

Tuesday, September 24, 2024

Written Testimony of Rob Bovett
before the
Joint Committee on Addiction and Community Safety Response
regarding
Requested Technical Fixes for 2024 House Bill 4002

Dear Co-Chairs Prozanski and Kropf, Senators Campos, Girod, Knopp, and Lieber, and Representatives Goodwin, Mannix, Nosse, Sanchez, Smith, and Valderrama,

For the record I'm Rob Bovett. I have been involved in drug policy at local, state, national, and international levels for a few decades, and currently teach Drug Law and Policy at Lewis & Clark Law School. My career has focused heavily on creating and implementing diversionary programs in our criminal justice system for people suffering from addiction or behavioral health issues. I also currently serve as Vice-Chair of your Criminal Justice Commission where we oversee many of those programs - although I speak only for myself this afternoon.

Thank you for the opportunity to present the current technical amendment requests for 2024 House Bill 4002, which I was involved in helping to negotiate and craft. Even at that time we knew that most of the technical amendments I am presenting to you today would be necessary, so we have been working on them during the interim. My hope is that you will approve of this letter being forwarded to Legislative Counsel prior to the pre-session deadline to begin the formal crafting of a committee bill.

1. Technical Fix Requests

1. Making the expunction sections functional (Sections 54 to 56 of HB 4002). This is the subject of an ongoing interim work group Chaired by Representative Kropf. Aaron Knott with the Oregon Judicial Department (OJD), as well as the Oregon State Police (OSP), have done a lot of work already. Many stakeholders are actively participating in the work group. I am also participating, mostly to monitor the progress and, if a consensus solution is agreed upon, help craft the language to implement that solution in the HB 4002 technical fix bill.

2. Making the pharmacy sections functional (Sections 7 to 9 of HB 4002). I am currently working with the Oregon State Pharmacy Association (OSPA), as well as a pharmacy professor, on amendments to make these sections work as intended. We should have specific language prepared very soon.

3. Breaking out fentanyl offenses into separate statutes (Section 39 of HB 4002) to mirror the overall breakout system in ORS Chapter 475 established by 2005 Senate Bill 907, so that we can better track data and maintain independence from the federal scheduling framework for the primary drugs of abuse – thus those federal schedules don't dictate state crime levels based on federal scheduling criteria (see Attachment A) that don't always make much practical sense. This independence has proven to be desirable and efficacious in a number of contexts, such as with regard to cannabis.

4. Expanding the definition of "local correctional facility" to also include community correction centers for purposes of the CJC Opioid Use Disorder Medication Grant Program to enable more Medication Assisted Treatment (MAT) as intended by that program. Some counties operate community correction centers as an auxiliary to jails to provide for alternatives and enhanced services, such as transition, work release, and similar programs. Those facilities should also have been included in the definition of "local correctional facility" for this particular grant program. We have worked out proposed language for this fix, which is included in Attachment B.

In addition to those technical fixes which we already knew would be necessary, following the implementation of key portions of House Bill 4002 on September 1, I have reached out to many stakeholders again to see if additional technical corrections are needed, including law enforcement leadership, the Oregon Health Authority (OHA), the Criminal Justice Commission (CJC), the Association of Oregon Counties (AOC), and the League of Oregon Cities (LOC). I have already received three additional technical fixes that CJC and AOC are currently working on, and confirmation from the Oregon Youth Authority (OYA) that they do not need any further technical fixes. I will report back to the Committee Co-Chairs regarding any additional provisions that should be added to this proposed technical corrections bill.

2. Brief General Comment

As Senator Lieber and others noted during the hearings on House Bill 4002, and echoed in my own oral and written testimony on the bill, there is no easy fix and this will take some time. The passage of House Bill 4002 was only a first step, as I have mentioned in essays published here and here. More technical fixes, as well as additional substantive policy changes, will undoubtedly be needed. With key portions of the bill becoming effective only three weeks ago, it is far too early to assess matters or draw conclusions.

That said, we are seeing some early signs of positive impacts in many communities across Oregon, including reducing community harm and seeing more people opting to participate in deflection and other recovery pathways than we initially anticipated. While some counties have struggled more than others to get deflection programs up-and-running for a variety of reasons, including partnership challenges and inadequate funding, please keep in mind that it has been less than six months since passage of the bill.

One of the key drug policy lessons we have learned with regard to implementing evidence-based programs is that local control is vital. Requiring pure fidelity to a program design that works in one county often does not work in another due to different circumstances, such as resources and supportive services. We have seen this play out with many programs operating under Justice Reinvestment, as well as HOPE. As a famous county judge once said, "if you've seen one county in Oregon, you've seen one county in Oregon."

My message for you today is that we are heading down the right path, while acknowledging there is much more work ahead.

Thank you again for the opportunity to testify today. I look forward to working with the Committee on these important technical fixes.

Sincerely,

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NOTE: All information and comments above are my own.
They do not reflect any official position of Lewis & Clark Law School or any client.

Attachment A

FED	Potential for Abuse	Accepted Medical Use	Safety and potential for addiction
I	High	No	Not safe even with Rx
II	High	Yes	Severe risk of addiction
III	Medium	Yes	High risk of addiction
IV	Moderate	Yes	Moderate risk of addiction
V	Lowest	Yes	Mild risk of addiction
Rx	No	Yes	Little risk of addiction
OTC	No	Yes	No risk of addiction



Attachment B

SECTION X. Section 81, chapter 70, Oregon Laws 2024, is amended to read:

Sec. 81. As used in sections 81 to 86, **chapter 70, Oregon Laws 2024** [of this 2024 Act]:

(1) “Commission” means the Oregon Criminal Justice Commission.

(2) “Local correctional facility” has the meaning given that term in ORS 169.005. **“Local correctional facility” also means any facility operated by the county supervisory authority, as that term is defined in ORS 144.087, to include facilities for corrections supervision services or custodial facilities.**

(3) “Tribal correctional facility” means a jail or prison in Oregon that is operated by a federally recognized tribe and confines persons for more than 36 hours.