



LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

MEASURE 110 (2020)

BACKGROUND BRIEF

On November 3, 2020, Oregon voters passed [Measure 110](#), approving two shifts in how the state deals with the use of illegal drugs. First, the measure reduces penalties for drug possession, making Oregon the first state to decriminalize the personal possession of illegal drugs. Secondly, the anticipated savings achieved from the current cost of enforcing criminal drug possession penalties will be combined with marijuana sales revenue to fund a new drug addiction treatment and recovery grant program.

CRIMINAL PENALTY REDUCTIONS

Effective February 1, 2020, Measure 110 reduces the penalty for a possession of controlled substance offense that is not classified as a commercial drug offense under [ORS 475.900\(1\)\(b\)](#) (2019). For possession of large amounts, Measure 110 reduces criminal penalties from the felony level to a Class A misdemeanor. A Class A misdemeanor is punishable by up to 364 days of imprisonment and a fine of up to \$6,250.¹

For possession of smaller amounts of controlled substances, Measure 110 reduces the penalty from the criminal misdemeanor level to a new, Class E violation. Under Section 19 of the Measure, a Class E violation is punishable by a \$100 fine. In lieu of a fine, a person charged with a violation may instead complete a health assessment at an Addiction Recovery Center. Measure 110 also removes penalty enhancements for possession of smaller amounts of controlled substances where the individual has a previous felony conviction or multiple previous convictions for possession.

Specific criminal penalty reductions include:

General Controlled Substances (Section 11)

- **Possession of a Schedule I, II, or III controlled substance:** penalty reduced from a Class A misdemeanor to a Class E violation
- **Possession of a Schedule IV controlled substance:** penalty reduced from a Class C misdemeanor to a Class E violation

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¹ ORS [161.615](#) (2019) and [161.635](#) (2019)

LSD (Section 11)

- **Possession of fewer than 40 user units** of lysergic acid diethylamide (LSD): penalty reduced from a Class A misdemeanor to a Class E violation
- **Possession of 40 or more user units** of lysergic acid diethylamide (LSD): penalty reduced from a Class B felony to a Class A misdemeanor

Psilocybin and Psilocin (Section 11)

- **Unauthorized possession of fewer than 12 grams:** penalty reduced from a Class A misdemeanor to a Class E violation
- **Possession of 12 or more grams:** penalty reduced from a Class B felony to a Class A misdemeanor

Methadone (Section 12)

- **Unauthorized possession of fewer than 40 user units:** penalty reduced from a Class A misdemeanor to a Class E violation
- **Possession of 40 or more user units:** penalty reduced from a Class C felony to a Class A misdemeanor

Oxycodone (Section 13)

- **Unauthorized possession of fewer than 40 pills, tablets, or capsules:** penalty reduced from a Class A misdemeanor to a Class E violation
- **Possession of 40 or more pills, tablets, or capsules:** reduced from a Class C felony to a Class A misdemeanor

Heroin (Section 14)

- **Possession of less than one gram:** penalty reduced from a Class A misdemeanor to a Class E violation
- **Possession of one or more grams:** penalty reduced from a Class B felony to a Class A misdemeanor

MDMA/Ecstasy, MDA, MDEA/Eve (Section 15)

- **Possession of less than one gram, or fewer than five pills, tablets, or capsules** of 3,4-methylenedioxymethamphetamine (MDMA/Ecstasy): penalty reduced from a Class A misdemeanor to a Class E violation
- **Possession of one or more grams, or five or more pills, tablets, or capsules** of 3,4-methylenedioxyamphetamine (MDA), 3,4-methylenedioxymethamphetamine (MDMA/Ecstasy), or 3,4-methylenedioxy-N-ethylamphetamine (MDEA/Eve): penalty reduced from a Class B felony to a Class A misdemeanor

Cocaine (Section 16)

- **Unauthorized possession of less than two grams:** penalty reduced from a Class A misdemeanor to a Class E violation
- **Possession of two or more grams:** penalty reduced from a Class C felony to a Class A misdemeanor

Methamphetamine (Section 17)

- **Unauthorized possession of less than two grams:** penalty reduced from a Class A misdemeanor to a Class E violation
- **Possession of two grams or more:** penalty reduced from a Class C felony to a Class A misdemeanor

Impacts on Sentencing

According to a [Racial and Ethnic Impact Statement](#) provided by the Oregon Criminal Justice Commission (CJC), there were 2,139 misdemeanor convictions and 1,918 felony convictions for possession of controlled substances across Oregon in 2019. These convictions disproportionately affected Black and Native American individuals, who accounted for 4.7 and 1.3 percent of the convictions, respectively, despite each making up a smaller share of Oregon's population based on census data.²

With the passage of Measure 110, convictions for both felony and misdemeanor possession of controlled substances are expected to be greatly reduced. Overall, the CJC estimated that there will be an almost 91 percent reduction in convictions, with the total number of misdemeanor convictions falling to approximately 276 and the total number of felony convictions falling to approximately 102. The CJC also estimates that the disparity affecting Black and Native American Oregonians will close substantially, with total convictions for those groups reduced by 93.7 and 94.2 percent respectively. A similar downward trend should also be seen in the number of possession-related arrests.³

Effects on Occupational Licenses

Under [ORS 670.280 \(2019\)](#), a licensing board, commission, or agency may consider a criminal conviction or other conduct, if it relates to the licensed activity, when determining whether a person is fit to receive or hold a specific occupational license. Measure 110 creates a rebuttable presumption that a conviction for conduct that has been classified or reclassified as a Class E violation does not make an applicant unfit to receive or hold an occupational license or otherwise relate to the fitness and ability of the applicant or licensee to engage in the licensed activity.

EXPANDING ADDICTION TREATMENT AND SERVICES

Addiction Recovery Center Grant Program

Measure 110 establishes a program that provides grants to existing agencies or organizations to create Addiction Recovery Centers (Centers) to provide immediate triage of the acute needs of people who use drugs and to assess and address ongoing needs through intensive case management and linkage to care and services. At least one Center must be established and operational within each coordinated care organization (CCO) service area by October 31, 2021. In order to receive grant funds, an applying Center must demonstrate an ability to provide the following services:

- 24/7/365 triage to determine acute care needs;
- behavioral health needs assessment, including a substance use disorder screening by a credentialed addiction treatment professional;
- individual intervention planning, intensive case management, and connection to services;

² Oregon Criminal Justice Commission, *Racial and Ethnic Impact Statement for Initiative Petition 44 (2020)*, available at <https://sos.oregon.gov/elections/Documents/fec/IP44-REI-Statement.pdf> (last visited December 7, 2020)

³ *Id.*

- peer support, including direct engagement with marginalized community members who could potentially benefit from the Center's services; and
- outreach to clients who are unable to access the Center.

Services provided by the Centers must be evidence-informed, trauma-informed, culturally responsive, patient-centered, non-judgmental, and centered on principles of harm reduction. Centers must have at least one Certified Alcohol and Drug Counselor or other credentialed addiction treatment professional; intensive case manager; and peer support specialist.

Grants must be provided to increase access to at least one of the following services:

- low-barrier substance use disorder treatment;
- peer support and recovery services;
- transitional, supportive, and permanent housing for persons with substance use disorder; or
- harm reduction interventions including, but not limited to, overdose prevention education, access to naloxone hydrochloride and sterile syringes, and stimulant-specific drug education and outreach.

In the transition to the establishment of Centers in each CCO service area, Measure 110 requires the Oregon Health Authority (OHA) to establish a statewide temporary 24/7/365 telephone Addiction Recovery Center no later than February 1, 2021. If a Center has not been established in the CCO service area, the person may utilize the temporary telephone Center established by OHA to complete the health assessment in lieu of the new \$100 Class E fine. This temporary telephone Center should be terminated with the required October 31, 2021 establishment of CCO service area Centers.

Oversight and Accountability Council

OHA must establish an Oversight and Accountability Council (Council) to determine how grant funds will be distributed and to oversee the Centers. The Council must be formed before February 1, 2021. The 17-member Council must be comprised of qualified individuals with experience in substance use disorder treatment and other addiction services representing specified stakeholders, including:

- a representative of the Behavioral Health Services section of OHA's Health System Division;
- three members of communities that have been disproportionately impacted by arrests, prosecution, or sentencing for Class E drug violations;
- a physician specializing in addiction medicine;
- a licensed clinical social worker;
- an evidence-based substance use disorder provider;
- a harm reduction services provider;
- a person specializing in housing services for people with substance use disorder or a diagnosed mental health condition;
- an academic researcher specializing in drug use or drug policy;
- at least two people who suffered or suffer from substance use disorder;

- at least two recovery peers;
- a mental or behavioral health provider;
- a representative of a CCO; and
- a person who works for a nonprofit organization that advocates for persons who experience or have experienced substance use disorder.

FUNDING

Measure 110 creates the new Drug Treatment and Recovery Services Fund (Fund) within the State Treasury to support the Addiction Recovery Center Grant Program. The Fund has two primary sources: (1) savings to the State resulting from drug offense sentence reductions, including reductions in arrests, incarceration, and supervision; and (2) moneys in the Oregon Marijuana Fund in excess of \$11,250,000 per quarter.

The Oregon Marijuana Fund is currently distributed in specified percentages to cities and counties (10 percent each), the State School Fund (40 percent), the Mental Health Alcoholism and Drug Services Account (20 percent), the State Police Account (15 percent), and for purposes related to alcohol and drug abuse prevention, early intervention and treatment services (five percent). Under Measure 110, those current distribution percentages apply only to a quarterly (\$11.25 million) cap, which in turn sums to \$45 million a year or \$90 million a biennium. All revenue in excess of that (capped) amount will be transferred quarterly to the new Drug Treatment and Recovery Services Fund. The transfer of money to the new Drug Treatment and Recovery Services Fund will therefore result in a reduction of funding to these current recipients of Oregon Marijuana Fund moneys. According to the November Economic and Revenue Forecast, the new Fund is expected to receive \$81.4 million in marijuana tax revenue in the 2019-21 biennium and \$229 million, or about 72 percent of the marijuana revenue, in the 2021-23 biennium.⁴

| Marijuana Fund Revenue Reductions (in millions) | | |
|---|-------------------|--------------------|
| <i>Transferred to Drug Treatment and Recovery Services Fund under Measure 110</i> | | |
| | 2019-2021 | 2021-2023 |
| State School Fund | (\$29.368) | (\$91.593) |
| Mental Health Alcoholism and Drug Services Account | (\$14.684) | (\$45.796) |
| State Police Fund | (\$11.013) | (\$34.347) |
| Cities | (\$11.355) | (\$22.898) |
| Counties | (\$11.355) | (\$22.898) |
| Alcohol & Drug Abuse Prevention | (\$3.671) | (\$11.449) |
| TOTAL | (\$81.446) | (\$228.982) |

⁴ Oregon Office of Economic Analysis, *Oregon Economic and Revenue Forecast*, December 2020 (release date: November 18, 2020), <<https://www.oregon.gov/das/OEA/Documents/forecast1220.pdf>> (last visited December 4, 2020)

Moneys in the Fund are to be in addition to, and not in replacement of, any existing allocations or appropriations for the purposes of providing substance use disorder treatment, peer support and recovery services; transitional, supportive, and permanent housing for persons with substance use disorders; harm reduction interventions; and for establishing Centers. The Measure requires a minimum deposit of \$57 million into the Fund in the first year with specified minimum annual increases. OHA may use an amount not exceeding four percent of the Fund for administration, with the remaining balance to be distributed as grants to Centers.

AUDITS

Measure 110 requires the Secretary of State to conduct financial and performance audits on the uses and effectiveness of the Fund by December 31, 2022 and biennially thereafter. These audits are required to look at specified elements of the grant programs and Centers, including the effectiveness of grants in increasing access to treatment and other recovery services and the outcomes of each Center. The audits are also required to include data on the number of Class E violations issued and the race of people who have received citations.

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