



February 29, 2024

OREGON HOUSE OF REPRESENTATIVES

Timothy G. Sekerak
Chief Clerk of the House
State Capitol Building
Salem, OR 97301

RE: Vote Explanation on HB 4002 - A ^{sc}

Dear Chief Clerk Sekerak,

In 2020, Oregon voters recognized that the status quo of the War on Drugs was not solving the problems of addiction and substance-use disorder and sought a health-based approach to addiction and overdose as a more effective, compassionate, and productive response. The passage of Measure 110 provided vital funding for the programs which have already helped more than 60,000 Oregonians, even after the initial distribution of funding was severely delayed. Across the United States, including where drug possession and use are criminalized and harshly punished, substance use, and its consequences have been increasing without signs of slowing. This should suggest to all of us that the status quo of the United States' response to crises of addiction and recovery are fundamentally flawed. The causes of this crisis have been building for decades, only intensifying with the introduction of the fentanyl epidemic, and run much deeper than Oregon's relatively recent passing of Measure 110.

Oregonians, including myself, support the expansion and funding of accessible and available substance use disorder, mental health, and behavioral health treatment services. While the initial startup of programs funded because of 110 was frustratingly delayed, the positive impacts of the programs it established are now beginning to show on our streets and in our communities. OHA has reported a nearly 300% increase in access to services.

As presented, HB 4002 will recriminalize the possession of drugs with optional deflection programs – a county can choose to create deflection programs and police and prosecutors can choose to participate in them but it is completely optional and not required. The Oregon Judicial Department cited significant concerns for implementing HB 4002. In a letter to the chairs of the Joint Committee On Addiction and Community Safety Response, Oregon's Chief Justice Flynn outlined the substantial challenges that HB 4002 will face in implementation if passed, including:

- massive costs and staffing requirements that exceed the capacity of Oregon's courts (which are already overburdened);
- a deepening of the public defender crisis and its impacts beyond cases resulting from recriminalization;
- the potential for unequal provision of diversion and treatment programs offered to individuals based on the location where they are arrested and tried, subject to the discretion of local law enforcement and prosecutors who would have unchecked authority for deciding if such programs would even be made available; and
- substantial challenges inherent to the proposed timeline for implementation that would see Oregon's courts become gridlocked with a wave of new cases for which they have no roadmap to





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- substantial challenges inherent to the proposed timeline for implementation that would see Oregon's courts become gridlocked with a wave of new cases for which they have no roadmap to trial. What criminal system experts tell us is that this bill is likely to create a cycle of people in and out of jail, without connection to services.

I caution us to think about what will happen if we pass a bill that exacerbates Oregon's public defender crisis at a time when the investments we made to ensure legal representation for those who need it are still working to catch up to our constitutional requirements.

Colleagues in the Joint Committee emphasized that we will need to be vigilant to the near certain racial and ethnic disparities and harms of recriminalization of this bill. We must be prepared to make corrections in the future because there are no accountability measures when disparate impacts are identified in the Criminal Justice Commission (CJC) report. But we have data-driven analysis *right now*. The CJC Racial and Ethnic Impact Statement on this bill predicted that Black and African American individuals will be convicted of Boyd deliveries at 2.3 times the rate of white people, and Latinx individuals will be sent to prison for Boyd deliveries at twice the rate of white individuals. For possession, Black and African American people are predicted to be convicted at 1.4 times the rate of white people, but this is a projection; if we look at past data pre M110, the rate could end up being even higher than projected.

Punitive, criminalized approaches to the crises of addiction and drug use have been racially charged since their inception. We have decades of data of the selective enforcement of drug crimes in Communities of Color. Regrettably, these racially charged outcomes have held true in Oregon as well. As recently as 2021, Portland police arrested Black people at a per capita rate 4.3 times higher than white people, the fifth worst in the country. And Portland Police killed Black people 3.9 times more than white people.ⁱ Black people are incarcerated in Oregon jails and prisons at about 5.4 times the rate of white people.ⁱⁱ Issues of race and class remain driving forces behind inequitable prosecution rates across Oregon. We should expect that a return to criminalization is a move that tacitly supports the community-destroying intent of Nixon's War on Drugs, and against the best interests of our communities.

It is also not in the best interest of our communities to implement criminal penalties with the promise of deflection through treatment when we know that there are not enough treatment beds and behavioral health providers to address the needs we have currently, let alone after the passage of 4002. The American Civil Liberties Union has identified that HB 4002 fails to learn from the failed War on Drugs approaches to resolving substance-use disorder crises, and fails to learn from the implementation challenges of Measure 110. We cannot continue to fail Oregonians. It would be irresponsible to implement 4002 as written given that we do not have capacity to meet the current treatment needs of Oregonians, let alone a massive influx of individuals driven into an undeveloped system that will punish, rather than support, those with complex treatment needs. The services HB 4002 is counting on will not be up and running in time to help those rounded up when this bill goes into effect.

As the legislature has considered this bill, the impacts and effects of incarceration and prosecution have seemingly been put on the back burner. It would be an unconscionable oversight to not acknowledge that addressing our crises of addiction and substance use with criminalization will further the ongoing crises of: public defender shortages, excessive and disproportionate incarceration, recidivism, family separation, unequal access to care





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across urban-rural divides, deaths of despair, unsheltered homelessness resulting from criminal records, and difficulties in gaining employment after release. With recriminalization, we are electing to further inflame long-running, devastating challenges. All of this could be avoided, if only we listen to those who are responsible for implementing this bill, to those who work closely with communities most impacted, to those who have repeatedly raised their voices to identify all the above concerns about our existing carceral and criminal systems, and to our consciences - where we know that we must meet the crises of addiction and substance use with compassion, not convictions, care, not jail.

A health-based approach to addiction and overdose is more effective, more compassionate, and more cost-effective than criminal punishments. Criminalizing people because they suffer from addiction ruins lives, is more expensive, and can make access to treatment and recovery more difficult.

HB 4002 is billed as an attempt to fix a broken system, a tall order when components of the bill itself are deeply flawed, and the current crisis has been built up for decades. Measure 110 was not going to fix decades of underinvestment in 18 months, and neither will this bill. For years I've heard of the hallowed Oregon Way, and in the last two sessions I've seen a lot of good political compromise and across the aisle work. But more often it seems that the real Oregon Way is five star expectations on a shoestring budget. We, as a state, not just the legislature, have valid and high expectations for outcomes, but we consistently fall short of funding the programs required to achieve those outcomes. I am ecstatic to pass the investments in addiction and substance abuse disorder treatment coming to us through HB 5204, but we cannot set the expectation that several hundred million dollars is going to mitigate the harm that has been wrought for decades, particularly on low income individuals and in Communities of Color.

Let us not forget how that harm came to us either. John Ehrlichman, advisor in the Nixon White House and Watergate co-conspirator said: "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."ⁱⁱⁱ

Oregon does not need to continue a failed policy predicated on a lie. I urge your No vote on HB 4002.

Respectfully,

Representative Farrah Chaichi, House District 35

ⁱ <https://www.opb.org/article/2021/02/07/portland-has-5th-worst-arrest-disparities-in-the-nation-according-to-data/?outputType=amp>

ⁱⁱ <https://www.prisonpolicy.org/profiles/OR.html>

ⁱⁱⁱ <https://harpers.org/archive/2016/04/legalize-it-all/>

