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Decriminalize Drugs Now: A Dire Situation Becomes Much More Urgent

Miki Saito*

I. INTRODUCTION

The COVID-19 pandemic has unquestionably impacted many communities. It has revealed inadequacies in social protection systems that purport to support vulnerable individuals, such as those experiencing homelessness and poverty, those living with disabilities, and those experiencing drug addiction.¹ Although drug overdose deaths decreased from 2017 to 2018,² those within the addiction community have voiced concerns about the impacts of COVID-19—specifically social isolation and decreased access to in-person treatment—on people experiencing drug addiction.³ Because of the severe changes the pandemic has brought on our daily lives, and because we do not know its long-term effects on various institutions, it is important that immediate steps are taken to reduce harm. Although the Washington State Supreme Court recently ruled on a drug

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¹ See generally *Everyone Included: Social Impact of COVID-19*, UNITED NATIONS, <https://www.un.org/development/desa/dspd/everyone-included-covid-19.html> [<https://perma.cc/WKP3-VZTJ>]; MARCELINA JASMINE SILVA & ZAKARY KELLY, THE ESCALATION OF THE OPIOID EPIDEMIC DUE TO COVID-19 AND RESULTING LESSONS ABOUT TREATMENT ALTERNATIVES e202 (2020), http://ajmc.s3.amazonaws.com/_media/_pdf/AJMC_07_2020_Silva%20final.pdf [<https://perma.cc/QCA8-9A2G>].

² Nana Wilson et al., *Drug and Opioid-Involved Overdose Deaths—United States, 2017–2018*, in MORBIDITY AND MORTALITY WEEKLY REPORT (Mar. 20, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6911a4.htm> [<https://perma.cc/2GHK-TWKH>].

³ See generally SILVA & KELLY *supra*, note 1; see also Editorial Board, *The Opioid Crisis Didn't Disappear Amid the Pandemic. It Still Calls for Urgent Action.*, WASH. POST (Oct. 16, 2020), https://www.washingtonpost.com/opinions/the-opioid-crisis-didnt-disappear-amid-the-pandemic-it-still-calls-for-urgent-action/2020/10/16/7df74fd0-0d7f-11eb-b1e8-16b59b92b36d_story.html [<https://perma.cc/Q7AT-5YCJ>].

possession-related issue and noted the punitive nature of some drug laws,⁴ the decision does not go far enough to address the racist and classist harms often associated with the continued criminalization of drugs. Therefore, advocates and stakeholders must propose a ballot measure that would decriminalize possession and use of all drugs and invest in harm reduction policies. Additionally, advocates, stakeholders, and lawmakers should reconsider local diversion programs' dependence on law enforcement agencies and the criminal legal system for current drug crime enforcement.

In order to address the many problematic aspects inherent of continued criminal enforcement of drugs, it is important to provide historical context for this issue. Therefore, this comment first describes the history of racism in drug criminalization policies in the United States, with particular emphasis on the War on Drugs. Next, this comment summarizes Washington State laws governing drug enforcement, including recent developments in state drug laws, while also focusing on decriminalization efforts within King County and the Seattle area. Then, this comment details a background on decriminalization in two different jurisdictions—Portugal and Oregon. Finally, this comment proposes several solutions to the opioid epidemic specific to Washington State.

II. BACKGROUND

In 1874, long before the widespread criminalization of cocaine and marijuana in the twentieth century, San Francisco passed the first anti-drug laws in the United States by banning the smoking of opium.⁵ These laws were intended to address the growing concern of “drug stimulated [Chinese immigrants] working harder than non-smoking whites,” rather than the public health and safety of all citizens.⁶ At the time, smoking opium was

⁴ State v. Blake, 197 Wn.2d 170, 173, 481 P.3d 521 (2021).

⁵ Kathleen Auerhahn, *The Split Labor Market and the Origins of Antidrug Legislation in the United States*, 24 L. & SOC. INQUIRY 411, 422–24 (1999).

⁶ *Id.* at 422.

associated with the “contaminat[ion of] white people,” as “[a] brief residence in the Chinese quarter must convince any reasonable man that he is far below any race claiming to be intelligent as people, and that his baser habits are simply loathsome.”⁷ Thus, even in its earliest forms, anti-drug laws in the United States developed from racist origins.

Long before opium was policed by legislation, it was widely used in many forms for medicinal purposes.⁸ For example, Ancient Egyptian relics have depicted knowledge of opium as a pain reliever.⁹ Additionally, morphine, the active ingredient in opium, was first isolated in 1803 and used to treat soldiers during the Civil War.¹⁰ Later in the nineteenth century, heroin was developed as a less addictive and safer form of morphine.¹¹ Before its addictive properties became known, heroin was heavily marketed and later sold as over-the-counter medicine to treat coughs and colds.¹² Despite the widespread usage of opioids—all natural, semisynthetic, synthetic chemicals that react with the opioid receptors in the brain and body¹³—throughout the nineteenth and twentieth centuries, across all classes and races, some methods of opiate use were more socially acceptable than others.¹⁴ For example, even though opiates—natural forms

⁷ *Id.*

⁸ CHERYL L. CHAMBERS, DRUG LAWS AND INSTITUTIONAL RACISM, THE STORY TOLD BY THE CONGRESSIONAL RECORD 27–29 (Melvin I. Urofsky, 2010).

⁹ *Id.* at 28.

¹⁰ *Heroin, Morphine, and Opiates*, HISTORY.COM, <https://www.history.com/topics/crime/history-of-heroin-morphine-and-opiates> [<https://perma.cc/9U3G-6VNC>] (last updated June 10, 2019).

¹¹ *Heroin, Morphine, and Opiates*, *supra* note 10.

¹² *Id.*; Mary W. Carter, *The Hidden Epidemic Opioid Addiction Among Older Adults*, 27 No. 2 Experience 4 (2017).

¹³ *Commonly Used Terms*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/opioids/basics/terms.html> [<https://perma.cc/5X5Q-T9HD>].

¹⁴ Dale Gieringer, *The Opium Exclusion Act of 1909*, COUNTERPUNCH (Feb. 6, 2009), <https://www.counterpunch.org/2009/02/06/the-opium-exclusion-act-of-1909/> [<https://perma.cc/7CLZ-HKE4>] (stating that “the Opium Exclusion Act applied only to the opium processed for smoking that was favored by Chinese immigrants—not the medicinal opium that white Americans commonly kept in their household medicine cabinets”).

of opioids, such as morphine, heroin, and codeine¹⁵—were used widely in medicine, smoking opium¹⁶ was associated with racist connotations of Chinese workers.¹⁷ Even though this early criminalization of smoking opium came well before the War on Drugs, it illuminates the highly racialized trend of drug policing in the United States that is still prevalent today.

A. *The War on Drugs*

The term “War on Drugs” was first used by President Richard Nixon in an address to Congress in 1971.¹⁸ The early legislation of the War on Drugs dramatically increased the policing of drugs by increasing the size and power of federal drug enforcement agencies and included measures regarding mandatory sentencing and no-knock warrants.¹⁹ Particularly, the Anti-Drug Abuse Acts of 1986 and 1988 introduced minimum mandatory sentences and differentiated sentences for crack cocaine and powder cocaine.²⁰ With these acts, Congress intended to minimize “international drug traffic” and drug shipments into the United States.²¹ Specifically, Congress sought to address quantities of drugs that “kingpins” or “major

¹⁵ *Commonly Used Terms*, *supra* note 13.

¹⁶ James Nevius, *The Strange History of Opiates in America: from Morphine for Kids to Heroin for Soldiers*, THE GUARDIAN (Mar. 15, 2016), <https://www.theguardian.com/commentisfree/2016/mar/15/long-opiate-use-history-america-latest-epidemic> [<https://perma.cc/54R7-HW34>]; Gieringer, *supra* note 14.

¹⁷ *A Brief History of the Drug War*, DRUG POL’Y ALL., <https://www.drugpolicy.org/issues/brief-history-drug-war> [<https://perma.cc/E8AB-W3KS>] (Starting with laws aimed at Chinese immigrants and use of opium. Anti-drug laws later evolved to target mainly Latino and Black people for marijuana and cocaine use).

¹⁸ Tiffany R. Simmons, *The Effects of the War on Drugs on Black Women: From Early Legislation to Incarceration*, 26 AM. UNIV. J. GENDER SOC. POL’Y & L. 719, 723 (2018).

¹⁹ DRUG POL’Y ALL., *supra* note 17.

²⁰ DEBORAH J. VAGINS & JESSELYN MCCURDY, ACLU, CRACKS IN THE SYSTEM: TWENTY YEARS OF THE UNJUST FEDERAL CRACK COCAINE LAW ii (Oct. 2006), https://www.aclu.org/sites/default/files/field_document/cracksinsystem_20061025.pdf [<https://perma.cc/UB4G-V96J>]; Simmons, *supra* note 18.

²¹ *See generally* Anti-Drug Abuse Act of 1986, Pub. L. No. 99–570, 100 Stat. 3207.

traffickers” would possess.²² For example, legislation imposed a mandatory minimum prison sentence of ten years on those convicted of possessing 5,000 or more grams of powder cocaine or fifty or more grams of crack cocaine.²³ Those charged on crack cocaine offenses were almost always Black, street-level sellers.²⁴ Despite recommendations to eliminate the distinction between powder and crack cocaine from medical professionals and the United States Sentencing Commission, a bipartisan agency that aims to reduce sentencing disparities and promote transparency, these sentencing differences prevailed and had devastating effects on Black communities.²⁵

With this new legislation, individuals experienced tougher sentences for crack cocaine offenses than powder cocaine, despite these substances being pharmacologically identical.²⁶ Consequently, Black people were disproportionately affected by these legislative discrepancies.²⁷ This disparate treatment can be attributed to the focus drug enforcement agencies placed on policing “predominantly minority urban areas.”²⁸ Crack, developed as a cheaper alternative to powder cocaine, was more accessible for those of a lower socioeconomic demographic and became associated with inner-city minority communities.²⁹ Despite evidence from 1998

²² David A. Sklansky, *Cocaine, Race, and Equal Protection*, 47 STAN. L. R. 1283, 1287 (1995).

²³ *Id.*

²⁴ *Id.* at 1288–89.

²⁵ VAGINS & MCCURDY, *supra* note 20; *see generally About the Commission*, U.S. SENT’G COMM’N, <https://www.ussc.gov/> [<https://perma.cc/789A-CAGK>].

²⁶ MARC MAUER, *THE CHANGING RACIAL DYNAMICS OF THE WAR ON DRUGS* 1, 15 (2009), <https://www.sentencingproject.org/wp-content/uploads/2016/01/The-Changing-Racial-Dynamics-of-the-War-on-Drugs.pdf> [<https://perma.cc/28PD-97PE>].

²⁷ *Id.*

²⁸ VII. *Racially Disproportionate Drug Arrests*, 12 HUM. RTS. WATCH 78 (2000). <https://www.hrw.org/reports/2000/usa/Rcedrg00-05.htm> [<https://perma.cc/CR3G-5Z35>].

²⁹ *What is Crack? Differences Between Crack and Cocaine?*, AM. ADDICTION CTRS. (Oct. 19, 2020), <https://americanaddictioncenters.org/cocaine-treatment/differences-with-crack> [<https://perma.cc/K2BD-BH8F>]; Andrew Cohen, *How White Users Made Heroin a Public-Health Problem*, THE ATLANTIC (Aug. 12, 2015),

showing that more white people had used crack than Black people, data on arrests for drugs between 1979 to 1998 shows a substantially higher proportion of Black drug offenders than white drug offenders.³⁰ In fact, an aide from the Nixon Administration later admitted to targeting Black people with their policies, saying, “[the Administration] couldn’t make it illegal to be either against the [Vietnam] war or [B]lack, but by getting the public to associate the hippies with marijuana and [B]lacks with heroin, and then criminalizing both heavily, we could disrupt those communities.”³¹ Thus, the criminalization of crack cocaine stemmed from blatantly racist origins, effects of which are still seen today.

B. The Opioid Epidemic

Although in recent years some states have voted to legalize or decriminalize drugs, the dominant national policy towards drug use and possession remains that of criminalization.³² The early implementation of laws surrounding drugs and their use have developed over time and have contributed to addiction, overdose deaths, mass incarceration, drug stigmatization, and disease transmission.³³ As this history suggests, major differences exist today between the types of drugs that are deemed socially acceptable versus criminalized.

<https://www.theatlantic.com/politics/archive/2015/08/crack-heroin-and-race/401015/> [<https://perma.cc/J6NW-FEMP>].

³⁰ *VII. Racially Disproportionate Drug Arrests supra* note 28, at 84.

³¹ DRUG POL’Y ALL., *supra* note 17.

³² Kevin Doyle, *Decriminalization Could Help Ease the Nation’s Drug Epidemic, but the Devil is in the Details*, STAT (Nov. 17, 2020), <https://www.statnews.com/2020/11/17/drug-decriminalization-could-help-ease-the-nations-drug-epidemic-but-the-devil-is-in-the-details/> [<https://perma.cc/6FSR-G443>] (describing generally the legalization of marijuana in several states and the decriminalization of drugs in Oregon).

³³ See generally Randy E. Barnett, *The Harmful Side Effects of Drug Prohibition*, UTAH L. REV. 11 (2009) (discussing that drug laws often punish drug users, create riskier transactions, and lead to the creation of more dangerous drugs).

The Centers for Disease Control and Prevention (CDC) has classified the opioid epidemic into three waves, highlighting differences in origins and costs of drugs.³⁴ The first wave is associated with overdoses due to prescription opioid pain medication.³⁵ In a study, the CDC found that overdoses due to prescription drugs had worsened between 1999 and 2008; that there were not many underlying demographic differences in state populations for those overdoses; and that the overdose rates were related to wide variations in pain medication prescribing.³⁶ These findings led to CDC recommendations about how often and when doctors should prescribe pain relievers, and about how to approach pain management, in general.³⁷ Unfortunately, as doctors became more careful about their prescriptions, patients turned to cheaper, more easily accessible alternatives for pain relief.³⁸

The second wave, beginning in 2010, is characterized by rapid increases in overdose deaths involving heroin.³⁹ During this timeframe, the CDC found that following the rapid increase in prescription drug overdose rates in the previous decade, more individuals were experiencing overdose deaths from heroin use.⁴⁰ In its study, the CDC noted that people who reported

³⁴ *Id.*

³⁵ *The Drug Overdose Epidemic: Behind the Numbers*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/drugoverdose/data/index.html> [<https://perma.cc/X5DZ-C7FY>] [hereinafter *Behind the Numbers*]; LEONARD J. PAULLOZZI ET AL., *Vital Signs: Overdoses of Prescription Opioid Pain Relievers — United States, 1999—2008*, in MORBIDITY AND MORTALITY WEEKLY REPORT 1487–92 (Nov. 4, 2011), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6043a4.html> [<https://perma.cc/DXB8-UPNQ>].

³⁶ PAULLOZZI ET AL., *supra* note 35.

³⁷ *Id.*

³⁸ NAT'L INST ON DRUG ABUSE, PRESCRIPTION OPIOIDS AND HEROIN RESEARCH REPORT 11 (2018) (describing how some research suggests that the transition from prescription opioids to heroin is attributable to its cost).

³⁹ *Behind the Numbers*, *supra* note 35.

⁴⁰ ROSE A. RUDD ET AL., *Increases in Heroin Overdose Deaths—28 States, 2010 to 2012*, in MORBIDITY AND MORTALITY WEEKLY REPORT 849–54 (Oct. 3, 2014), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6339a1.htm> [<https://perma.cc/D3VH-JHQ5>].

heroin use described it as “more readily accessible, less expensive, and . . . a more potent high than prescription opioids.”⁴¹ Although prescription drug overdose rates were decreasing, the CDC was also concerned that the rise in heroin overdose deaths indicated an increase in injection drug use.⁴² A potential rise in injection drug use was of particular concern because using needles or syringes places people at a higher risk of contracting HIV/AIDS, hepatitis, and other viral infections.⁴³

Starting around 2013, the third wave of the opioid epidemic is characterized by overdose deaths associated with synthetic opioids, especially fentanyl.⁴⁴ Fentanyl is a highly potent opioid and can be found mixed in other illicit drugs like heroin, counterfeit pills, and cocaine.⁴⁵ Due to its potency, fentanyl ingestion can lead to a quick loss of consciousness and death.⁴⁶ According to a CDC study, most fentanyl deaths were not attributed to injection, but instead were introduced to the body through snorting, ingesting, or smoking.⁴⁷ This study led to recommendations surrounding the availability of naloxone, an overdose reversal drug, and other intervention programs.⁴⁸

⁴¹ *Id.*

⁴² *Id.*

⁴³ *HIV and Injection Drug Use*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/hiv/basics/hiv-transmission/injection-drug-use.html> [<https://perma.cc/FSF5-8B69>].

⁴⁴ *Opioid Overdose, Understanding the Epidemic*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/drugoverdose/epidemic/index.html> [<https://perma.cc/C32Z-4SFC>].

⁴⁵ *Id.*

⁴⁶ JULIE K. O'DONNELL ET AL., *Deaths Involving Fentanyl, Fentanyl Analogs, and U-47700–10 States, July–December 2016*, in MORBIDITY AND MORTALITY WEEKLY REPORT 1197–1202 (Nov. 3, 2017), <https://www.cdc.gov/mmwr/volumes/66/wr/mm6643e1.htm> [<https://perma.cc/8D47-86BJ>].

⁴⁷ *Id.*

⁴⁸ *Id.* Naloxone is also often known under its brand name, Narcan. *Opioid Overdose Basics*, NAT'L HARM REDUCTION COAL., <https://harmreduction.org/issues/overdose-prevention/overview/overdose-basics/understanding-naloxone/> [<https://perma.cc/7LWH-23NN>].

C. Washington State Drug Laws and Mass Incarceration

Prior to 2021, possession of a controlled substance in Washington State was a felony resulting in imprisonment, fines, or both, depending on the class of the drug.⁴⁹ Specifically, the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance was considered a felony, punishable with imprisonment for a minimum of five years and/or a fine of up to fifty thousand dollars.⁵⁰ However, recognizing particularly punitive effects of incarceration, the Washington State Supreme Court ruled in early 2021 that a strict liability statute criminalizing unintentional, unknowing possession of a controlled substance fell beyond the State's police powers.⁵¹ In *State v. Blake*, the court placed particular emphasis on concerns associated with the "harsh penalties of felony conviction, lengthy imprisonment, stigma, and collateral consequences that accompany every felony drug conviction."⁵² In response to this decision, Governor Jay Inslee signed legislation making possession of drugs a misdemeanor, saying that the new law would, "help reduce the disparate impact of the previous drug possession statute on people of color."⁵³ The legislation also encourages prosecutors "to divert such cases for assessment, treatment, or other services."⁵⁴

⁴⁹ WASH. REV. CODE § 69.50.401 (2021).

⁵⁰ *Id.*; *Jail and Penalty Alternatives for Drug or VUCSA Crimes in Washington*, VUCSA DEF., <https://www.vucsa.com/jail-and-penalty-alternatives-for-drug-or-vucsa-crimes> (last visited Oct. 2, 2020).

⁵¹ *State v. Blake*, 197 Wn.2d 170, 173, 481 P.3d 521 (2021) (In this case, Shannon Blake was arrested while unknowingly having a small baggy containing methamphetamine in a pocket of her jeans. On appeal from the trial court, the Appellate Court held that the "crime of possession of a controlled substance does not require a mens rea element" and the defense's burden to show unwitting possession does not violate due process.")

⁵² *Id.* at 174.

⁵³ S.B. 5476, 67th Leg., 2021 Reg. Sess. (Wash. 2021); Rachel La Corte & Gene Johnson, *New Washington state law makes drug possession a misdemeanor*, AP NEWS (May 31, 2021), <https://apnews.com/article/washington-laws-government-and-politics-bf0a8af742fe8053e5d5748125143e84> [<https://perma.cc/5GRN-2SXQ>].

⁵⁴ S.B. 5476, 67th Leg., 2021 Reg. Sess. (Wash. 2021)

Nevertheless, studies show how “discriminatory enforcement” of drug possession laws contributes to the disproportionate representation of Black people in prisons across the United States and in Washington State.⁵⁵ In general, the system of mass incarceration affects the health and well-being of those within prisons; compared to the general population, incarcerated individuals experience a disproportionate amount of chronic and viral health problems, such as diabetes, high blood pressure, HIV, substance abuse, and mental health problems.⁵⁶ Incarceration also disrupts life for individuals, and, upon release, those people often struggle to find housing and employment and to connect with others.⁵⁷ In addition to a gap in work history due to incarceration and stigmatization of incarceration, few employers are willing to hire applicants with criminal records.⁵⁸ Other consequences of incarceration include loss of federal financial aid, eviction, loss of the right to vote, and denial of public assistance.⁵⁹ Thus, it follows that mass incarceration contributes to barriers to upward socioeconomic mobility and political engagement.

Another outcome associated with mass incarceration is the effect that it has on marriages, families, and children.⁶⁰ Studies suggest that intergenerational consequences of incarceration place an accumulation of

⁵⁵ *It's Time for the U.S. to Decriminalize Drug Use and Possession*, DRUG POL'Y ALL. (Aug. 30, 2017), <https://www.drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession#other-countries-experiences> [<https://perma.cc/B2QN-GG9M>].

⁵⁶ *Health, PRISON POL'Y INITIATIVE*, <https://www.prisonpolicy.org/health.html#:~:text=People%20in%20prisons%20and%20jails,quality%20and%20difficult%20to%20access> [<https://perma.cc/N7MK-U8S9>].

⁵⁷ See generally Dora M. Dumont et al., *Public Health and the Epidemic of Incarceration*, 33 ANN. REV. PUB. HEALTH 325 (2012).

⁵⁸ Jason Schnittker & Andrea John, *Enduring Stigma: The Long-Term Effects of Incarceration on Health*, 48 J. HEALTH SOC. BEHAV. 115, 117 (2007).

⁵⁹ *It's Time for the U.S. to Decriminalize Drug Use and Possession*, DRUG POL'Y ALL. (Aug. 30, 2017) <https://www.drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession#other-countries-experiences> [<https://perma.cc/P3A6-JBWZ>] [hereinafter *Decriminalize*].

⁶⁰ See generally Schnittker & John, *supra* note 58; Kristin Turney, *The Unequal Consequences of Mass Incarceration for Children*, 54 DEMOGRAPHY 361 (2017).

stressors on children who may already be experiencing instability and poverty.⁶¹ Specifically, these stressors stem from strains on economic resources, disruption in parental dynamics, impairment of parenting behaviors, and weakening of maternal health.⁶²

Because of the numerous social, economic, and health-related consequences associated with mass incarceration, it is imperative that stakeholders assess the role of enforcement of drug use and possession within a larger system that includes partners, families, and potential employers. Despite the shift in punishment for drug possession from a felony to a misdemeanor, subjecting individuals to the criminal legal system at all for possession and use of drugs has rippling effects. Therefore, decriminalization of such activity should help ease the burden on incarcerated people and their loved ones.

D. Decriminalization Efforts in Seattle and King County

Before we continue, it is important to define several relevant terms. Drug decriminalization is defined as the elimination of criminal penalties for drug use, drug possession, and drug equipment possession.⁶³ In contrast, legalization is the process of removing all legal prohibitions for a particular drug.⁶⁴ While there is no universal definition, harm reduction is understood as practical strategies and ideas aimed to reduce negative consequences associated with drug use.⁶⁵ Harm reduction is also a social justice

⁶¹ Turney, *supra* note 60, at 364.

⁶² *Id.*

⁶³ *Decriminalize*, *supra* note 59.

⁶⁴ Dragan M. Svrakic et al., *Legalization, Decriminalization & Medicinal Use of Cannabis: A Scientific and Public Health Perspective*, 109 J. MO. STATE MED. ASS'N. 90 (2012).

⁶⁵ *Principles of Harm Reduction*, NAT'L HARM REDUCTION COAL., <https://harmreduction.org/about-us/principles-of-harm-reduction/> [<https://perma.cc/W2CD-T8MJ>].

movement that rests upon the belief in, and respect for, the rights of people who use drugs.⁶⁶

The concept of drug decriminalization has been gaining domestic and global support, and is now endorsed by many medical, public health, and human rights groups.⁶⁷ Decriminalization practices include implementation of diversion programs and clean needle exchanges.⁶⁸ Another well-known example of decriminalization is the enactment of “Good Samaritan” laws. These laws shield people from liability for seeking emergency medical treatment in drug overdose situations.⁶⁹ These practices all demonstrate harm reduction values in that they seek to create a safer environment for drug use, recognizing that drug use will always occur and is not inherently a moral wrong.

Critics of drug decriminalization in the Seattle area attribute the city’s increasing rates of homelessness to looser drug policy.⁷⁰ The 2019 television documentary, “Seattle Is Dying,” showed viewers scenes of poverty and homelessness from around Seattle, attempting to link rising

⁶⁶ *Id.*

⁶⁷ Svrakic et al., *supra* note 64.

⁶⁸ See generally *Law Enforcement Assisted Diversion (LEAD)*, KING CNTY. (June 15, 2020), <https://www.kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/diversion-reentry-services/lead.aspx#:~:text=The%20Law%20Enforcement%20Assisted%20Diversion,behavioral%20health%20needs%20or%20poverty> [https://perma.cc/8BKC-8BVZ] [hereinafter *LEAD King County*]; see also *Needle Exchange, drug use and harm reduction*, KING CNTY. (June 19, 2020), <https://www.kingcounty.gov/depts/health/communicable-diseases/hiv-std/patients/drug-use-harm-reduction.aspx> [https://perma.cc/V5LE-PK82].

⁶⁹ WASH. REV. CODE § 4.24.300 (2021); *Good Samaritan Law*, STOPOVERDOSE.ORG (July 27, 2018), <http://stopoverdose.org/section/good-samaritan-law/> [https://perma.cc/K4FW-DKXB] (explaining the meaning of Good Samaritan Law in plain language).

⁷⁰ Justin Jouvenal, *No Charges for Personal Drug Possession: Seattle’s Bold Gamble to Bring ‘Peace’ After the War on Drugs*, WASH. POST (June 11, 2019), https://www.washingtonpost.com/local/public-safety/no-charges-for-personal-drug-possession-seattles-bold-gamble-to-bring-peace-after-the-war-on-drugs/2019/06/11/69a7bb46-7285-11e9-9f06-5fc2ee80027a_story.html [https://perma.cc/F7KG-2MS9].

levels of homelessness with city leadership’s “failure” to enforce laws.⁷¹ These criticisms fail to acknowledge the complexities surrounding homelessness. For example, our society and culture, shown through popular media, overwhelmingly attribute homelessness as an individual shortcoming or failure.⁷² However, studies show that homelessness is caused by practices including but not limited to the divestment from social housing, lack of affordable housing, neighborhood gentrification, inadequate mental health services, and unlivable wages.⁷³ In fact, critical responses to the “Seattle Is Dying” documentary pointed out these issues, noting that the documentary “conflates homelessness with drug use, mental illness, and crime.”⁷⁴ Thus, the association of drug decriminalization as a causal factor towards homelessness is misguided, at the very least.

1. Law Enforcement Assisted Diversion

To address the issues surrounding mass incarceration, drug policing, and addiction, King County implemented a diversion program aimed at individuals involved in low-level drug crime, sex work, and crimes of poverty.⁷⁵ Instead of prosecuting and incarcerating individuals engaged in these activities, the Law Enforcement Assisted Diversion (LEAD) program connects them with case managers who can assist in crisis response and long-term services, including substance use disorder treatment and housing.⁷⁶ LEAD participants are not required to maintain abstinence or

⁷¹ Eric Johnson, *KOMO News Special: Seattle is Dying*, KOMO NEWS (Mar. 14, 2019), <https://komonews.com/news/local/komo-news-special-seattle-is-dying> [<https://perma.cc/ZTB9-DW74>].

⁷² Amy S. Katz et al., *Housing First the Conversation: Discourse, Policy and the Limits of the Possible*, 27 CRITICAL PUB. HEALTH 139, 141 (2017).

⁷³ *Id.* at 142.

⁷⁴ Catherine Hinrichsen, *6 Reasons Why KOMO’s Take on Homelessness is the Wrong One*, CROSSCUT. (Mar. 20, 2019), <https://crosscut.com/2019/03/6-reasons-why-komostake-homelessness-wrong-one> [<https://perma.cc/D9YW-4ETB>].

⁷⁵ *LEAD King County*, *supra* note 68.

⁷⁶ *Id.*

attend treatment, which is consistent with harm reduction values of minimizing harmful effects of drug use rather than condemning use.⁷⁷ In recognizing the effects of incarceration and displacement from communities, the program seeks to extend services to individuals for as long as they need them.⁷⁸ LEAD is designed and marketed such that community groups, prosecutors, and law enforcement collaborate to decrease the number of individuals sent to jail, to promote harm reduction tactics, and to increase community outreach.⁷⁹

According to an evaluation by the University of Washington, LEAD participants were more likely to find housing and employment following their first referral to the program, compared to the month prior to referral.⁸⁰ Additionally, this evaluation found that LEAD participants finding housing and employment was correlated with experiencing fewer arrests.⁸¹

From a cost perspective, the LEAD program seems both efficient and effective.⁸² In another study conducted by the University of Washington, researchers found that LEAD participants, on average, had 1.4 fewer days of jail bookings and spent about 41 fewer days in jail per year than those in the study's control group.⁸³ Additionally, LEAD participants incurred significantly less legal costs compared to non-LEAD individuals.⁸⁴ These

⁷⁷ *LEAD King County*, *supra* note 68; *Principles of Harm Reduction*, NAT'L HARM REDUCTION COAL., <https://harmreduction.org/about-us/principles-of-harm-reduction/> [<https://perma.cc/B6LT-JNR5>].

⁷⁸ *LEAD King County*, *supra* note 68.

⁷⁹ *Id.*

⁸⁰ SEEMA L. CLIFASEFI ET AL., LEAD PROGRAM EVALUATION: THE IMPACT OF LEAD ON HOUSING, EMPLOYMENT AND INCOME/ BENEFITS 2 (2016), https://56ec6537-6189-4c37-a275-02c6ee23efe0.filesusr.com/ugd/6f124f_dbde96f835db4526abf7bfda03d0040f.pdf

[<https://perma.cc/WX8A-RXG4>].

⁸¹ *Id.*

⁸² *See generally* Susan E. Collins et al., *Seattle's Law Enforcement Assisted Diversion (LEAD): Program Effects on Criminal Justice and Legal System Utilization and Costs*, 15 J. EXPERIMENTAL CRIMINOLOGY 201 (2019).

⁸³ *Id.* at 201.

⁸⁴ *Id.*

studies, evaluating the efficacy of the LEAD program, indicate that jurisdictions can implement positive changes to the way they address drug related crimes.

2. Clean Needle Exchanges and Safe Consumption Sites

In addition to the LEAD program, King County has engaged in other decriminalization responses. Although controversial,⁸⁵ King County has implemented several clean needle exchange locations and has engaged in discussions about introducing safe consumption sites.⁸⁶ Clean needle exchanges typically provide new, sterile syringes and clean injection equipment in exchange for used, contaminated equipment.⁸⁷ Some clean needle exchanges may also refer drug users into treatment and healthcare and may provide testing for some infections.⁸⁸ Part of the hesitation of communities to support more clean needle exchanges is a misguided belief that the availability of clean needles will contribute to increased drug use.⁸⁹ However, the CDC has stated that the presence of clean needle exchanges does not lead to increases in drug use, nor does it lead to more crime.⁹⁰

⁸⁵ Scott Greenstone, *Afraid of Enabling Drug Use, Washington Cities Push Back Against Needle Exchanges*, SEATTLE TIMES (July 28, 2019), <https://www.seattletimes.com/seattle-news/homeless/afraid-of-enabling-drug-use-washington-cities-push-back-against-needle-exchanges/> [<https://perma.cc/M6KD-MBUN>].

⁸⁶ Aaron Kunkler, *What's Been Happening With Safe Injection Sites?*, SEATTLE WKLY. (Nov. 30, 2019), <https://www.seattleweekly.com/news/whats-been-happening-with-safe-injection-sites/> [<https://perma.cc/C45U-GJJK?type=image>].

⁸⁷ *King County Needle Exchange*, KING CNTY. (May 12, 2021), <https://www.kingcounty.gov/depts/health/communicable-diseases/hiv-std/patients/drug-use-harm-reduction/needle-exchange.aspx> [<https://perma.cc/W9ZM-95QK>].

⁸⁸ *Id.*

⁸⁹ Edgar Mendez, *Do Needle Exchanges Reduce the Spread of Infectious Disease? The Research Isn't Clear.*, MILWAUKEE J. SENTINEL (Nov. 8, 2018), <https://www.jsonline.com/story/opinion/contributors/2018/11/08/research-mixed-needle-exchange-programs/1930524002/> [<https://perma.cc/57ME-M8VC>].

⁹⁰ *Syringe Services Programs (SSPs) FAQs*, CNTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/ssp/syringe-services-programs-faq.html#lead-to-more-crime> [<https://perma.cc/FHE7-E7FK>].

Moreover, studies have shown that investments in clean needle exchanges are actually associated with decreases in HIV prevalence and lifetime HIV treatment cost savings of about \$75.8 million.⁹¹

Implementing safe consumption sites is another harm-reduction approach to addressing the opioid epidemic. Safe consumption sites are defined as professionally supervised facilities where drug users can consume drugs.⁹² Safe consumption sites accomplish much of the same public and individual health goals as clean needle exchanges and often expand on these services. In addition to providing drug use resources and referrals to services, consumption sites also aim to decrease morbidity and mortality through emergency intervention in the event of an overdose or adverse reaction.⁹³ Implementing safe consumption sites would also involve decriminalization of drug consumption in some capacity because, federally, “[t]he Controlled Substances Act prohibits any person from knowingly and intentionally maintaining a place for the purpose of illegal drug use.”⁹⁴

In addition to legal barriers to the implementation of safe consumption sites in the United States, there is an abundance of cultural stigma surrounding drug use and related crime.⁹⁵ For example, a Philadelphia

⁹¹ *Access to Clean Syringes*, CNTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/policy/hst/hi5/cleansyringes/index.html> [https://perma.cc/2TPZ-QXLW].

⁹² EUR. MONITORING CTR. FOR DRUGS AND DRUG ADDICTION, *PERSPECTIVES ON DRUGS, DRUG CONSUMPTION ROOMS: AN OVERVIEW OF PROVISION AND EVIDENCE 2* (2018), https://www.emcdda.europa.eu/system/files/publications/2734/POD_Drug%20consumption%20rooms.pdf [https://perma.cc/Z2TV-3HXN].

⁹³ *Id.*

⁹⁴ Press Release, Off. of Pub. Affs., U.S. Dep’t of Just., Appellate Court Agrees with Government that Supervised Injection Sites are Illegal under Federal Law; Reverses District Court Ruling (Jan. 13, 2021), <https://www.justice.gov/opa/pr/appellate-court-agrees-government-supervised-injection-sites-are-illegal-under-federal-law> [https://perma.cc/M7PB-HXNB] [hereinafter Appellate Court Agrees]; *See generally Supervised Consumption Services*, DRUG POL’Y ALL., <https://www.drugpolicy.org/issues/supervised-consumption-services> [https://perma.cc/4Y7V-QUHW] [hereinafter *Supervised Consumption*].

⁹⁵ *Supervised Consumption*, *supra* note 94.

nonprofit, Safehouse, experienced resistance from both government officials and community members when it announced plans to open a safe consumption site.⁹⁶ Despite a federal district judge ruling in early 2020 that a safe consumption site would be legal, community resistance and an appellate decision prevailed and the site has not yet opened.⁹⁷ Similar to clean needle exchanges, no academic studies have shown a correlation between safe consumption sites and increases in community drug use.⁹⁸ Instead, safe consumption sites can contribute to introductions to substance use disorder treatment and provide a safe space to manage on-site overdoses.⁹⁹

In fact, supervised injection sites currently operate in Europe, Australia, and Canada with the aim to decrease viral disease transmission and drug overdose deaths.¹⁰⁰ A study of Insite, a Canadian facility located in Vancouver, British Columbia, showed that overdose deaths in the area decreased by 35% after opening and that the city overdose rate decreased by 9.3%.¹⁰¹ Thus, there is evidence to suggest that safe consumption sites are associated with fewer overdose deaths in areas where injection drug use is particularly prevalent.¹⁰²

⁹⁶ Bobby Allyn, *Injection Site Faces Criticism, Resistance*, PHILADELPHIA TR. (Oct. 8, 2018), https://www.phillytrib.com/metros/injection-site-faces-criticism-resistance/article_216c88af-a6e8-506c-8f45-1916f09e0e3d.html [<https://perma.cc/Q5BQ-XCL4>].

⁹⁷ See Appellate Court Agrees, *supra* note 94; Nina Feldman & Jake Blumgart, *Safehouse Hits Pause On Plan to Open Supervised Injection Site in South Philly*, WHYY (Feb. 27, 2020), <https://whyy.org/articles/safehouse-hits-pause-on-plan-to-open-supervised-injection-site-in-south-philly/> [<https://perma.cc/8U74-SK2W>].

⁹⁸ *Supervised Consumption*, *supra* note 94.

⁹⁹ *Id.*

¹⁰⁰ Alex Kreit, *Safe Injection Sites and the Federal “Crack House” Statute*, 60 B.C. L. REV. 414, 421 (2019).

¹⁰¹ Brandon DL Marshall et al., *Reduction in Overdose Mortality After the Opening of North America’s First Medically Supervised Safer Injecting Facility: A Retrospective Population-Based Study*, 377 LANCET 1429 (2011).

¹⁰² *Id.*

E. The Portuguese Decriminalization Model

Washington State should also look to other jurisdictions as a guide for potential amendments to laws governing drug decriminalization efforts. Like many other countries in the late twentieth century, Portugal experienced high rates of drug use, particularly heroin use.¹⁰³ In response to this problem, Portugal rejected an abstinence or “zero tolerance” approach and instead appointed a committee of doctors, sociologists, psychologists, and lawyers to investigate the drug issue.¹⁰⁴ As a result of this committee’s recommendations, Portugal officially decriminalized all drug use and possession in 2001.¹⁰⁵ Studies have found that, contrary to popular global discourse, drug consumption has not increased as a result of decriminalization.¹⁰⁶ In addition, both HIV infection rates and drug-related deaths have decreased in Portugal since decriminalization.¹⁰⁷

Many experts agree that Portugal is proof that decriminalization does not increase drug use and is a better, more humane way to address drug consumption, addiction, recidivism, and disease transmission.¹⁰⁸ Specifically, Portuguese policy makers recognized that drug dependence was not a problem that could be solved by locking people away from the rest of society.¹⁰⁹ Washington State should take a similar approach and prioritize the health and safety of communities by implementing harm reduction strategies and decriminalization programming.

¹⁰³ *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*, GLOB. DRUG POL’Y PROGRAM 19 (June 2011) <https://www.tni.org/files/publication-downloads/drug-policy-in-portugal-english.pdf> [<https://perma.cc/C5HW-AJY6>] [hereinafter *Portugal*].

¹⁰⁴ *Id.* at 21.

¹⁰⁵ Susana Ferreria, *Portugal’s Radical Drugs Policy Is Working. Why Hasn’t The World Copied It?*, THE GUARDIAN (Dec. 5, 2017), <https://www.theguardian.com/news/2017/dec/05/portugals-radical-drugs-policy-is-working-why-hasnt-the-world-copied-it> [<https://perma.cc/2U5P-BAP7>].

¹⁰⁶ *Portugal*, *supra* note 103, at 24.

¹⁰⁷ *Id.* at 8.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 27.

F. Oregon State's Decriminalization Measure

During the Fall 2020 election cycle, Oregon voters chose to decriminalize personal possession of all drugs, including heroin and cocaine.¹¹⁰ Specifically, Oregon Measure 110, the Drug Decriminalization and Addiction Treatment Initiative, provided that “a ‘yes’ vote supported making personal non-commercial possession of a controlled substance no more than a Class E violation (max fine of \$100) and establishing a drug addiction treatment and recovery program funded in part by the state’s marijuana tax revenue and state prison savings.”¹¹¹ Conversely, a “no” vote maintained the “existing maximum penalty for a Class A misdemeanor of one year in prison and a \$6,250 fine.”¹¹² Although individual possession was decriminalized, those who manufacture or distribute illegal drugs remain subject to criminal penalty.¹¹³

Proponents of the Oregon ballot measure recognized that individuals with drug addiction needed humane, health-based support, not criminal punishment.¹¹⁴ Lawmakers in Oregon noted that access to recovery services, peer support, and stable housing was of particular importance when drafting the language of the Act.¹¹⁵ Meanwhile, critics of the Oregon ballot measure voiced concerns that decriminalization would increase

¹¹⁰Natasha Lennard, *Oregon's Decriminalization Vote Might Be Biggest Step Yet to Ending War on Drugs*, THE INTERCEPT (Nov. 4, 2020), <https://theintercept.com/2020/11/04/oregon-drugs-decriminalization/> [<https://perma.cc/PB5D-M2AX>].

¹¹¹LEGIS. POL'Y & RSCH. OFF., MEASURE 110 (2020) BACKGROUND BRIEF (2020), [https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-\(2020\).pdf](https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-(2020).pdf) [<https://perma.cc/AU32-K4NH>]; see also *Oregon Measure 110, Drug Decriminalization and Addiction Treatment Initiative (2020)*, BALLOTEDIA, [https://ballotpedia.org/Oregon_Measure_110,_Drug_Decriminalization_and_Addiction_Treatment_Initiative_\(2020\)](https://ballotpedia.org/Oregon_Measure_110,_Drug_Decriminalization_and_Addiction_Treatment_Initiative_(2020)) [<https://perma.cc/S7JA-B6XJ>].

¹¹²See MEASURE 110 (2020) BACKGROUND BRIEF, *supra* note 111.

¹¹³*Id.*

¹¹⁴*Oregonians Say YES On 110: More Treatment. Less Punishment.*, YES 110, <https://voteyeson110.org/> [<https://perma.cc/UGR9-CGE2>].

¹¹⁵Drug Addiction Treatment and Recovery Act, B.M. No. 110, I.P. No. 44 (2020).

access to drugs for adults and minors,¹¹⁶ an idea that has been disproved by studying jurisdictions like Portugal.¹¹⁷ Much of the criticism centers around the idea that those who use drugs are deserving of punishment—in need of “the threat of incarceration”¹¹⁸—which further perpetuates the false notion that continued interactions with the court system and law enforcement are humane and sustainable ways to address harm.¹¹⁹

Both advocacy groups and lawmakers noted the detrimental effects of the criminal legal system on those struggling with drug addiction.¹²⁰ Specifically, lawmakers noted that criminalization of drug possession has contributed to challenges related to obtaining housing, schooling, loans, professional licensing, and jobs.¹²¹ Lawmakers also explicitly noted the disproportionate harms that drug criminalization has on poor people and people of color.¹²² Finally, proponents of the ballot measure also recognized the significant differences in cost between arresting, prosecuting, and jailing someone for drug possession versus providing drug treatment to that individual.¹²³ According to supporters of the ballot measure, it costs almost \$30,000 to subject someone to the criminal legal system for drug possession, while it costs about \$10,000 to provide them with treatment.¹²⁴ The ballot measure also proposed that these drug treatment programs be funded with marijuana tax revenue.¹²⁵

¹¹⁶ *Voter Statements, Vote No on Measure 110!*, <http://voteno110.com/103-2/> [<https://perma.cc/8AY6-X5VD>].

¹¹⁷ See discussion *supra* Section II.E.

¹¹⁸ See *Voter Statements, supra* note 116.

¹¹⁹ ALEX S. VITALE, *THE END OF POLICING* 146–47 (discussing the problematic aspects of drug courts, as they are often punitive, dangerous, and dehumanizing for participants).

¹²⁰ *Drug Addiction Treatment and Recovery Act*, B.M. No. 110, I.P. No. 44 (2020).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Oregonians Say YES On 110: More Treatment. Less Punishment, supra* note 114.

¹²⁴ *Id.*

¹²⁵ *Oregon Measure 110, Drug Decriminalization and Addiction Treatment Initiative (2020), supra* note 111.

The Oregon and Portugal models of drug decriminalization are similar in that both jurisdictions have recognized the need to increase drug treatment, while also noting that drug use cannot and should not be addressed by subjecting people to the criminal legal system. Further interactions with courts via court-mandated treatment programs are often humiliating for participants, as the focus centers on one's moral failures and punishment.¹²⁶ As shown in Portugal, decriminalization of drugs has led to lower HIV prevalence and fewer drug-related deaths.¹²⁷ Therefore, Washington State should follow these more humane approaches, invest in harm reduction, and decriminalize drug use and possession statewide.

III. PROPOSED SOLUTIONS TO THE OPIOID EPIDEMIC AND ACCOMPANYING ISSUES

To address the issues that accompany the criminalization of drug use and possession, such as mass incarceration and disease transmission, it is imperative that legal solutions consider community needs and the sociological impacts of such proposals. Harm reduction approaches are absolutely necessary, as are complete divestments from the general policing of drug use and possession. To tackle today's most pressing issues surrounding drug use and possession, Washington State and King County must do the following: (1) maintain and expand current harm reduction approaches; (2) decriminalize possession and use of all drugs; and (3) end interactions with the police and the court system by eliminating the LEAD program.

A. Continuance and Strengthening of Harm Reduction Approaches

Following the model in King County, Washington State must expand clean needle exchange programs, while also piloting safe consumption sites to strengthen harm reduction efforts in the community, because doing so

¹²⁶ VITALE, *supra* note 119, at 147.

¹²⁷ See discussion *supra* Section II.E.

would align best with public health goals. Of the thirty-nine counties in Washington State, twenty-six have clean needle exchange programs.¹²⁸ Currently, there are six clean needle exchanges and zero safe consumption sites in King County.¹²⁹

1. Clean Needle Exchanges

According to the CDC, people who inject drugs and use clean needle exchanges are more likely to enter into treatment for substance use.¹³⁰ Clean needle exchanges are also associated with decreased transmission of HIV, viral hepatitis, and bacterial and fungal infections.¹³¹ Individuals who use injection drugs are also at a higher risk of other health issues such as endocarditis, skin infections, and deep tissues abscesses.¹³² On a larger scale, access to clean needles protects not only the individual using injection drugs but also their families and sexual partners.¹³³ Clean needle exchanges in King County also provide a range of other services, including abscess treatment and care, HIV/hepatitis testing and counseling, Hepatitis A and B vaccinations, tuberculosis screening, and access to Narcan to prevent overdose deaths.¹³⁴

Clean needle exchanges were first introduced in Seattle in 1989, and there have been zero reported cases of mother-to-child HIV transmission

¹²⁸ *Syringe Service Programs*, WASH. STATE DEP'T HEALTH, <https://www.doh.wa.gov/YouandYourFamily/DrugUserHealth/SyringeServicePrograms> [<https://perma.cc/BY2Q-JDQB>].

¹²⁹ *King County Needle Exchange*, *supra* note 87; see also *Frequently Asked Questions, Behavioral Health and Recovery Division*, KING CNTY. (July 30, 2019), <https://www.kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/task-forces/heroin-opiates-task-force/faqs.aspx> [<https://perma.cc/PVB6-WUKF>] (explaining that a group is currently working on establishing a site in King County).

¹³⁰ *Syringe Services Programs (SSPs) FAQs*, *supra* note 90.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *King County Needle Exchange*, *supra* note 87.

¹³⁴ *Id.*

among resident women in King County in the last ten years.¹³⁵ Thus, there is an association between access to clean needles and the prevention of certain infections and other chronic diseases typically associated with individuals using unsterile needles, their families, and their sexual partners.

Investment in clean needle exchange programs typically results in economic benefits (medical treatment savings), as well as more favorable community health outcomes.¹³⁶ King County currently spends approximately \$1.2 million per year on its clean needle exchange programs, mostly funded by Washington State, King County, and the City of Seattle.¹³⁷ The needle exchanges also receive some private funding.¹³⁸ Although this may sound expensive, King County has calculated an estimated \$70 million saved in HIV-related medical costs.¹³⁹ Public health scholars have conducted studies showing similar results: funding of clean needle exchange programs is associated with reductions in the number of HIV infections.¹⁴⁰ In the interest of public health advancement and economic savings, King County should continue to support its clean needle exchange programs and the State should start to implement these programs in other counties that do not currently have them.

Despite the proven public health interests associated with clean needle exchanges, critics often claim that such programs increase availability of drug paraphernalia and thereby promote drug use and abuse.¹⁴¹ Additionally, critics claim that these programs waste taxpayer money,

¹³⁵ *Id.*

¹³⁶ See generally Trang Quynh Nguyen et al., *Syringe Exchange in the United States: A National Level Economic Evaluation of Hypothetical Increases in Investment*, 18 AIDS & BEHAV. 2144 (2014); *King County Needle Exchange*, *supra* note 87.

¹³⁷ *King County Needle Exchange*, *supra* note 87.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Nguyen et al., *supra* note 136.

¹⁴¹ McCarton Ackerman, *The Pros and Cons of Needle Exchange Programs*, AM. ADDICTION CTRS., RECOVERY.ORG (Dec. 15, 2019), <https://www.recovery.org/the-pros-and-cons-of-needle-exchange-programs/> [<https://perma.cc/8YTY-YMRB>].

endanger communities, and actually increase disease transmission.¹⁴² However, as discussed above, many of these claims are entirely false and are deeply rooted in stigmatization and criminalization of individuals who use drugs.¹⁴³ A complex analysis of the stigmatization of drug use is beyond the scope of this comment; however, harm reduction programs as a method of advocacy can also reduce community stigma.¹⁴⁴ Although drug use and addiction have historically been addressed by criminal punishment, research has shown that those living in areas with more treatment services have lower probabilities of accusations and convictions of crime.¹⁴⁵ Maintaining and expanding the current approach to clean needle exchanges is not only an effective harm reduction approach but is also a helpful method of addressing mass incarceration.

2. Implementation of Safe Consumption Sites

To address the opioid epidemic and to reduce mass incarceration, Washington State must establish its first safe consumption sites. In the past several years, the implementation of safe consumption sites (known in Seattle and King County as “Community Health Engagement Locations” or “CHEL”) has been studied and debated.¹⁴⁶ Arguably more controversial than clean needle exchanges, King County has been unsuccessful in establishing a CHEL largely due to resistance from community advocates

¹⁴² *Id.*

¹⁴³ *Supra* Section II.

¹⁴⁴ *Harm Reduction Reducing Stigma*, ALTA. HEALTH SERVS. (Aug. 2019), <https://www.albertahealthservices.ca/assets/info/hrs/if-hrs-reducing-stigma.pdf> [<https://perma.cc/XM5R-LYDS>].

¹⁴⁵ Denise C. Gottfredson et al., *Substance Use, Drug Treatment, and Crime: An Examination of Intra-Individual Variation in a Drug Court Population*, 38 J. DRUG ISSUES 601, 606 (2008).

¹⁴⁶ Aaron Kunkler, *What’s Been Happening With Safe Injection Sites?*, SEATTLE WKLY. (Nov. 30, 2019), <https://www.seattleweekly.com/news/whats-been-happening-with-safe-injection-sites/> [<https://perma.cc/8NN3-GHYU>].

and potential legal barriers.¹⁴⁷ CHELs could provide access to medical treatment, behavioral health, and social services, and could be a safe space for hygienic consumption of drugs.¹⁴⁸ In addition, CHELs seek to address harms associated with drug use, including overdose deaths, disease transmission, and criminal legal system involvement.¹⁴⁹ For example, in late November 2021, two clean needle exchanges in New York City were converted into safe consumption sites and began operating as such after years of organizing and advocacy efforts.¹⁵⁰ Hopefully, the establishment of these two sites will begin a cultural shift in the United States where drug use is met with compassion and safety rather than policing, criminalization, and stigma. Due to its experience with running clean needle exchanges, piloting a safe consumption site in King County is a logical first step towards addressing the opioid epidemic in Washington.

Since no safe consumption sites have been created in King County to date,¹⁵¹ community-specific data on costs, effectiveness, and other

¹⁴⁷ *Id.* Much of the community resistance surrounding safe consumption center around the idea that drug use is morally wrong and that the sites themselves will increase access to and normalize the use of drugs. See generally Deborah Becker & Chris Citorik, 'Supervised Injection Sites Are A Terrible Idea,' *U.S. Attorney Lelling Says*, WBUR (July 20, 2018), <https://www.wbur.org/radioboston/2018/07/20/elling-supervised-injection-marijuana-enforcement> [<https://perma.cc/9PA3-JEW4>]. Additionally, these sites would technically be illegal under federal law. *Id.*

¹⁴⁸ *Frequently Asked Questions*, BEHAV. HEALTH AND RECOVERY DIV., KING CNTY. (July 30, 2019), <https://www.kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/task-forces/heroin-opiates-task-force/faqs.aspx> [<https://perma.cc/H8NE-E3DP>].

¹⁴⁹ *Id.*

¹⁵⁰ Jeffery C. Mays & Andy Newman, *Nation's First Supervised Drug-Injection Sites Open in New York*, N.Y. TIMES (Nov. 30, 2021), <https://www.nytimes.com/2021/11/30/nyregion/supervised-injection-sites-nyc.html> [<https://perma.cc/ADD6-6GAS>]; for more information about these new safe consumption sites, see also Matt Sutton, *New York City to Open Nation's First-Ever Overdose Prevention Ctr. Pilots to Save Lives Amid Record Overdoses*, DRUG POL'Y ALLIANCE (Nov. 30, 2021), <https://drugpolicy.org/press-release/2021/11/new-york-city-opens-nations-first-ever-overdose-prevention-center-pilots-save> [<https://perma.cc/8QXP-TFFK>].

¹⁵¹ As of December 15, 2021.

information is relatively sparse. However, studies examining safe consumption sites in other jurisdictions give insight as to the cost-effectiveness, public health effects, and impacts on the criminal legal system of these sites.¹⁵² Canada's first safe consumption site, Insite, opened in 2003 in Vancouver, British Columbia.¹⁵³ Although consumption and possession of illicit drugs are technically illegal under Canadian Law, Insite operates under an exemption to the law and is, therefore, an example of drug decriminalization and harm reduction.¹⁵⁴

Costs associated with safe consumption sites include costs for addiction counseling, case management, healthcare, public health screening, housing services, education, and peer counseling.¹⁵⁵ A study analyzing the cost-benefits and cost-effectiveness of Insite found that the establishment of Insite has contributed to positive community health outcomes and is a good community investment.¹⁵⁶ For example, the study estimated that Insite prevented roughly thirty-five new HIV cases per year and an average of almost three deaths per year.¹⁵⁷ Another study found that no increases in drug trafficking occurred after Insite opened, and there was a decrease in vehicle break-ins and theft in the surrounding area.¹⁵⁸

Safe consumption sites share many of the same criticisms as clean needle exchanges. Their critics argue that the availability of a place to consume

¹⁵² See generally Martin A. Anderson & Neil Boyd, *A Cost-Benefit and Cost-Effectiveness Analysis of Vancouver's Supervised Injection Facility*, 21 INT'L J. DRUG POL'Y 70 (2010). The establishment of the two safe consumption sites in New York will ideally provide further insight as to impacts on public health, mass incarceration, and governmental budgets.

¹⁵³ *Supervised Consumption Sites*, VANCOUVER COASTAL HEALTH, <http://www.vch.ca/public-health/harm-reduction/supervised-consumption-sites> [<https://perma.cc/YAS6-X48Y>].

¹⁵⁴ Anderson & Boyd, *supra* note 152.

¹⁵⁵ *Id.* at 71.

¹⁵⁶ *Id.* at 75.

¹⁵⁷ *Id.* at 72.

¹⁵⁸ Evan Wood et al., *Impact of a Medically Supervised Safer Injecting Facility on Drug Dealing and Other Drug-Related Crime*, 1 SUBSTANCE ABUSE TREATMENT, PREVENTION, AND POL'Y (2006).

drugs will enable more individuals to consume drugs and that safe consumption sites will lead to more crime.¹⁵⁹ However, as discussed above, most of these claims are untrue and are rooted in cultural stigma surrounding drug use.¹⁶⁰

Washington State, and King County specifically, needs to act swiftly to allocate funding for a safe consumption site. With the long-awaited establishment of such a site, fewer opioid-related deaths will occur and individuals who use drugs will have more access to mental and behavioral health services. Implementation of safe injection sites will likely also contribute to fewer incarcerated individuals as the focus on drug use shifts away from criminalization and toward offering community support.¹⁶¹ Perhaps the most persuasive reason for the immediate implementation of safe consumption sites in the King County area is that out of all safe consumption sites worldwide, no overdose-related deaths have occurred.¹⁶²

B. Decriminalization of Possession and Use of All Drugs in Washington State

Following the example set by the recent passage of an Oregon ballot measure, Washington State must extend this harm reduction approach to its response to the opioid epidemic and decriminalize possession and use of all drugs. Efforts such as the LEAD program, safe consumption sites, clean

¹⁵⁹ Elana Gordon, *What's The Evidence That Supervised Drug Injection Sites Save Lives?*, NPR (Sept. 7, 2018), <https://www.npr.org/sections/health-shots/2018/09/07/645609248/whats-the-evidence-that-supervised-drug-injection-sites-save-lives> [<https://perma.cc/TSA7-VL8Q>].

¹⁶⁰ Wood et al., *supra* note 158; *see generally* Jenifer Wogen and Maria Teresa Restrepo, *Human Rights, Stigma, and Substance Use*, 22 HEALTH HUM. RTS. J. 51 (2020) (discussing stigma commonly associated with people with substance use disorders, perceiving them as dangerous).

¹⁶¹ Elizabeth Warren, *Rethinking Public Safety to Reduce Mass Incarceration and Strengthen Communities*, MEDIUM (Aug. 20, 2019), <https://medium.com/@teamwarren/rethinking-public-safety-to-reduce-mass-incarceration-and-strengthen-communities-90e8591c6255> [<https://perma.cc/S4FH-YKJ7>].

¹⁶² *Frequently Asked Questions*, *supra* note 148.

needle exchanges, and Good Samaritan laws are all examples of varying levels of decriminalization of drug use and possession.¹⁶³ Although the recent decision in *State v. Blake* suggests a possible shift toward eventual decriminalization, the holding was quite narrow.¹⁶⁴ Moreover, the subsequent legislation passed does not do enough to address the harms associated with continued criminalization of drugs since a misdemeanor still requires interaction with the criminal punishment system, and although prosecutors are encouraged to defer punishment for treatment, there does not seem to be a way to hold prosecutors accountable to this standard.

A ballot measure is significant because it requires a more hands-on approach from stakeholders and voters voicing their opinions. Cassandra Frederique, Executive Director of the Drug Policy Alliance, noted the importance of passing the ballot measure and highlighted how this was a “historic, paradigm shifting win and arguably the biggest blow to the war on drugs to date . . . a substantial shift in public support in favor of treating drug use with health services rather than criminalization.”¹⁶⁵ Therefore, advocates, scholars, and stakeholders should use this momentum to propose a ballot measure decriminalizing all possession of drugs, regardless of intent and knowledge.

Following similar models in Portugal and Oregon, where possession and use of drugs were decriminalized, advocates should push to end criminalization of drug use and possession. The Portuguese program has led to substantial decreases in incarceration rates, HIV/AIDs incidence, and

¹⁶³ Jag Davies, *4 Reasons Why The U.S. Needs to Decriminalize Drugs - And Why We're Closer Than You Think*, DRUG POL'Y ALL. (July 9, 2017), <https://www.drugpolicy.org/blog/4-reasons-why-us-needs-decriminalize-drugs-and-why-were-closer-you-think> [<https://perma.cc/AY76-TCP5>].

¹⁶⁴ See *State v. Blake*, 197 Wn.2d 170, 183, 481 P.3d 521 (2021) (holding that strict liability drug possession statute was unconstitutional because it violated due process by penalizing individuals who unintentionally and unknowingly possessed drugs).

¹⁶⁵ Cassandra Frederique, *Monumental Night for Drug Policy Reform*, DRUG POL'Y ALL. BLOG (Nov. 6, 2020), <https://drugpolicy.org/blog/2020elections> [<https://perma.cc/G9KN-BGXD>].

drug overdoses, while the number of individuals seeking treatment has increased.¹⁶⁶ Although the Oregon measure was passed too recently to have been studied at length, from what scholars have learned from the Portuguese model, it seems highly likely that incarceration rates will decrease, as will intravenous virus transmission.

In Washington State, Initiative 502 legalized possession and consumption of small amounts of marijuana for individuals over the age of twenty-one, with restrictions on when and where one can buy, consume, and possess it.¹⁶⁷ Since legalization, the marijuana industry has surpassed expectations, producing almost \$400 million in tax revenue in 2019, with allocations split between basic healthcare, general funds, and education and research.¹⁶⁸ Moreover, commentators have noted that “incarceration numbers haven’t been affected by weed legalization.”¹⁶⁹ Although the results from marijuana legalization seem promising, Washington should focus efforts on more widespread decriminalization of all drug use and possession to more effectively address public health issues of mass incarceration and disease transmission. In addition, Washington State should take a similar approach to Oregon and use marijuana tax revenue to fund programs that aim to combat the opioid epidemic.

Washington State citizens should propose a ballot measure that eliminates the felony and misdemeanor classifications of drug possession, following Oregon’s lead. Since both states are similar in that both have legalized marijuana, Washington should replicate Oregon’s approach in funding addiction treatment and recovery programs with marijuana tax

¹⁶⁶ Davies, *supra* note 163.

¹⁶⁷ *Know the Law*, WASH. STATE LIQUOR AND CANNABIS BD., <https://lcb.wa.gov/mj-education/know-the-law> [<https://perma.cc/34E9-QHX5>].

¹⁶⁸ Casey Decker & Ian Smay, *Recreational Marijuana in Washington State: Area We Better Off?*, KREM (Feb. 3, 2020), <https://www.krem.com/article/news/investigations/legalmarijuanaarewetteroff/293-5314d8e1-ebca-43bc-be9c-5dd7c445f2db> [<https://perma.cc/CSA6-6JKK>].

¹⁶⁹ *Id.*

revenue. However, the proposed Washington ballot measure should differ from the Oregon measure in that it should not impose any fines on those in possession of controlled substances. Although the fine in Oregon is significantly lower than it once was,¹⁷⁰ having any fine at all ultimately punishes the poor.¹⁷¹ Moreover, imposing a fine for drug possession exacerbates a major concern laid out earlier in this comment—poor people of color being disproportionately affected and actively harmed by the criminal legal system. Therefore, while Washington should propose a similar ballot measure to Oregon’s recently passed measure, Washington’s measure should not impose fines on those found to be in possession of a drug because that could retroactively contribute to whether one stays impoverished or not. To address harms associated with mass incarceration, this measure should also expunge the records of those currently and formerly incarcerated for the same drug possession crimes that this measure decriminalizes.

To propose an initiative in Washington, a voter or group of voters must gather signatures on a petition.¹⁷² For initiatives filed between 2021 and 2024, proponents must gather 324,516 signatures on a petition.¹⁷³ State law also requires the petition to contain the full text of the measure.¹⁷⁴

A potential Washington State ballot measure title presented first on a petition and then to voters could resemble the following:

Provides statewide addiction and recovery services; marijuana taxes partially finance; reclassifies possession and eliminates penalties of all drugs.

¹⁷⁰ *Oregon Measure 110*, *supra* note 111.

¹⁷¹ *US: Criminal Justice System Fuels Poverty Cycle*, HUM. RTS. WATCH (June 21, 2018), <https://www.hrw.org/news/2018/06/21/us-criminal-justice-system-fuels-poverty-cycle> [<https://perma.cc/9946-AS76>].

¹⁷² *Frequently Asked Questions about Circulating Initiative and Referendum Petitions*, WASH. SEC’Y OF STATE, <https://www.sos.wa.gov/elections/initiatives/faq.aspx> [<https://perma.cc/RGQ6-8MMQ>].

¹⁷³ *Id.*

¹⁷⁴ *Id.*

Result of ‘Yes’ Vote: ‘Yes’ vote provides addiction and recovery services (including safe consumption sites); marijuana taxes partially finance; reclassifies possession and eliminates penalties of all drugs.

Result of ‘No’ Vote: ‘No’ vote rejects requiring addiction and recovery services; retains current marijuana tax revenue uses; maintains current classification/penalties for possession of drugs.

So that voters are given a more complete picture of what decriminalization would look like, a ballot summary could include the following language:

This measure mandates the establishment and funding of addiction recovery centers and services, including safe consumption sites, within each existing coordinate care organization service area by January 2024. These centers provide drug users with triage, health assessments, treatment, and recovery services. To fund these centers, this measure dedicates all marijuana tax revenue above \$15,000,000 quarterly, legislative appropriations, and any savings from reductions in arrests, incarceration, and supervision resulting from the measure. This measure also reclassifies personal non-commercial possession of certain drugs under a specified amount from misdemeanor or felony. This measure will expunge the criminal records of those incarcerated for the acts that are decriminalized by this measure. No fines will be imposed for this non-commercial possession and the person in possession will be given an option for a health assessment at an addiction recovery center. The Washington State Department of Health establishes a council to distribute funds and oversee the implementation of centers. Secretary of State audits quarterly.

1. Criticism and Support of Decriminalization

Common arguments against decriminalization are echoed in the sentiments put forth by opponents to the Oregon ballot measure.¹⁷⁵ Typically, critics of decriminalization see the enforcement of criminal

¹⁷⁵ *Oregon Measure 110*, *supra* note 111.

penalties for drug use and possession as an adequate deterrent for crime.¹⁷⁶ In particular, one critic of the Oregon ballot measure, Dr. Paul Coelho, voiced concerns that “the framers of ballot measure 110 [mistakenly] portray individuals with active addictions as rational actors who will naturally seek out and accept treatment for their condition,” and argued for the need for a “threat of incarceration.”¹⁷⁷ To be frank, critiques and perspectives such as these are dehumanizing and undermine the integrity of individuals who use drugs. Such statements place the blame on the individual instead of recognizing the role that complexities and inadequacies of our society—such as structural racism, classism, and lack of adequate social support systems—have on substance use. Moreover, these perspectives mistakenly place too much reliance on the carceral system; ignore or downplay the connections between poverty, mental illness, drug use, race, and incarceration; and see drug use as inherently problematic, rather than as an activity that many people engage in and as a facet of a society that requires collective efforts to make safer. If incarceration worked as a solution to drug possession and use and other crimes, the United States would be safer than it is now.¹⁷⁸ Because more data is showing that continued criminalization and incarceration is not an effective solution to improving public safety,¹⁷⁹ decriminalization is the most logical and humane option.

King County Prosecutor Dan Satterberg has even addressed the opioid epidemic, noting criminalization and punishment are not the answer.¹⁸⁰ Prior to changing its policy, King County spent more than \$3 million per

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See generally *Criminal Justice Facts*, SENTENCING PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/> [https://perma.cc/YG7N-G98X].

¹⁷⁹ See generally *id.*

¹⁸⁰ Dan Satterberg, *My Sister’s Drug Addiction – and What It Taught Me*, CROSSCUT (May 17, 2018), <https://crosscut.com/2018/05/my-sisters-drug-addiction-and-what-it-taught-me> [https://perma.cc/LH9K-F2BR].

year to arrest, prosecute, and release drug possessors.¹⁸¹ Recognizing that criminalization and punishment are not the answer, King County no longer prosecutes individuals for possessing less than one gram of any drug.¹⁸²

Domestic and global organizations have been pushing for decriminalization, as well.¹⁸³ For example, the United Nations and World Health Organization have called for repealing “punitive laws that have been proven to have negative health outcomes.”¹⁸⁴ This joint statement supported repealing laws criminalizing drug use and possession.¹⁸⁵ Decriminalization, at our current stage of the opioid epidemic and mass incarceration, is a more realistic and safe alternative to both continued criminalization and legalization of all drugs.

While arguments for the legalization of all drugs seem to be aligned with the goals of decriminalization, historical evidence and research are not persuasive enough to warrant such a drastic change in policy. In contrast to decriminalization efforts, proponents of drug legalization argue that such measures will make drugs safer via governmental regulation of quality.¹⁸⁶ Specifically, these commentators claim that drug legalization would accomplish many of the same things that decriminalization would accomplish: reductions in crime and policing, public health benefits, and

¹⁸¹ Justin Jouvenal, *No Charges for Personal Drug Possession: Seattle’s Bold Gamble to Bring ‘Peace’ After the War on Drugs*, WASH. POST (June 11, 2019), https://www.washingtonpost.com/local/public-safety/no-charges-for-personal-drug-possession-seattles-bold-gamble-to-bring-peace-after-the-war-on-drugs/2019/06/11/69a7bb46-7285-11e9-9f06-5fc2ee80027a_story.html [<https://perma.cc/TGW3-EUXT>].

¹⁸² *Id.*

¹⁸³ Davies, *supra* note 163.

¹⁸⁴ *Joint United Nations Statement on Ending Discrimination in Health Care Settings*, WORLD HEALTH ORG. (June 27, 2017), <https://www.who.int/news/item/27-06-2017-joint-united-nations-statement-on-ending-discrimination-in-health-care-settings> [<https://perma.cc/JA33-PB64>].

¹⁸⁵ *Id.*

¹⁸⁶ *Drug Legalization: A False Hope*, INST. FOR BEHAV. AND HEALTH, <https://www.ibhinc.org/drug-legalization> [<https://perma.cc/ZZR7-TGVT>].

more lives saved.¹⁸⁷ Legalization would also allow the government to generate tax revenue and save more money on drug enforcement, reinvesting that money back into community programs.¹⁸⁸ However, legalization of all drugs would ultimately require more complex research and would introduce many multifaceted regulatory issues.¹⁸⁹ Further, Seattle and King County are already engaged in decriminalization efforts that have saved many lives, especially via decreased disease transmission at clean needle exchanges.¹⁹⁰ Therefore, decriminalization is a much more feasible and efficient alternative to legalization.

C. Impacts of Police Divestment on Diversion Programs

Next, although the LEAD program in Seattle has seen encouraging results, such as lower rates of recidivism, better housing outcomes, fewer arrests, and decreased costs for the legal system, in general,¹⁹¹ the very nature of such diversion programs depends heavily on police and the institution of policing. As scholars, policymakers, and activists work on solutions addressing the over-policing and over-incarceration of Black people,¹⁹² local lawmakers must reexamine the role of police in their harm reduction programs and question whether police should be included at all. Considering these significant concerns, King County should cease using police to address drug use and eliminate the LEAD program.

¹⁸⁷ See generally S.B. Duke & A.C. Gross, Abstract, *Legalizing Drugs Would Benefit the United States* (1996).

¹⁸⁸ Meaghan Cussen & Walter Block, *Legalize Drugs Now!: An Analysis of the Benefits of Legalized Drugs*, 59 AM. J. ECON. AND SOCIO. 525, 533 (2000).

¹⁸⁹ Paul Stares, *Drug Legalization?: Time for a Real Debate*, THE BROOKINGS INST. (Mar. 1, 1996), <https://www.brookings.edu/articles/drug-legalization-time-for-a-real-debate/> [<https://perma.cc/V6MQ-BZY2>].

¹⁹⁰ *King County Needle Exchange*, *supra* note 87.

¹⁹¹ *Evaluations*, LEAD NAT'L SUPPORT BUREAU, <https://www.leadbureau.org/evaluations> [<https://perma.cc/8GLJ-2MYG>].

¹⁹² Patrisse Cullors, *'Black Lives Matter' is About More than the Police*, ACLU (June 23, 2020), <https://www.aclu.org/news/criminal-law-reform/black-lives-matter-is-about-more-than-the-police/> [<https://perma.cc/3NHG-YD4F>].

In Seattle, programs that support housing, childcare, food, and other essential services are severely underfunded compared to police funding.¹⁹³ For example, the City of Seattle once endorsed a 2020 budget of about \$400 million for police,¹⁹⁴ compared to about \$11 million for public health promotion and \$80 million for addressing homelessness.¹⁹⁵ In addition, policing as an institution disproportionately targets poor Black people.¹⁹⁶ Studies have shown that Black individuals were more likely to be arrested for marijuana possession than white individuals, despite comparable rates of marijuana usage.¹⁹⁷ Thus, given the disproportionate effects of policing on Black people,¹⁹⁸ it is vital that lawmakers and constituents ask whether the police should remain in existing diversion roles.

In response to the current Movement for Black Lives,¹⁹⁹ the local LEAD program is already exploring different avenues to address overreliance on police for addressing drug use and possession.²⁰⁰ As of December 2021, recommendations have not been published, but local organizers claim to have the goal of reducing the presence and scale of police departments, thus

¹⁹³ *Why Divest from Policing*, DECRIMINALIZE SEATTLE, <https://decriminalizeseattle.com/whydivest/> [<https://perma.cc/S9R6-E8E8>].

¹⁹⁴ *2020 Proposed Budget, Police*, CITY OF SEATTLE, <https://www.seattle.gov/city-budget/2020-proposed-budget#/spd> [<https://perma.cc/92LK-GFV9>].

¹⁹⁵ *2020 Proposed Budget, Human Services*, CITY OF SEATTLE, <https://www.seattle.gov/city-budget/2020-proposed-budget#/hsd> [<https://perma.cc/C7ST-K5Q3>].

¹⁹⁶ *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System*, SENTENCING PROJECT (Apr. 19, 2018) <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/> [<https://perma.cc/T4MZ-9UEN>].

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *About Us*, M4BL, <https://m4bl.org/about-us/> [<https://perma.cc/T99N-CAU9>] (stating that “prisons, police and all other institutions that inflict violence on Black people must be abolished and replaced by institutions that value and affirm the flourishing of Black lives.”).

²⁰⁰ *Pop-up Window Addressing Black Lives Matter*, LEAD NAT’L SUPPORT BUREAU, <https://www.leadbureau.org/> [<https://perma.cc/KGN3-TYTE>].

decentering law enforcement from this process.²⁰¹ While this sounds like it could be a plausible solution to the disproportionate policing of Black people on its surface, a better solution would be to end the program altogether. The purported reduction in the scale and presence of police departments will still lead to individuals interacting with police, which will statistically result in Black people being disproportionately subject to police brutality.²⁰² Since the goal of the LEAD program is to disrupt the cycle of individuals in the carceral system for drug possession and use,²⁰³ eliminating police from the equation by ending the program is compatible with the program's ultimate aim. Thus, to be compatible with its own goals, the program must end so as to eliminate interactions between people who use drugs and the police. Instead, the implementation of safe consumption sites and more available community-based mental health services would offer people who use drugs less punitive and more humane alternatives.

IV. CONCLUSION

Effectively addressing the opioid epidemic in Washington State will require a mixture of harm reduction and legislative solutions, including a ballot measure. This is an acute issue because the effects of the opioid epidemic have been exacerbated by the COVID-19 pandemic.²⁰⁴ To reduce overdose death rates, disease transmission, and mass incarceration, Washington should continue its current commitment to clean needle exchanges while also mobilizing to implement harm reduction programs such as safe consumption sites. Next, Washington State should

²⁰¹ *Id.*

²⁰² Alexi Jones & Wendy Sawyer, *Not just "a few bad apples": U.S. police kill civilians at much higher rates than other countries*, PRISON POL'Y INIT. (June 5, 2020), <https://www.prisonpolicy.org/blog/2020/06/05/policekillings/> [https://perma.cc/32R3-9K9U].

²⁰³ *Pop-up Window Addressing Black Lives Matter*, *supra* note 200.

²⁰⁴ *The Opioid Epidemic and COVID-19*, MED. CITY HEALTHCARE (Oct. 14, 2020), <https://medicalcityhealthcare.com/blog/entry/the-opioid-epidemic-and-covid-19> [https://perma.cc/2H4P-KLHP].

decriminalize possession and use of drugs. Finally, given the disproportionate treatment of Black individuals by police departments and law enforcement in general, the existing law enforcement-assisted diversion programs must cease to rely on the institution of policing. Instead, these programs must reflect on the compatibility of law enforcement with harm reduction values and ultimately be put to their end.

