

HB 4036 STAFF MEASURE SUMMARY

Joint Committee On Addiction and Community Safety Response

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Meeting Dates: 2/7

WHAT THE MEASURE DOES:

Recriminalizing Drug Possession and Repealing Class E Violation Provisions (Sections 1-22)

Increases penalties for possession of a controlled substance from a Class E violation to a Class C misdemeanor and repeals provisions relating to possession of a controlled substance as a Class E violation.

Restoration of State v. Boyd Delivery Definition (Section 23)

Expands the definition of “deliver” or “delivery” to include the possession of a controlled substance with intent to transfer to another person.

Creation of New Drug Offenses (Sections 24 and 25)

Creates the Class A misdemeanor crime of using a controlled substance in a public place. Defines public place for purposes of measure.

Use of Controlled Substances in Enclosed Space (Sections 26 and 27)

Creates the Class A misdemeanor crime of using a controlled substance in an enclosed space. Provides that violation of this crime constitutes a Class C felony if the person has a prior conviction for this crime.

Drug Encapsulating, Tableting, or Counterfeiting Equipment (Sections 28-30)

Establishes as a Class C felony for any person to possess, purchase, make, deliver, or sell a tableting machine, an encapsulating machine or controlled substance counterfeiting material while having reasonable cause to believe that the machine or materials will be used to manufacture a controlled or counterfeit substance. States that the crime shall be treated as a Category 6 on the sentencing guidelines grid for purposes of sentencing. Defines relevant terms. Removes provision from ORS 475.916 relating to possession of materials made redundant by sections 28 and 29 of this measure.

Increased Penalties for Certain Drug Crimes (Section 31)

Requires a court to sentence a person convicted of unlawful delivery or attempted delivery or manufacture of a controlled substance to at least 36 months incarceration if the person has been previously convicted of unlawful delivery or attempted delivery or manufacture of a controlled substance within the previous five years.

Taylor’s Law (Sections 32-35)

Provides that unlawful delivery of a controlled substance is a Class A felony if the use of the controlled substance was a factor in causing the death of another person. States that each person who unlawfully delivers a controlled substance that results in the death of another person as described is criminally liable under this provision.

Requires a court to sentence a person convicted of unlawful delivery of a controlled substance resulting in the death of another person to a term of incarceration of 58 months to 130 months and use a Crime Category 10 of the sentencing guidelines grid when sentencing. Prohibits the court from granting a downward departure of the above sentence except in circumstances provided in measure. Defines relevant terms.

Supervision Conditions (Sections 36 and 37)

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Amends general conditions of probation under ORS 137.540 to include that a person shall not use or possess controlled substances except pursuant to a medical prescription.

Designated Drug Related and Property Misdemeanors (Sections 38-41)

Amends ORS 423.478. Directs the Department of Corrections (DOC) to assume responsibility for community-based supervision for offenders convicted of designated property misdemeanors. Expands definition of “designated drug-related misdemeanor” to include unlawful possession of a controlled substance and unlawful use of a controlled substance in a public place under section 25 of this act. Defines “designated property misdemeanor” for purposes of this act.

Mandatory Drug Treatment (Section 42)

Provides that a person charged with or convicted of a designated drug-related or property misdemeanor be ordered, as condition of probation or any conditional discharge agreement, to be evaluated for drug dependence and if treatment for drug dependence is recommended the person be directed to complete the course of treatment as directed by the evaluator at no cost to the person.

Conditional Discharge Diversion (Section 43)

Requires a district attorney to offer any person charged with a designated drug-related misdemeanor to enter conditional discharge if certain criteria are met. Requires entry into diversion within 30 days unless otherwise agreed and directs the court to defer further proceedings and place the person on probation. Establishes terms authorized to be included in a conditional discharge agreement and certain rights a defendant must waive.

Expungement (Section 44)

Expands ORS 137.225 to allow a person to file a motion for an order setting aside conviction for possession of a controlled substance or use of a controlled substance in a public place immediately following the successful completion of all conditions of probation, one year from the date of conviction, or one year from the release of the person from imprisonment, whichever occurs latest.

Opioid Overdose Rapid Response Grant Program (Sections 45-47)

Establishes the Opioid Overdose Rapid Response Grant Program to assist cities and counties in establishing and supporting opioid rapid response teams. Directs the Oregon Criminal Justice Commission (CJC) to administer the grant program as described. Requires the CJC to adopt certain rules for administering the grant program. Appropriates funds to the CJC for the biennium ending June 30, 2025, for purposes of the grant program.

Alcohol and Drug Policy Commission (Section 48)

Defines relevant terms for the provision. Directs the Alcohol and Drug Policy Commission (Commission) to provide grants and funding, using the Drug Treatment and Recovery Services Fund, to counties and tribes to support evidence-informed and evidence-based services specified by measure. Further directs the Commission to provide grants and funding, as prioritized by the measure, to cities and counties to support enforcement related harm reduction services.

Transfer of Duties from Oregon Health Authority and Oversight and Accountability Council (Sections 49-65)

Amends ORS 430.384. Appropriates moneys in the Drug Treatment and Recovery Services Fund to the Alcohol and Drug Policy Commission to be used as directed in statute and by this measure. Transfers existing responsibilities for fund management and distribution to the Commission and expands grant and funding distribution authority to include providing grants and funding as described by Section 48 of this act.

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Directs the Commission to conduct an analysis of the most effective ways to address substance abuse within the state and report no later than September 15, 2025, to the interim committees of the Legislative Assembly related to health and the judiciary.

Lottery Bonds for Treatment Facility Infrastructure (Section 66)

Authorizes the State Treasurer to issue lottery bonds to be distributed through the Oregon Department of Administrative Service Economic Development Fund for local government purchase or renovation of physical infrastructure for substance abuse treatment and recovery.

Legislative Findings Concerning Specialty Court Funding (Section 66a)

Makes findings and declares that specialty courts improve treatment outcomes and reduce recidivism and that the Oregon Criminal Justice Commission must be adequately funded to ensure the success of the specialty courts operating within the state of Oregon.

Effective Date (Section 69)

Takes effect on the 91st day following adjournment sine die.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In November 2020, Oregon voters passed Ballot Measure 110, also known as the Drug Addiction and Treatment Recovery Act, 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, any savings achieved from the cost of enforcing criminal drug possession penalties are combined with marijuana sales revenue to fund a new drug addiction treatment and recovery grant program. Senate Bill 755 (2021) modified some of the requirements of Ballot Measure 110, including establishing Behavioral Health Resource Networks (BHRNs), which are a group of organizations that partner to provide substance use services free of charge to individuals seeking care. The measure required a BHRN to be established in each county and tribal area in the state.