

Office Email
sen.kaysejama@oregonlegislature.gov

Legislative Website
www.oregonlegislature.gov/Jama



Capitol Phone
503-986-1724

Capitol Address
900 Court St. NE, S-409,
Salem, Oregon 97301

State Senator Kayse Jama

Senate District 24 (D-East Portland, Damascus, Boring)

March 2, 2023
Secretary of the Senate
Vote Explanation: HB 4002

Secretary Rutledge,

I am writing to explain my “no” vote on HB 4002. I acknowledge that drug use is a complex, polarizing issue, and that many people in Oregon do not feel safe. However, my objections to this legislation are numerous and serious. This bill will have devastating impacts on communities of color and low-income Oregonians, burdening our already-strained justice system while failing to address the root causes of our addiction crisis. For these reasons, I believe it’s important to clearly state why I oppose this legislation and the re-criminalization of drugs in our state.

HB 4002 will exacerbate the existing geographic, racial, and socioeconomic inequities that already plague our criminal legal system. Under HB 4002, access to care will be entirely dependent on geography and subject to the biases of individual officers. Counties are not required to offer deflection or diversion programs, and even if these programs are created, police and prosecutors are not required to use them. Off-ramps to treatment—which should at the very least be mandatory—will be determined on a case-by-case basis. This level of discretion increases the likelihood that individual bias will influence who receives treatment. As a result, low-income, communities of color, and rural Oregonians will functionally have less access to care than wealthy, white Oregonians who live in urban areas.

I cannot overstate the disproportionate and devastating harm that HB 4002 will inflict on Black and Brown Oregonians in particular. Our communities have been torn apart by the war on drugs, with over-policing fracturing families, ruining lives, and destabilizing neighborhoods for generations. Before Measure 110, Black Oregonians had double the rate of convictions for possession of methamphetamine, cocaine, and heroin statewide, despite using substances at

similar rates as their white counterparts.¹ Indigenous Oregonians were convicted of felony drug possession at five times the rate of white Oregonians.²

A return to criminalization will inevitably perpetuate similar injustices. Drug criminalization policies in Oregon and the United States more broadly have explicitly racist roots and have led to explicitly racist outcomes. Even a “minor” misdemeanor drug charge creates barriers that last a lifetime, preventing Oregonians from accessing stable housing, qualifying for loans, or getting a job. HB 4002 will ensure that these barriers continue to disproportionately harm Black and Brown communities. While the bill contains provisions for data collection on disparate impacts, we must continue to consult with impacted communities and relevant culturally specific organizations on the design and implementation of these collection programs.

Furthermore, our state legal system is not equipped to handle the consequences of HB 4002. Oregon does not have enough public defenders for current caseloads, let alone for the thousands of low-level cases that will be created by this bill. Oregon Supreme Court Chief Justice Meagan Flynn has publicly stated that “many of these cases may end up being dismissed for lack of counsel, without ever reaching the point of conditional discharge.”³ Thousands of low-income Oregonians will be stuck in legal limbo without the constitutionally required representation, leading to further disparities in who can access treatment. This will create massive backlogs in our courts, preventing other cases from moving forward and diverting state dollars that would be better spent on expanding treatment programs. We cannot in good faith argue that HB 4002 will deliver justice when the system responsible for administering that justice has explicitly stated that it is ill-equipped to do so.

When Oregon voters approved Ballot Measure 110 in 2020, they were expressing their moral and practical objections to the logic of the war on drugs. Oregonians recognized that incarceration is a cruel, ineffective response to a public health crisis. They approved historic state investment in treatment expansion and voted to replace criminal penalties with minor fines. Supported by 58% of registered voters, this measure represented a clear democratic will to move beyond criminalization and toward evidence-based solutions.

I still believe in this vision of Oregon—an Oregon that embraces structural change. We must re-envision our criminal justice system in its entirety. Punishing people who need our support is

¹ Oregon Criminal Justice Commission. “IP 44 Racial and Ethnic Impact Statement.” Oregon Public Broadcasting, August 5, 2020. https://www.opb.org/pdf/IP44%20-%20REI%20Statement%20Supplement_1602708982790.pdf

² Oregon Criminal Justice Commission. “IP 44 Racial and Ethnic Impact Statement.” Oregon Public Broadcasting, August 5, 2020. https://www.opb.org/pdf/IP44%20-%20REI%20Statement%20Supplement_1602708982790.pdf

³ Flynn, Meagan. “Response to Public Safety Provisions in Working Draft #2 LC 154/HB 4002.” Oregon Judicial Department, February 5, 2024. <https://s3.documentcloud.org/documents/24427378/letter-from-chief-justice-flynn-to-jacsr-ojd-response-re-hb-4002-1.pdf>

not the path to a healthy, stable community. Instead, we must vastly expand access to healthcare, stable housing, and properly trained crisis response services.

I will not pretend that the rollout of Measure 110 was smooth, or even initially successful. Uncertain early results undoubtedly weakened our faith in the promise of drug decriminalization. Yet these failures are better explained by state inaction rather than the efficacy of a health-based approach to addiction treatment. The state's reluctance to fully implement Measure 110 is well-documented. We neglected to train police on how to use the new law and refused to establish a comprehensive ticketing system⁴ Instead of taking responsibility for these failures, HB 4002 places the blame on individuals with substance use disorder. We have abdicated our responsibility to implement voters' vision of a more just Oregon and now insist on returning to criminalization as if our hands are tied.

I understand that things look different now than they did four years ago. The widespread availability and highly addictive nature of fentanyl has undoubtedly exacerbated our addiction crisis. My heart goes out to all the Oregonians who have lost loved ones, friends, and community members to an overdose. Each of these deaths is a tragedy that demands a response.

This dramatic increase in overdose deaths underscores the increased need for treatment and peer support, not for criminal penalties. HB 4002 gives up on Measure 110 too early. Multiple studies have found no evidence that drug decriminalization significantly impacted fatal overdose rates.⁵ Overdose deaths in the Northeast, South, and Midwest began significantly rising in 2014 along with an increase in fentanyl-related deaths. Fentanyl did not reach Oregon's unregulated drug market until 2020, and in the year following Measure 110, our state's overdose deaths were comparable to other Western States.⁶ Oregon has criminalized addiction for the past six decades. It is naive to believe that we can meaningfully reverse generations of bad public policy in just four years, particularly when we have not built the infrastructure necessary to fully realize the promise of Measure 110.

I also believe that HB 4002 fundamentally misunderstands the nature of addiction. Substance use disorder is a treatable health condition. It shares the same characteristics as hundreds of other diseases that we treat daily in healthcare facilities: it is caused by a combination of biological and environmental factors, it alters the chemical structure of the brain, and most importantly, it can

⁴ Schick, Tony, and Conrad Wilson. "Oregon's Drug Decriminalization Aimed to Make Police a Gateway to Rehab, Not Jail. State Leaders Failed to Make It Work." Oregon Public Broadcasting, February 14, 2024. <https://www.opb.org/article/2024/02/14/oregon-drug-decriminalization-plan-measure-110-leadership-failures/#:~:text=In%20January%202023%2C%20the%20month,the%20panel%20with%20adequate%20support>

⁵ Joshi, Spruha, Bianca Rivera, and Magdalena Cerda. "One-Year Association of Drug Possession Law Change With Fatal Drug Overdose in Oregon and Washington." *Jama Psychiatry* 80, no. 12 (27AD): 1277–83. <https://doi.org/10.1001/jamapsychiatry.2023.3416>;

⁶ Kral, Alex, Sofia Oviedo, Jamie Humphrey, and Barrot Lambdin. "Impact of Fentanyl on Overdose Mortality in Oregon before and after Measure 110." Research Triangle Institute, 2023. <https://drive.google.com/file/d/1u2JSe4N3Hxw1XAel-4kqHq5ToZpFVnEu/view>

be treated with direct medical intervention. Yet HB 4002 insists on framing addiction as a personal moral failure. It holds individuals suffering from a disease criminally responsible for behavior that is often out of their control.

HB 4002 returns us to the draconian, ineffectual logic of the war on drugs. Re-criminalizing drug use will entangle Oregonians suffering from addiction in a complicated, costly legal process. It will place people who need medical care into jails where that care is often unavailable—and where the risk of overdose death *increases*. County jails are currently seeing record death rates among people in custody, including deaths due to overdose.⁷ These facilities do not have adequate resources or trained staff to safely manage drug withdrawals. After experiencing the trauma and stress of incarceration, people will return to the street, where they are 10 times as likely to die of an opioid overdose than the general public.⁸

HB 4002 will not make Oregon safer. A return to criminalization will push our most vulnerable neighbors further into the shadows, away from the support they deserve and the treatment they so desperately need. More than simply taking the wrong policy approach, HB 4002 sends the message that Oregonians suffering from addiction are second-class citizens. This bill represents our collective failure to extend empathy to those in crisis. We cannot seem to recognize that, under different circumstances, we might very well be in the same position as the people we have now labeled criminals, needing treatment services that do not exist and seeking compassion that is nowhere to be found.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kayse Jama', with a long horizontal flourish extending to the right.

Kayse Jama, Oregon Senate District 24

⁷ Zarkhin, Fedor. "Drug Overdoses, Suicide Are Foremost Causes in Recent Multnomah County Inmate Deaths." OregonLive, December 12, 2023. <https://www.oregonlive.com/crime/2023/12/drug-overdoses-suicide-are-foremost-causes-in-recent-multnomah-county-inmate-deaths.html>

⁸ Hartung, Daniel, Caitlin McCracken, Thuan Nguyen, and Katherine Kempany. "Fatal and Nonfatal Opioid Overdose Risk Following Release from Prison: A Retrospective Cohort Study Using Linked Administrative Data." *Journal of Substance Use and Addiction Treatment* 147 (2023). <https://doi.org/https://doi.org/10.1016/j.josat.2023.208971>