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Is America's drug policy actually working?

Overdose deaths just posted the largest sustained decline in 40 years — and the evidence says almost no policy anyone chose caused it. A feasibility assessment of enforcement, treatment, decriminalization, and legalization, with the legal wall around the one fix that's actually cheap.

ABSTRACT

The binding constraint on American drug policy is not evidence — it's law. The strongest-evidence treatment for stimulant use disorder is capped by a federal anti-kickback rule one agency could lift tomorrow; methadone, the best-studied opioid treatment on Earth, is dispensable only through 2,000 federally licensed clinics by a statute Congress alone can change. Meanwhile, the crisis's own numbers are moving for reasons policy didn't cause: overdose deaths fell ~38% from their 2023 peak, most credibly explained by a fentanyl supply shock and a shrinking at-risk population, not by any program this filing could recommend funding faster. We root-traced the two precedents everyone cites — Portugal and Oregon — and found both broke the same way: the money for treatment arrived more than a year after the leniency did. We conclude the cheapest, fastest, most defensible first move in the entire filing is a federal rule change nobody's heard of, and we stamp our uncertainties in the text.

PART 1

The bigger numbers: alcohol and tobacco kill more people than the whole overdose crisis

~178K
ALCOHOL DEATHS/YR

450–480K
TOBACCO DEATHS/YR

~113K
PEAK OVERDOSE DEATHS

43.1%
DEATHS INVOLVING BOTH AN OPIOID & A STIMULANT

Every "drug policy" conversation that stays confined to illegal substances is, by simple body count, looking at the smaller problem. Alcohol-attributable deaths (CDC, 2020–21 average) exceed the overdose crisis's own peak by more than half; tobacco kills 4–7 times as many Americans annually — using the exact policy toolkit (taxation, age-gating, marketing limits) this filing's own architecture list already includes for the legal drugs everyone already tolerates.

CDC ARDI/MMWR 2024 · CDC tobacco mortality estimates · CDC NCHS Data Brief 549

> PLAIN TALK
> If "drugs" only means the illegal ones, you've picked the smaller crisis. The two legal drugs kill more people every year than the fentanyl era ever did at its worst.

PART 2

The legal wall: the best-evidenced treatments are the most legally cornered

BINDING CONSTRAINT

Methadone — decades of evidence, dispensable in the UK, Australia, and Canada through ordinary pharmacies — can only be dispensed in the US through ~2,000 federally licensed clinics, a restriction written directly into statute (21 U.S.C. §823(h)), untouched by 2024's own reform. Buprenorphine's 2023 prescribing-waiver repeal produced real growth in *prescribers* — but flat growth in *patients actually treated*, confirmed by two independent studies: removing a legal barrier didn't move the outcome, because the barrier wasn't the binding constraint. And contingency management — the strongest evidence base for stimulant use disorder, which drives a growing share of the polysubstance deaths now the single largest overdose category — was capped for years at a third of its trial-effective incentive level by a federal anti-kickback policy one office can change on its own.

SAMHSA 42 CFR Part 8 · NEJM (Chua et al. 2024) · SAMHSA Advisory PEP24-06-001

RULEMAKING-EXECUTABLE, NO STATUTE REQUIRED

That contingency-management fix is already in motion: HHS's Office of Inspector General has standing authority — from a 1987 law — to create a dedicated safe harbor, and it opened a formal review in November 2024. Nothing about this needs Congress.

PART 3

The decline nobody caused

Overdose deaths peaked at ~112–114K in 2023 and have fallen ~38% since — the longest sustained decline in over 40 years. The two studies that actually decompose the cause quantitatively both point away from any single policy lever: a shrinking at-risk population and a fentanyl supply shock (plausibly a Chinese precursor-chemical crackdown), not naloxone distribution or treatment expansion, which have real but secondary, unisolated contributions. In June 2025, a widely reported "deaths rising again" reversal turned out to be a statistical artifact in CDC's own forecasting model — corrected months later, after the story had already spread.

Vangelov, Reuter, Humphreys et al., *Science* 2026 · Dowell et al., *Lancet Regional Health Americas* 2025 · Post & Ciccarone, *AJPH* 2025

STRONG COMPARATOR, NOT A STRAWMAN

Deaths are already falling substantially for reasons no policy in this filing controls. Every architecture we score has to beat that trend, not zero — and the false-alarm episode is a warning that the public conversation is primed to believe a reversal on thin evidence.

PART 4

What enforcement actually buys — and what it doesn't

CLAIM	RECORD
DRUG PRICE	Real cocaine & heroin prices fell ~80% since 1981, purity rose, through decades of rising enforcement spending — no detectable price effect
STATE PRISONS	13% drug offenses, down 46% since 2007 — "mass incarceration" is not mainly a drug-war artifact where 89% of US prisoners are held
HOPE PROBATION	Landmark result — 4-site replication found no advantage over ordinary probation
FOCUSED DETERRENCE	Real, RCT-confirmed effect — but on gang/gun violence, not drug markets
DRUG COURTS	50%→38% recidivism in meta-analysis — concentrated among serious, dependent offenders

STEELMAN APPLIED, NOT DECORATED

> PLAIN TALK
>
> Enforcement's real, evidence-backed job is suppressing violence and reducing reoffending for serious offenders — not moving the price or supply of drugs. The single most famous "swift and certain" program on record didn't survive its own replication.

PART 5

The precedents, root-traced

Portugal's 2001 decriminalization produced a genuine, strongly corroborated HIV-transmission win — but the scholars who actually study it say decriminalization's own causal contribution, separate from the treatment system Portugal built alongside it, "cannot be firmly established." The most-cited pro-decriminalization US source is a funded advocacy report, not scholarship. Oregon's Measure 110 tells a sharper story: three of four peer-reviewed studies find little-to-no detectable effect on overdose deaths, pointing instead to the same regional fentanyl timing that hit every neighboring state — but Oregon's own treatment-funding mechanism didn't start reaching providers until 16 months after decriminalization took effect. Both precedents broke the identical way: the leniency arrived on schedule, the treatment money didn't.

Hughes & Stevens (2010, 2012) · Joshi et al., *JAMA Psychiatry* 2023 · Zoorob et al., *JAMA Network Open* 2024 · Spencer, *J. Health Econ.* 2023

CONTESTED, NOT SETTLED

One peer-reviewed study (Spencer 2023) does find a real Oregon effect — and attributes part of it to that same missing treatment buildout, not to leniency itself.

PART 6

The architecture that wins: eleven designs, four ways of scoring them, one clear first move

Eleven candidate architectures were scored on eight anchored dimensions — evidence strength, legal executability, cost, mortality impact, criminal-justice footprint, political durability, liberty impact, and speed — then ranked under four objective weightings (mortality-first, order-first, liberty-first, equal). The top-ranked architecture — confirmed by an independent blind second scorer — is **contingency-management legalization**: the strongest trial evidence in the filing, a federal rulemaking process already underway, next to no cost. Two first-pass claims did not survive the re-score and are withdrawn: supply-side spending no longer ranks last — its interdiction leg is refuted by forty years of price data, but its precursor-control leg carries the record's best observed link to the current death decline, so the row now holds a split verdict — and the prevention/tobacco-playbook row fell from second place to bottom-tier once its cells were re-anchored to what the record shows about the instrument rather than the size of its target. Decriminalization and the enforcement steelman still show the largest weighting swings — which remains the finding, not a flaw.

Scorecard: 11 × 8 × 4, anchored scales, red-team pass applied — committed

CLEAREST FIRST MOVE, NOT "THE" RECOMMENDATION

PART 7

Sequencing: the cheap fix moves first, precisely because nobody's watching it

Rulemaking-executable items — the contingency-management safe harbor, Medicaid's IMD-exclusion waivers, tighter conditions on opioid-settlement spending — can move in the next year with no new appropriation and no new statute. Items requiring Congress — ending methadone's dispensing monopoly, a durable cannabis banking fix — sit in a longer queue. The sharpest lesson from the precedents: both Oregon's and San Francisco's harm-reduction-forward policies were reversed within two to four years by locally organized, donor-backed coalitions, regardless of what the underlying mortality data actually showed. A policy that's politically invisible — like a federal

safe-harbor rule — can bank results before any backlash coalition has time to organize. A policy that's politically legible as "harm reduction" cannot count on that same runway.

Sequencing synthesis, 11 workstreams — committed

APPENDIX

The honesty box

The scorecard's own dimensions favor cheap, fast fixes. Contingency management's top ranking is real, but partly a function of which axes we chose to measure — a reader who weights transformative scale over speed could reasonably prefer a different architecture. **Two precedents, one failure mode.** Portugal and Oregon both show decriminalization-without-prompt-treatment-funding underperforming — but we haven't yet root-traced Switzerland, the case most often cited as the one that funded treatment properly. That comparison is still open. **Twice-checked, with a disclosed leak.** An independent blind second scorer has now re-scored every cell; the reconciliation withdrew two first-pass ranking claims and confirmed the headline. One honesty note: a status line in the protocol file leaked the headline conclusion to the second scorer, so agreement on the top rank is discounted as confirmation — the underlying cells were still independently derived, and the leak is logged, not hidden.

THE RECEIPTS · 11-workstream protocol · pre-registered adjudication criteria (M3) · anchor table preserving our own corrected priors · deviations log (14 entries) · red team applied · steelman built for enforcement per M3 · all committed and public.

CITE · Gubment. "Is America's Drug Policy Actually Working?" Policy Whitepaper No. 8, Aug 2026. gubment.com/drugs · Sources & data: gubment.com/drugs/sources