



# Racial & Ethnic Impact Statement – HB 4002-24

Oregon Criminal Justice Commission

26 February 2024

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## BACKGROUND

The Oregon Criminal Justice Commission (CJC) received two written requests from a member of the Legislative Assembly from each major political party requesting a racial and ethnic impact statement pursuant to ORS 137.683 for House Bill 4002-24.<sup>1</sup> As required by ORS 137.683 this statement describes the racial and ethnic impact to the criminal offender population (ORS 137.683(1)) that includes individuals convicted of specific crimes modified in HB 4002-24. There are several components of HB 4002-24 that are not related to the criminal justice system specifically or will not impact the composition of the adult criminal offender population, and this statement does not include discussions of the potential racial and ethnic impact of those components.

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## KEY TAKEAWAYS

Utilizing data compiled by the Oregon Criminal Justice Commission to calculate the fiscal impact of House Bill 4002-24, the following results are reported regarding potential racial and ethnic impacts of the proposed legislation.

1. The Commission predicts that a racial disparity for Black/African American individuals will be present for the new convictions resulting from legislation regarding “Boyd deliveries.” Annually, the Commission predicts there will be 111 additional convictions across all racial/ethnic groups, 7 of which will be for Black/African American individuals. To reach parity with whites given Census population differences in Oregon, there would need to be no more than 3 convictions annually.
2. The Commission predicts that a racial disparity for Black/African American individuals will be present for the new convictions resulting from legislation regarding possession of controlled substances. The Commission predicts there will be 2,257 additional convictions across all racial/ethnic groups, 103 of which will be for Black/African American individuals. To reach parity with whites given Census population differences in Oregon, there would need to be no more than 74 convictions for Black/African American individuals.
3. The disparities identified for convictions for possession of controlled substances were smaller than those previously identified by the Commission. In 2015/2016, Black/African American individuals were overrepresented for convictions of possession at a rate that is five times higher than what we predict will result from HB 4002-24.

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<sup>1</sup> <https://olis.oregonlegislature.gov/liz/2024R1/Downloads/ProposedAmendment/26060>

## **ANALYZED COMPONENTS OF HB 4002-24**

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### *Delivery of Controlled Substances*

Sections 24 and 25 of HB 4002-24 propose changes to laws regarding the delivery of controlled substances. Section 24 focuses on providing legislative clarification regarding the standard applied to delivery of controlled substances cases following an Oregon Court of Appeals decision, *State v. Hubbell*,<sup>2</sup> which was decided in 2021 and affirmed by the Oregon Supreme Court in 2023. In brief, the decision in *State v. Hubbell* focused on whether possession of controlled substances with intent to deliver constituted an attempted transfer and thus could be prosecuted as a delivery under Oregon law, which was a longstanding standard stemming from a court ruling in *State v. Boyd*<sup>3</sup> in 1988. The Oregon State Appeals Court held, and the Oregon Supreme Court affirmed that an “[attempted transfer] is not established by evidence that a person possessed a large quantity of controlled substance and had a general intent to transfer it at an undetermined future time.”<sup>4</sup>

The practical effect of the *State v. Hubbell* decision has been a substantial decrease in convictions for so called “Boyd Deliveries” in the state. Indeed, data demonstrates that between 2015 and 2017, there was an average of 163 Boyd delivery convictions per year. In 2022, by comparison, there were 28 delivery convictions of this type, an 82 percent reduction. Section 24 of HB 4002-24 purports to reinstitute the legal standard for prosecuting delivery of controlled substances to the standard existing prior to the *State v. Hubbell* decision in 2021.

Section 25 also proposes changes to delivery of controlled substances by providing sentencing enhancements for deliveries of heroin, cocaine, fentanyl, or methamphetamine that occur within 500 feet of a treatment facility or a temporary residence shelter or deliveries occurring within 30 feet of a public park.

### *Possession of Controlled Substances*

Since the effective date of Ballot Measure 110 in February of 2021, the possession of user amounts of controlled substances has been considered a non-criminal E-Violation under Oregon law. HB 4002-24, Section 35, proposes recriminalizing possession of user amounts of controlled substances by classifying such behavior as an unranked misdemeanor (hereinafter “Drug Enforcement Misdemeanors”), with a probation sentence of up to 18 months.

In Section 76, HB 4002-24 also proposes creating partnerships between law enforcement agencies and behavioral health entities to assist individuals who may have substance use disorder and create pathways for those individuals to receive treatment, recovery support services, housing, case management, and other services. The intent of HB 4002-24 is for these programs to deflect individuals who could otherwise be charged and convicted of possession of controlled substances from the criminal justice system.

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<sup>2</sup> *State v. Hubbell*, 314 Or App 844 (2021).

<sup>3</sup> *State v. Boyd*, 92 Or App 51, 756 P2d 1276, *rev den*, 307 Or 77 (1988).

<sup>4</sup> *State v. Hubbell*, 371 Or 340, 360 (2023).

## METHODOLOGY

### *Delivery of Controlled Substances*

The Oregon Criminal Justice Commission assumes Section 24 of HB 4002-24 will return drug delivery convictions to the level prior to the *State v. Hubbell* decision in September 2021. The Commission estimates an additional 70 convictions for drug delivery at a crime category level 4. The convictions are estimated to show 36 percent sentenced to local control with an average sentence length of 1.5 months and 64 percent sentenced to probation with an average sentence length of 24 months. The Commission also estimates an additional 15 convictions for drug delivery at crime category levels above 4. These convictions are estimated to show 55 percent sentenced to prison with an average sentence length of 24.2 months, 6 percent sentenced to local control with an average sentence length of 1.7 months, and 39 percent sentenced to probation with an average sentence length of 36 months.

Section 25 of HB 4002-24 modifies drug delivery sentences to include enhancements for offenses that occur at or within a certain distance from a treatment facility, temporary residence shelter, or public park. To create an estimate of this impact, the closest analogue in current Oregon law is a similar sentencing enhancement for delivery within 1,000 feet of a school.<sup>5</sup> In 2018 and 2019 there was an average of 60 convictions for drug delivery within 1,000 feet of a school. Using this frequency, the Commission estimates 13 convictions (representing a 20 percent increase from convictions within 1,000 feet of a school) of delivery for consideration that meet the criteria in Section 25 of HB 4002-24, at a crime category level 5. These convictions are estimated to show 28 percent sentenced to prison for an average sentence length of 16 months, 18 percent sentenced to local control for an average sentence length of 1.1 months, and 54 percent sentenced to probation for an average sentence length of 24 months. The Commission also estimates 13 convictions (representing a 20 percent increase from convictions within 1,000 feet of a school) of delivery that meet the criteria in Section 25 at a crime category level 7. These level 7 convictions are estimated to show 39 percent sentenced to prison for an average sentence length of 22 months, 8 percent sentenced to local control for an average sentence length of 1.3 months, and 53 percent sentenced to probation for an average sentence length of 36 months.

In total, the Commission estimates an additional 85 convictions from the changes in Section 24 and an additional 26 convictions from the changes in Section 25. This results in a total of 111 additional convictions, and subsequent additional 31 prison beds at full impact.

### *Possession of Controlled Substances*

To estimate the potential impact of HB 4002-24 on convictions for possession of controlled substances, it is first necessary to define the share of individuals who may be deflected from the criminal justice system through their participation in new deflection programs established by HB 4002-24, Section 76. As such, the Commission developed a statewide deflection eligible population estimate based on total possession of controlled substances arrests in 2019. It is hypothesized that the focus of these new deflection programs will be those individuals who

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<sup>5</sup> See ORS 475.822, 475.832, 475.852, 475.872, 475.882, and 475.892.

possess controlled substances and are not engaging in other criminal behavior at the time of their interaction with law enforcement. Based on this assumption, Commission staff removed arrests with accompanying charges as well as those individuals arrested who were on active supervision at the time of their law enforcement encounter. This resulted in a statewide estimate of 3,187 possible deflection eligible cases based on 2019 possession of controlled substances arrests. In addition, the Commission is assuming that 23 counties<sup>6</sup> will be able to implement a deflection program by September 1, 2024 and the Commission further assumes that of the deflection eligible population in these 23 counties, 50 percent will successfully complete deflection and not be charged with a Drug Enforcement Misdemeanor. As a result, the Commission estimates that 1,269 successful deflections will occur. It is important to note, however, that the share of deflected individuals will vary by county and could be impacted by the timeline for implementing deflection programs locally, the fidelity with which they are built and implemented, and the standards of individual programs.

Conversely, the Commission estimates the remaining cases will either not be offered deflection (either because the county does not have a deflection program or the person is not eligible due to a hold, warrant, concurrent offense, or other disqualifier) *or* the person will not successfully complete their deflection program. As a result, the Commission estimates that 1,523 cases per year will enter into the criminal justice system and be added to the current system capacity. Of those that enter into the criminal justice system, the Commission estimates that 381 cases, or 25 percent, will receive a conditional discharge sentence of 12 months. This represents an increase from 2019 where 18 percent of drug possession sentences received a conditional discharge. The Commission further estimates that 50 percent of conditional discharges will be completed successfully. The remaining 1,142 cases are estimated to receive a probation sentence of 18 months. Finally, a revocation sentence of up to 180 days incarceration can be imposed and this can include time in an inpatient or outpatient drug and alcohol program. The Commission estimates that 40 percent of probation sentences will receive a revocation with an average sentence length of 3 months.

### *Victim Impact*

The Commission is required by ORS 137.683 to include an “estimate of the racial and ethnic composition of the crime victims who may be affected by the proposed legislation.” The Commission, however, lacks the data regarding victimization related to both delivery of controlled substances and/or possession of controlled substances necessary to provide estimated impact. The scientific research has long shown there are only slight differences by race and ethnicity with regards to drug use and abuse.<sup>7</sup> Recent research within Oregon, however, suggests

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<sup>6</sup> The 23 counties assumed to be able to implement programs quickly are Baker, Benton, Clackamas, Clatsop, Columbia, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jackson, Josephine, Klamath, Lane, Malheur, Marion, Morrow, Multnomah, Umatilla, Wasco, and Washington. This list includes all counties who indicated their willingness as of 23 February 2026.

<sup>7</sup> Studies of drug use and abuse by race most often focus on adolescents and young adults aged 17 to 25 because the extant research has consistently found that rates of use and abuse are highest among individuals within that age bracket (McCabe, SE, M Morales, JA Cranford, J Delva, MD McPherson, CJ Boyd. 2007. “Race/Ethnicity and

that overdose deaths have been particularly impactful for Black/African American and Native American communities.<sup>8</sup>

### *Estimate of the Racial and Ethnic Impact*

For each of the components of HB 4002-24 described above, the Commission utilizes the predicted frequencies and percentages for each offense broken down by the standardized racial and ethnic categories found in its public safety databases: Asian/Pacific Islander, Black/African American, Latinx, Native American, and white. Further detail regarding racial identification at a more granular level is not available.

To provide additional context regarding the magnitude of the predicted disparities, the Commission employed a disparity metric called the Raw Differential Representation, or RDR.<sup>9</sup> The RDR approach to measuring racial disparities is superior to the use of percentage comparisons to Census populations and/or risk ratios.<sup>10</sup> Further, the RDR is an intuitive measure that reports statistics of disproportionality in terms of the number of individuals affected, which can better guide policy makers and report real, on the ground changes that occur in response to new policies and practices.

Substantively, the RDR represents the reduction in a given outcome, such as arrests or convictions, that would be required to reach parity with whites given population differences across race. As such, the RDR value for white individuals will always be zero because it is the group to which all others are compared. ***Positive RDR values for non-white racial groups indicated that a reduction equal to that number was necessary to bring the group in line with whites.*** Thus, if a racial group reported an RDR of 12 for convictions, then it would indicate that 12 fewer convictions for individuals of that group would be required to achieve parity with white

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Gender Differences in Drug Use and Abuse among College Students.” 21st Century Research on Drugs and Ethnicity 6(2):75-95; Miech, RA, LD Johnston, PM O’Malley, JG Bachman, JE Schulenberg. 2016. Monitoring the Future National Survey Results on Drug Use, 1975-2015: Volume 1, Secondary School Students. Ann Arbor: Institute for Social Research, The University of Michigan.). Studies of 12<sup>th</sup> graders via the well-respected, national Monitoring the Future Study report that Whites and Hispanics tend to use hallucinogens, MDMA, cocaine, and prescription drugs at rates that were higher than Blacks (rates of use among Asians are quite small and rarely included in these comparisons). The use of heroin and methamphetamine does differ by race, with each racial group taking its turn as the group with the highest prevalence of use. The rates at which these drugs are used by adolescents, however, is so small (e.g., heroin use among Blacks stood at 1% in 2015) that comparisons must be made with caution. Among slightly older individuals of what would normally be thought of as “college age,” the highest drug use rates are generally found to be for Hispanic and White individuals, with Blacks and Asians following behind in that order (McCabe et al. 2007).

<sup>8</sup> Please see Evidence-Based Substance Use Treatment—Recent Oregon Trends and Potential Solutions, presented by Todd Korhuis to the Joint Interim Committee on Addiction and Community Safety Response, 4 December 2023. <https://olis.oregonlegislature.gov/liz/2023II/Committees/JACSR/2023-12-04-09-00/Agenda>

<sup>9</sup> For a detailed methodological discussion of the Raw Differential Representation metric, please see the Commission’s Possession of Controlled Substances Report: *Per House Bill 2355 (2017)*, which is located at <https://www.oregon.gov/cjc/CJC%20Document%20Library/PossessionofControlledSubstancesReport-9-2018.pdf>.

<sup>10</sup> Girvan, Eric J., Kent McIntosh, and Keith Smolkowski. 2018. Tail, Tusk, and Trunk: An Examination of What Different Metrics Reveal about Racial Disproportionality in School Discipline. Available at SSRN: <https://ssrn.com/abstract=2979044> or <http://dx.doi.org/10.2139/ssrn.2979044>.

individuals. *Alternatively, if the RDR value is negative for a non-white group, it indicates that the non-white group is underrepresented relative to whites.*

In the section and tables that follow, the Commission will indicate the presence of disparities when groups are overrepresented for a given outcome—or, put another way, only when positive RDR values are reported. When non-white groups are underrepresented, which is denoted by negative RDR values, the Commission will not report it as a disparity per se, because it is not an indicator of a systemic overrepresentation of a non-white group for the outcome of interest.

## **RESULTS**

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### *Delivery of Controlled Substances*

As stated above, the Commission estimates that a total of 111 additional convictions will result from the proposed changes to delivery of controlled substances in HB 4002-24 (70 “Boyd” convictions at a crime level 4, 15 “Boyd” convictions at a crime level higher than 4, 13 convictions within the new geographic bounds at a crime level 5, and 13 convictions within the new geographic bounds at a crime level 7). Table 1 reports the predicted racial breakdown for those 111 cases.

As shown in Table 1, the Commission predicts that of the 111 annual convictions, 84 of them will be for white individuals, representing 75.7 percent of the total. For non-white convictions,

**Table 1. Delivery Conviction Estimate**

<b>Race/Ethnicity</b>	<b>Count</b>	<b>Percent</b>	<b>RDR</b>
Asian/PI	2	1.8%	-6
Black/A Am.	7	6.3%	4
Latinx	16	14.4%	0
Native Am.	2	1.8%	-1
Unknown	0	0.0%	N/A
White	84	75.7%	0
<b>Total</b>	<b>111</b>	<b>100.0%</b>	<b>N/A</b>

2 are predicted to be Asian/Pacific Islander, 7 are predicted to be Black/African American, 16 are predicted to be Latinx, and 2 are predicted to be Native American. When compared to their share of the Census population via the RDR metric, only Black/African American individuals displayed a disparity for this outcome. According to the RDR,

Black/African American individuals are

overrepresented by 4 convictions. Thus, to reach parity with white individuals, this means that there would need to be a reduction of 4 convictions among Black/African American individuals under the new legal structure proposed by HB 4002-24. For other non-white groups, the RDR metric results in either a negative value, which indicates that both Asian and Native American individuals are underrepresented compared to whites, or zero, which indicates that Latinx convictions are predicted to be on par with those for white individuals.

**Table 2. Delivery Prison Impact Estimate**

Race/Ethnicity	Count	Percent	RDR
Asian/PI	0.5	1.6%	-1.5
Black/A Am.	1.1	3.5%	0.3
Latinx	7.9	25.5%	4.0
Native Am.	0.7	2.3%	0.0
Unknown	0.0	0.0%	N/A
White	20.8	67.1%	0.0
Total	31.0	100.0%	N/A

As described in the previous section, of the 111 additional delivery of controlled substances convictions estimated by the Commission, it is predicted that an additional 31 prison beds will be needed at full impact. Table 2 describes the estimated racial breakdown of those prison sentences. The Commission predicts that over 67 percent of prison bound individuals will be white. Among non-white individuals, there is a disparity for both Black/African American and Latinx individuals. The magnitude of the disparity for Black/African American individuals is relatively small. For Latinx individuals, the RDR metric indicates that to reach parity with white individuals, there would have to be 4 fewer Latinx individuals serving a prison sentence for delivery of controlled substances per year.

**Table 3. Drug Delivery Prison Sentence Lengths in Months (2018-2019)**

Race/Ethnicity	Count	Avg. LOS
Asian/PI	16	24.84
Black/A. Am.	40	23.04
Latinx	201	27.78
Native Am.	18	25.93
White	586	24.23
Total	861	25.05

Finally, the Commission estimated average prison lengths of stay for prison bound individuals convicted of delivery of controlled substances. Historically, Boyd delivery convictions, due to their location on the sentencing grid, have not resulted in a substantial number of prison sentences. Indeed, during the 2015-2023 timeframe, only 12 prison sentences for non-white individuals have occurred, which is too small to provide reliable Boyd delivery estimates of length of stay broken down by race. What can be provided is a breakdown of delivery prison sentences for all delivery of controlled substances convictions. Table 3 reports the average prison sentence length in months for all delivery convictions by race/ethnicity. Most sentences for the different racial/ethnic groups fall around the 25-month time period. For Latinx individuals, however, the average sentence length is higher by almost three months.

### *Possession of Controlled Substances*

**Table 4. Drug Enforcement Misdemeanor Conviction Estimate**

Race/Ethnicity	Count	Percent	RDR
Asian/PI	20	0.9%	-158
Black/A. Am.	103	4.6%	29
Latinx	216	9.6%	-140
Native Am.	31	1.4%	-30
Unknown	6	0.3%	N/A
White	1,881	83.3%	0
Total	2,257	100.0%	N/A

Table 4 presents an estimated breakdown by race and ethnicity for those individuals who enter probation due a conviction for the new Drug Enforcement Misdemeanor, based on prior racial/ethnic distributions for possession convictions in 2019. In total, between those individuals who do not have a deflection option or fail their deflection programs, as well as those who were not eligible for deflection, the Commission predicts that there will be 2,257 convictions. Of those convictions, 1,881, or 83.3 percent, are estimated to be white. Among non-white individuals convicted of a Drug Enforcement Misdemeanor, only convictions for Black/African American individuals

demonstrate a disparity according to the RDR metric. Indeed, for the Black/African American category, there would have to be a reduction of 29 convictions per year to reach parity with whites.

**Table 5. Conditional Discharge Estimate**

Race/Ethnicity	Count	Percent	RDR
Asian/PI	3	0.8%	-25
Black/A Am.	37	9.7%	25
Latinx	36	9.4%	-20
Native Am.	5	1.3%	-5
Unknown	2	0.5%	N/A
White	298	78.2%	0
Total	381	100.0%	N/A

percent, will be for white individuals. Similar to the patterns found in other tables above, Black/African American individuals are predicted to be overrepresented for this outcome while Asian/Pacific Islanders, Latinx individuals, and Native Americans are predicted to be underrepresented relative to the white population.

**Table 6. Misdemeanor Local Control Impact Estimate**

Race/Ethnicity	Count	Percent	RDR
Asian/PI	3	1.3%	-15
Black/A Am.	5	2.2%	-3
Latinx	22	9.7%	-14
Native Am.	5	2.2%	-1
Unknown	0	0.0%	N/A
White	191	84.5%	0
Total	226	100.0%	N/A

non-white groups relative to white individuals.

Table 5 presents an estimated breakdown by race and ethnicity for those individuals who the Commission predicts will receive a conditional discharge under the new HB 4002-24 framework, which is based on the distribution of conditional discharges in 2019. Of the 381 predicted conditional discharges, the Commission estimates that 298, or 78.2

Finally, Table 6 presents an estimated breakdown by race and ethnicity for those individuals who are revoked to jail, which the Commission estimates will total 226 jail beds at full impact. The racial distribution for this outcome was obtained using the historic racial distribution for revocations. As shown in Table 6, the RDR metric does not identify the presence of systemic overrepresentation of any

Finally, to provide context regarding the magnitude of the disparities identified for possession of controlled substances, we recommend looking back to previous work conducted by the Commission regarding racial disparities in this area. Following the passage of House Bill 2355 in 2017, which defeloned possession under certain circumstances, the Commission filed two research reports, the most recent of which was released in late 2019. Comparing the outcomes reported in 2019 to the current data presented in this statement, there are two items of note. First, historically the Commission found consistent evidence of disparities for Native American individuals convicted of possession. As described above, however, the analyses presented in this statement do not predict that disparities will be present should HB 4002-24 be adopted.<sup>11</sup> Second, historic disparities for convictions of Black/African American individuals for possession were much higher than what is expected to result from the policy proposals in HB 4002-24.

<sup>11</sup> It is possible that the lack of identified disparities for Native Americans could be attributable to data quality issues related to the identification of Native American individuals in our secondary data sources. For a discussion of these challenges, please see <https://www.oregon.gov/cjc/CJC%20Document%20Library/RaceCorrectionTechDocFinal-8-6-18.pdf>



Specifically, in the years prior to defelonization of first time possession of controlled substances in House Bill 2355, disparities were much higher and would have required reductions of 150 Black/African American convictions to reach parity with whites. Since reform efforts related to possession began in 2017, however, Oregon has been moving in a positive direction where disparities became smaller, and it is predicted that the disparities for possession of controlled substances proposed in HB 4002-24 will follow this pattern.