

HEALTH LAW: PEER-REVIEWED ARTICLE

What Should the US Learn From New York's and Portugal's Approaches to the Opioid Crisis?

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Abstract

Between 1999 and 2020, more than 564 000 people in the United States died from opioid overdose. Domestically, the opioid epidemic tends to be approached not as a public health problem but as a law enforcement or judicial problem. Some US localities, however, are trying interventions modeled after international approaches that decriminalize opioid dependence. This article describes Portuguese approaches to persons with opioid use disorder.

Background of the US Opioid Crisis

Prior to the 1980s, the prescription of opioids in the United States was the exception for treating pain management. Health care professionals would only prescribe minimal opioids “unless death seemed imminent.”¹ This practice drastically changed in the 1990s, when the US Food and Drug Administration approved oxycodone to be used for chronic pain management.^{1,2} Pharmaceutical companies began pouring millions of dollars into marketing opioids to physicians and the public at large.¹ The opioid crisis in the United States has unfolded in 3 waves. The first wave began in the 1990s with the increased prescription of opioids for chronic pain.² The second wave began in the early 2010s with an increase in deaths associated with an expanding heroin market.² The third wave came in 2013 with an increase in deaths related to illegal synthetic opioids, such as fentanyl.² Between 1999 and 2020, more than 564 000 people died from an overdose involving any type of opioid.²

The opioid epidemic has not affected communities equally across the United States. Rural, typically working-class communities have traditionally been seen as the hardest hit. Specifically, the Appalachian region has higher opioid overdose death rates than the rest of the country.¹ An investigation conducted by the House Energy and Commerce Committee in West Virginia found that, from 2008 to 2018, 20.8 million hydrocodone and oxycodone pills were delivered to Williamson, West Virginia, a town with less than 3200 residents.¹ However, more recent research has shown the severe impact of the opioid crisis on African Americans and those living in urban communities as well.³ The types of communities and individuals that have been affected likely contributed to the response, or lack thereof, for many years. The US government and all 50 states “criminalize possession of illicit drugs for personal use.”⁴ The number of individuals who

suffer from opioid use disorder (OUD) and are involved with the criminal justice system has been increasing; such individuals are less likely to become repeat offenders if they participate in drug courts.⁵ In the United States, the criminal justice system maintains a punitive approach to addiction and punishes individuals instead of viewing OUD as a disease that requires treatment.⁶ To decrease overdose deaths, the United States must take steps to reduce **bias and stigma** against individuals with OUD. Increasing access to medication-assisted treatment (MAT) and learning from countries that have successfully managed their own opioid crisis is necessary for the United States to solve this ongoing crisis and decrease the burden on the strained criminal justice system.

Domestic Solutions

States like New York have begun to make efforts to combat the opioid crisis. In 2017, Buffalo, New York implemented the first court to specifically address OUD by greatly reducing the time between arrest and treatment for nonviolent users.⁷ Although general drug courts have been implemented throughout the country, opioid intervention courts are focused on short-term interventions to prevent overdoses and assess the individual's needs. In Buffalo, if the arrested individual agrees to participate, they are brought in front of a judge within hours of arrest and are ideally evaluated by a doctor and nurse within the first 24 hours.⁷ Buffalo's opioid intervention court provides evidence-based treatments, including MAT, and daily court appearances for 90 days for individuals to have conversations with judges.⁷

Another benefit of opioid intervention courts is that they can focus time and resources on rehabilitating individuals with OUD. When an individual is in an opioid intervention court program, their criminal charges are suspended during treatment, lessening the burden on the justice system and allowing the individual to focus on recovery. Individuals who receive MAT while incarcerated are more likely to enter treatment after release and less likely to test positive for illicit opioids 1 month after their release,⁵ thereby breaking the cycle of relapse following release from incarceration perpetuated by an already-strained legal system. However, many prisons, jails, and courts do not offer MAT.⁵ The opioid crisis largely affected **poor and minority communities** that lacked resources to begin with.⁸ By implementing opioid intervention courts, resources can be effectively distributed to individuals who would not otherwise have access to them.

Portugal's Solutions

In the 1990s, Lisbon was arguably the heroin capital of Europe. It was even estimated that 1% of Portugal's population was addicted to heroin.⁹ However, in 2001 Portugal moved to decriminalize all individual drug use.⁶ Instead of being sent to jail or prison, individuals caught with drugs are sent to a local panel called the Commission for the Dissuasion of Drug Addiction.¹⁰ These 3-person panels are typically made up of legal, health care, and social work professionals.¹⁰ The commission then assesses whether the individual is addicted and determines what type of treatment, if any, is appropriate.¹⁰ With this system in place, individuals who use drugs are more open to treatment and are no longer afraid of going to prison if they get caught. This model focuses on humanism—the understanding that these individuals have an illness and that health interventions are needed, not punitive judicial intervention.

This model has had a drastic impact on the country, as Portugal in 2017 had the lowest drug-related death rate in Western Europe.¹⁰ The number of people who use heroin dropped from a staggering 100 000 before the 2001 law to about 25 000 in 2017.¹⁰ The decriminalization of drugs in Portugal has had many other positive outcomes aside

from decreasing the number of users. During the same period, the number of HIV infections resulting from drug injections dropped by more than 90%.¹⁰

Portugal acknowledges that there are people who do not want to cease using drugs by focusing on harm reduction strategies. These programs provide those who use drugs with support, clean needles, condoms, and safe injection sites.¹⁰ Safe injection sites aim to reduce the transmission of diseases, prevent drug-related overdose deaths, and connect people who use drugs to resources, addiction treatment, and social services.¹¹ Safe injection sites provide **sterile equipment** and access to health care professionals in the event of an overdose and to social services for counseling.¹¹ Decriminalization, accompanied by harm reduction, has allowed Portugal to recover from its opioid crisis in a way that focused on individuals' needs and recovery. In recent years, however, the number of Portuguese adults using illicit drugs has increased, along with overdose rates, due to disinvestment in rehabilitation programs.¹²

Decriminalization

While New York State is making efforts to combat the opioid crisis, there is still much work to be done across the country. Other states and cities struggling with the opioid crisis might benefit from adopting programs like opioid intervention courts. The United States might also look to Portugal's method of decriminalization and safe injection sites to decrease the stigma associated with OUD.

Following New York's lead, implementing opioid intervention courts in states or counties with high rates of opioid use and overdose deaths attributed to opioid use would ensure that people who use drugs get necessary treatment instead of cycling through the criminal justice system repeatedly. Based on the Buffalo court, 10 essential elements have been identified for implementing a successful opioid intervention court: (1) "broad legal eligibility criteria," (2) "immediate screening and assessment for overdose risk," (3) "informed consent after consultation with defense counsel," (4) "suspension of prosecution or expedited plea during stabilization," (5) "rapid clinical assessment and treatment engagement," (6) "recovery support services," (7) "frequent judicial supervision and compliance monitoring," (8) "intensive case management," (9) "program completion and continuing care," and (10) "performance evaluation and program improvement."⁷ Implementing opioid intervention courts throughout the United States not only would help more individuals obtain treatment and support but also could be seen as a move toward general decriminalization, as an individual's charges are suspended throughout this process.

More broadly, following Portugal's approach by decriminalizing drug use would likely benefit the United States, although it might not be a realistic option at the federal level, given Oregon's recent recriminalization of possession of certain drugs.¹³ To attain success similar to Portugal, the United States would need to stop viewing people who use drugs as criminals and begin seeing drug addiction as an illness that can and should be treated. For example, states that legalized medical marijuana between 1999 and 2010 had on average a 25% lower annual opioid overdose death rate than states that did not.¹⁴ These laws show that even a small shift in attitudes toward drugs can lead to overall improvements, such as decreased mortality, and that decriminalization might be better implemented at the state level as opposed to federally.

In addition to reducing rates of overdose deaths, the implementation of safe injection facilities in larger cities and areas with high rates of drug use would help prevent

transmission of disease through unsanitary needles and provide safe spaces for people who use drugs to seek treatment and counseling. Current precedent set by the US Court of Appeals for the Third Circuit has held that safe injection facilities violate the so-called “crack house” statute,¹⁵ which prohibits the operation of houses and buildings where crack and other drugs are made or used.¹⁶ However, New York City has implemented safe injection facilities regardless of a lack of federal support.¹⁵ In addition to safe injection facilities, more harm reduction programs can be put in place to curb the spread of HIV and sexually transmitted infections among people who use drugs.

While there is evidence of progress in New York State and Portugal, the United States has a long way to go in destigmatizing and treating OUD. One of the biggest challenges will be changing attitudes toward those who use drugs. Decriminalization helps change public perception of drug use by acknowledging that addiction is a public health problem and not something that should be criminalized.

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