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82nd LEGISLATIVE ASSEMBLY
JOINT COMMITTEE ON ADDICTION AND COMMUNITY SAFETY RESPONSE

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To: Joint Interim Committee on Addiction and Community Safety Response

From: Brian Niebuurt, LPRO Analyst
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Subject: House Bill 4002 Amendment Summary

For the purposes of this summary, the provisions of the requested amendment for House Bill 4002 (relating to addiction crisis) have been loosely categorized into the subject areas of behavioral health and public safety. The summaries reflect the policy goals articulated by the amendment request and are intended to provide a preview of the language anticipated of the amendment based on that request. The actual LC amendment language may differ from the descriptions below.

Behavioral Health Provisions:

1. Access to Medications for Opioid Use Disorder (MOUD)

- *Prohibiting Prior Authorization & Utilization Management*

As requested, the amendment intends to prohibit group health insurers, health benefit plans, and coordinated care organizations from imposing prior authorization or other utilization review for drugs used to treat substance use disorders. The prohibition against utilization review will apply to all forms of SUD medications (e.g. sublingual, injectable, etc.). As requested, the amendment will allow prior authorization for opiates prescribed for purposes other than SUD treatment.

- *Dispensing MOUD*

As requested, the amendment intends to allow pharmacists to dispense refills of medications used to treat opioid use disorder in specified circumstances. It will require health benefit plans for reimburse the cost of emergency refills of medications used for the treatment of opioid used disorder if legally prescribed and dispensed. As requested, the amendment will also permit pharmacies to use prescription drug lockers for the storage of MOUD.

2. Group Recovery Home Housing Protections

As requested, the amendment intends to further clarify the circumstances permitting a group recovery home to remove a tenant for the use or possession of alcohol or drugs to require failure of both a preliminary and confirmatory test.

3. Access to Behavioral Health Treatment

As requested, the amendment intends to apply coordinated care organization network adequacy standards for providers to addiction treatment providers.

4. Alcohol and Drug Policy Commission Study

As requested, the amendment intends to require the Alcohol and Drug Policy Commission (ADPC) to conduct a study of barriers and best practices to youth access substance use disorder treatment, medication assisted treatment interventions in emergency departments, substance use disorder treatment provider credentialing, and insurance denials for MOUD. It will require ADPC to deliver a preliminary report report to Legislative Assembly by September 31, 2024, with a final report due by September 15, 2025.

5. Certified Community Behavioral Health Clinic Program

As requested, the amendment intends to establish the certified community behavioral health clinic (CCBHC) program in Oregon Health Authority. The amendment will require CCBHCs to cover all federally required services and will require the Oregon Health Authority (OHA) to either provide additional reimbursement or exception should OHA adopt additional service requirements. It will specify procedures for establishment and adjustments to fixed cost-based rates for certified community behavioral health clinics. The amendment will require Oregon Health Authority to submit a plan to the Centers for Medicare and Medicaid Services (CMS) for adding new CCBHCs by January 15, 2025. Will require the Oregon Health Authority to seek approval to receive federal financial participation for community behavioral health clinic program September 15, 2025.

6. Task Force on Regional Behavioral Health Accountability

As requested, the amendment will establish a 19-member Task Force on Regional Behavioral Health Accountability to deliver recommendations to improve behavioral health system governance and strengthen evidence-based funding decisions and accountability. It will require the Legislative Policy and Research Office to staff the task force and provide research and analysis on current funding streams, funding strategies in other states, barriers to SUD treatment in publicly supported treatment settings, and state and county responsibilities for providing behavioral health and SUD treatment. The task force will be required to deliver a report with recommendations by December 15, 2024.

Public Safety Provisions:

1. Delivery of Controlled Substances (DCS)

Possession with Intent to Deliver: In Oregon, a person commits the crime of delivery of a controlled substance if the person engages in the “actual, constructive, or attempted transfer” of that substance. A 1988 Oregon Court of Appeals case, State v. Boyd, established the rule that possession of drugs coupled with evidence of the intent to sell them, was sufficient to prove “attempted delivery” under ORS 475.005. In 2021 the Oregon Court of Appeals overturned State v. Boyd by holding that evidence of possession with intent to sell, alone, was insufficient to establish the crime of delivery of a controlled substance.

As requested, the LC language intends to expand the definition of “deliver” or “delivery” to include the possession of a controlled substance with intent to transfer to another person to encompass possession of drugs coupled with evidence of intent to sell them in the crime of delivery of a controlled substance.

Increased Sentencing for Certain DCS Offenses: Under ORS 475.900 the crime category classification for Delivery of Controlled Substances is higher for deliveries made within 1000 ft of certain locations.

As requested, the LC language intends to require any DCS made within a public park, within 500 ft of a temporary residence shelter or within 500 ft of a treatment facility, if the person knows or reasonably should have known they were within 500 ft of said location, be classified as a crime category 7 of the sentencing guidelines grid of the Oregon Criminal Justice Commission (CJC) if the delivery is for consideration and as a crime category 5 if there is no consideration.

CJAC Evaluation of Pretrial Holds: As requested, the LC language intends to direct the Chief Justice’s Criminal Justice Advisory Council to evaluate the pretrial release criteria for persons arrested for Delivery and Manufacture of Controlled Substances.

2. Possession of Controlled Substances and Affirmative Defense

As requested, the LC language intends to:

- a) Establish a class C misdemeanor for possession of a controlled substance.
- b) Prohibit a court from imposing a fine, cost, assessment or attorney fee as part of a judgment for a class C misdemeanor for possession of a controlled substance.
- c) Define “qualified deflection program” as a program certified by the CJC under the requirements of the proposed act.
- d) Provide that it is an affirmative defense to the class C misdemeanor crime of possession of a controlled substance that the accused person completed a qualified deflection program or that the person was not provided the opportunity to complete a deflection program.
- e) Define “completed” to mean that a person, after being referred to the qualified deflection program received a behavioral health screening (as described in ORS

430.389) or an equivalent screening and engaged in at least one additional contact with the program following the screening.

- f) Allow a document purporting to be a record of an individual's completion of an intervention deflection program as defined by proposed act to be self-authenticating for purposes of admissibility as evidence under ORS 40.510.

3. Deflection Programs

As requested, the LC language intends to:

- a) Define "deflection program" as a collaborative program between law enforcement and behavioral health systems that assist individuals who may have substance use disorder, another behavioral health disorder or co-occurring disorders, to create community-based pathways to treatment, recover support services, housing, case management or other services.
- b) Require the CJC to establish a certification process for deflection programs that qualify for the defense to PCS as described in this summary.
- c) Establish the minimum criteria for eligibility for certification under this proposed act to include that the program must (summary is not a complete list of requirements):
 - i. Be coordinated by a community mental health program or local mental health authority that agrees to responsibility over certain duties including convening the program partners as needed for operation of the program; manage grant program funds awarded as part of this act; ensuring the program receives certification as necessary to qualify for the defense established by proposed act; and providing verifications and notices required for establishing the defense described in this proposed act.
 - ii. Be made available to the referred individuals at no cost.
 - iii. Provide an initial contact within 30 days of referral

4. Community-based Supervision

As requested, the LC language intends to classify possession of a controlled substance class C misdemeanor as a designated drug-related misdemeanor and direct the Oregon Department of Corrections (DOC) to supervise, sanction, and service any person who enters into a probation agreement for said misdemeanor.

5. Conditional Discharge

As requested, the LC language intends to require a court, at the request of a person charged with a class C misdemeanor of possession of a controlled substance as created by this act, to defer further proceedings and place the person on probation for an initial term of 12 months. The requirements for entry and terms of probation are intended to include:

- a) That the person enter into the agreement no later than 30 days after the person's first appearance, unless good cause is shown for delay.
- b) General conditions of probation as described in ORS 137.540(1) and a requirement that the defendant complete a substance abuse evaluation and treatment.

- c) The understanding that the criminal charges filed will be dismissed with prejudice upon fulfillment of the probation terms as agreed, including upon early termination of probation period.
- d) The waiver of certain rights by the defendant but shall not require a defendant to enter a plea of guilty or no contest.

6. Expungement

As request, the LC language intends to require the sealing or expungement of records related to a person's conduct constituting possession of a controlled substance constituting a class C misdemeanor as follows:

- a) When a law enforcement agency receives written notice that a person has completed a qualified deflection program, the law enforcement agency shall provide verification to the district attorney with authority to prosecute the offense and within 60 days of receiving verification both the law enforcement agency and the district attorney shall seal all records related to the person's participation in the program.
- b) If no further prosecutorial action has been taken after two years from the date of citation for or contact with law enforcement for conduct constituting possession of controlled substance constituting a class C misdemeanor, any law enforcement agency or district attorney that possesses records related to the citation or conduct shall seal the records within 60 days of conclusion of two-year period. Any electronic court records related to the citation or conduct shall be sealed within 60 days of conclusion of two-year period.
- c) When a person successfully completes probation as part of a conditional discharge agreement as described by this proposed act and the court dismissed the proceedings the court shall order all records relating to the arrest or citation and criminal proceedings be sealed. The language intends to direct the clerk of the court to forward a certified copy of said order to applicable agencies.
- d) Three years from the date of conviction for a class C misdemeanor possession of controlled substance the court shall order all records relating to the arrest or citation, charges, and criminal proceedings be sealed. The language intends to direct the clerk of the court to forward a certified copy of said order to applicable agencies.
- e) As requested, the language intends to direct The Judicial Department to develop a standardized form for obtaining requisite information necessary for complying with an order to seal records as described, to be completed by the district attorney and defense attorney at the time a person enters probation.

7. Enforcement Data Tracking

As requested, the LC language intends to require any enforcement of delivery of controlled substances and possession of controlled substances, including officer-initiated stops, deflections, arrests, and prosecution, be collected and analyzed by the CJC to track any racial or demographic disparities. The CJC is to be required, beginning August of 2025, to provide a report annually to the judiciary committees containing an analysis of the data.

8. Oregon Behavioral Health Deflection Program and Funding for IMPACTS Grants

The 2019 Legislature established the IMPACTS Grant Program within the CJC. This program is designed to address the shortage of comprehensive community supports and services for individuals with mental health or substance use disorders, leading to their involvement with the criminal justice system, hospitalizations and institutional placements.

As requested, the LC language intends to establish the Oregon Behavioral Health Deflection Program (BHDP) within the IMPACTS grants program and direct the CJC to develop separate grant application and review processes for community mental health programs. The language is expected to provide minimum requirements for grant applications and programs to be eligible for funding. Should direct the CJC in cooperation with the Oregon Health Authority to monitor progress of and evaluate program outcomes for applicants that receive grant funds and require annual reporting, beginning September 2025, the findings of the evaluation of said progress, to the relevant interim committees of the Legislative Assembly.

The language, as requested, intends to establish the Oregon Behavioral Health Deflection Program Account and to appropriate funds for the purpose of carrying out the provisions relating to the BHDP.

9. Expansion of Welfare Hold Timeline

ORS 430.399 allows for a police officer to transport a visibly intoxicated person to a treatment or sobering center. Current statute allows for a director of a treatment facility to hold an individual for up to 48 hours. As requested, the LC language intends to extend the treatment center holds to up to 72 hours.