

**HB 4002 A STAFF MEASURE SUMMARY**

**Carrier:** Sen. Lieber

**Joint Committee On Addiction and Community Safety Response**

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**Action Date:** 02/27/24

**Action:** Do pass the A-Eng bill.

**Senate Vote**

**Yeas:** 4 - Girod, Knopp, Lieber, Steiner

**Nays:** 1 - Prozanski

**House Vote**

**Yeas:** 6 - Goodwin, Kropf, Mannix, Nosse, Sanchez, Smith G

**Nays:** 1 - Valderrama

**Fiscal:** Fiscal impact issued

**Revenue:** Has minimal revenue impact

**Prepared By:** Brian Nieubuurt, LPRO Analyst

**Meeting Dates:** 2/5, 2/7, 2/26, 2/27

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**WHAT THE MEASURE DOES:**

The measure removes barriers and establishes programs and policies aimed at improving access to substance use disorder (SUD) treatment. It also establishes a criminal justice framework for possession or delivery of controlled substances designed to encourage treatment over penalties such as jail or probation.

Detailed Summary

**Payment for Substance Use Disorder Treatment (Sections 1 – 5)**

- Prohibits health insurers and coordinated care organizations (CCOs) from imposing prior authorization or other utilization review for reimbursement of covered medications prescribed to treat substance use disorder (SUD).
- Requires health insurers and CCOs to reimburse the cost of refills of SUD medications.
- Specifies application to all forms of buprenorphine.
- Permits insurer to use prior authorization or other utilization management for opioids prescribed for purposes other than SUD treatment and for purposes of auditing claims or periodic redeterminations for need for continuing care.

**Pharmacist Dispensing of Opioid Use Disorder Medication Refills (Sections 6 – 9)**

- Permits pharmacist to dispense early refills of medications used to treat opioid use disorder to patients who have evidence of a previous prescription.
- Defines “early refill” and “refill.”
- Requires pharmacist to take specified steps when dispensing refill, including notifying patient’s primary care provider.
- Clarifies that record notations indicating previous prescription constitute verification of valid prescription.
- Requires Board of Pharmacy to adopt rules allowing pharmacist to obtain a registration number from the Drug Enforcement Administration (DEA) and store medications for the treatment of opioid use disorder on premises.
- Clarifies that prescription drug lockers located at the same physical address as the retail drug outlet with which the locker is associated do not need registration with the Oregon Board of Pharmacy or DEA.
- Requires prescription drug lockers located at other physical address to obtain registration from the DEA.

**Access to Addiction Treatment by Members of Coordinated Care Organizations (Section 10)**

- Adds addiction treatment providers to CCO network adequacy requirements.

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### **Alcohol and Drug Policy Commission Study (Sections 11 – 12)**

- Requires Alcohol and Drug Policy Commission (ADPC) to conduct study of barriers and best practices for youth SUD, increasing medication-assisted treatment (MAT), and increasing SUD providers in the state.
- Requires ADPC to study data regarding insurance claim denials for SUD medications.
- Requires ADPC to provide status update and preliminary recommendation by September 30, 2024.
- Requires ADPC to deliver final report by September 15, 2025.

### **Certified Community Behavioral Health Clinic Program (Sections 13 – 15)**

- Establishes a certified community behavioral health clinic (CCBHC) program in Oregon Health Authority (OHA).
- Requires OHA to appoint an advisory committee to advise in rule adoption.
- Requires OHA to either provide additional funding or have exception process if additional requirements on CCBHCs are made.
- Specifies actions to be taken by OHA in the development and adjustment of CCBHC rates.
- Requires CCBHC located in same geographic region as community mental health program (CMHP) to enter collaboration agreement with CMHP before OHA may approve CCBHC certification.
- Requires OHA to begin drafting state plan amendment for submission to the Center for Medicare and Medicaid Services (CMS) to add new CCBHCs prior to January 15, 2025.

### **Joint Task Force on Regional Behavioral Health Accountability (Sections 16 - 17)**

- Establishes 26-member Joint Task Force on Regional Behavioral Health Accountability to make recommendations on improving governance of behavioral health systems and strengthening evidence-based funding decisions.
- Specifies membership.
- Requires Task Force to develop recommendations on improving collaboration and accountability, improving outcomes, and providing greater cost efficiencies.
- Requires Task Force to collaborate with task forces that have overlapping scopes of work.
- Requires Task Force to provide draft recommendations to Legislative Assembly by September 15, 2025, and final recommendations by December 15, 2025.
- Requires Director of Legislative and Policy Research Office (LPRO) to provide staff support to Task Force.
- Sunsets Task Force on January 2, 2026.

### **Task Force on Improving the Safety of Behavioral Health Workers (Sections 18 – 19)**

- Establishes 16-member Task Force on Improving the Safety of Behavioral Health Workers and specifies membership.
- Requires Task Force to deliver preliminary report to Legislative Assembly containing draft recommendations on specified safety considerations by September 1, 2024.
- Requires Task Force to delivery final report to Legislative Assembly by December 1, 2024.
- Requires LPRO Director to provide staff support to Task Force.
- Sunsets Task Force January 2, 2026.

### **United We Heal Medicaid Payment Program (Section 20)**

- Establishes United We Heal Medicaid Payment Program in OHA to provide supplemental payments to eligible behavioral health care providers to enable the providers to access enhanced apprenticeship and training programs and opportunities.
- Requires OHA to adopt rules.
- Requires behavioral health provider to enter into memorandum of understanding with OHA in order to participate in program.

### **Conforming amendments (Sections 21 - 23)**

### **Delivery of Controlled Substances (Section 24)**

(Delivery Definition Based on State v. Boyd)

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- Expands the definition of “deliver” or “delivery” to include the possession of a controlled substance with intent to transfer to another person.
- Defines “within 30 feet” and “within 500 feet.”

### **Delivery in Certain Locations (Section 25)**

- Requires any conviction for delivery of a controlled substance (DCS) made within 30 ft of 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.
- Defines “public park,” “temporary residence shelter,” and “treatment facility.”

### **Reevaluation of Release Guidelines (Sections 26 and 27)**

- Directs the Chief Justice’s Criminal Justice Advisory Council to reevaluate and update the pretrial release criteria for persons arrested for delivery or manufacture of controlled substances.
- Repeals this section on January 2<sup>nd</sup>, 2025.

### **Conforming Amendments (Sections 28 – 32)**

#### **Applicability (Section 33)**

- Provides that sections 24, 25 and 28 to 32 of this act apply to conduct occurring on or after the effective date of this act.

### **Possession of Controlled Substances (Sections 34 and 35)**

#### **(Drug Enforcement Misdemeanor Provisions)**

- Establishes a drug enforcement misdemeanor crime of possession of a controlled substance (PCS).
- Provides that a court may impose sentence for the crime of PCS as follows:
  - The court may impose a term of imprisonment of up to 180 days upon the request of the defendant; or
  - If a straight jail sentence is not imposed, the court shall suspend imposition of sentence and impose up to 18 months probation and shall not order any jail time as a condition of probation. Probation may be extended beyond 18 months by agreement of the probationer but may not exceed 5 years.
  - If the terms of probation are found to have been violated, structured jail sanctions may be imposed by agreement of the defendant or by order of a court, up to a total of 30 days jail. Any term of incarceration must allow for early release to a treatment facility.
  - Upon revocation of a probation sentence imposed as provided by this section, a court may order up to 180 days in jail with the option of early release to an inpatient or outpatient drug and alcohol treatment program under the supervisory authority of county community corrections and pursuant conditions of a release agreement.
  - Requires any jail sentence be reduced for any day the defendant is on release to a treatment program or previously served in-custody.
  - Prohibits a court from imposing any fines or fees for a conviction for a drug enforcement misdemeanor PCS.

### **Deflection Programs (Sections 36 - 38)**

- Encourages law enforcement agencies and district attorneys, in lieu of arrest or prosecution of persons unlawfully in possession of a controlled substance constituting a drug enforcement misdemeanor, to refer or divert a person to a deflection program as defined by the measure.
- Directs the Criminal Justice Commission (CJC), no later than 12 months after the effective date of this 2024 act, to conduct a study to determine best practices for deflection programs and make recommendations for funding of the Oregon Behavioral Health Deflection Program.
- Requires the CJC, no later than 18 months after the effective date of this act, to develop standards and best practices for deflection programs using data received pursuant to sections 61 and 63 of this act.

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- Provides that the CJC shall establish a statewide system for tracking data concerning deflection program outcomes as specified and to maintain a publicly available list of deflection programs operating within the state.
- Defines “deflection program” as a collaborative program between law enforcement and behavioral health systems that assist individuals who may have substances 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.
- Allows for citations for the misdemeanor crime of PCS created by this section to include a date on which a person shall appear to be more than 30 days after the date the citation was issued to allow the person to participate in a deflection program as defined by this act.

### **Drug Enforcement Misdemeanor Conforming Amendments (Sections 39-46)**

#### **Supervision Duty and Funding (Sections 47- 50)**

- Directs the Department of Corrections (DOC) to assume responsibility for community-based supervision for offenders on conditional discharge agreement for a drug enforcement misdemeanor. Expands definition of “designated drug-related misdemeanor” to include the drug enforcement misdemeanor constituting PCS established by this act.

#### **Conditional Discharge (Sections 51 - 53)**

- Requires a court, at the request of a person charged with a drug enforcement misdemeanor constituting PCS, 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.
- Some of the requirements for entry into and terms of the agreement include:
  - That the person request to enter into the agreement no later than 30 days after the person’s first appearance, unless good cause is shown for delay.
  - An initial term of probation of 12-months and up to 30 days jail may be imposed as a sanction upon if terms of probation are violated.
  - Imposition of general conditions of probation as described in ORS 137.540(1) and a requirement that the defendant complete a substance abuse evaluation and treatment.
  - 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.

#### **Expungement (Sections 54 - 56)**

- Requires the sealing or expungement of records related to a person's conduct constituting a drug enforcement misdemeanor constituting PCS as follows:
  - Provides that deflection coordinators shall provide written verification that a person has completed a deflection program to the court, law enforcement agency, and the district attorney with authority to prosecute the offense and to the court with legal jurisdiction.
  - Within 60 days of receiving verification, the law enforcement agency and the district attorney shall seal all records related to the person’s participation in the program and the court shall seal all electronic records created concerning the offense.
  - 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 a drug enforcement misdemeanor constituting PCS, 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.
  - 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, within 90 days after dismissal, order all records relating to the arrest or citation and criminal proceedings be sealed. Directs the clerk of the court to forward a certified copy of said order to applicable agencies.

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- When a person successfully completes probation for conviction of a drug enforcement misdemeanor constituting PCS, the court shall, within 90 days of receiving notification of successful completion, order all records relating to the arrest or citation and criminal proceedings be sealed. Directs the clerk of the court to forward a certified copy of said order to applicable agencies.
- Three years from the date of conviction or dismissal of charge of a drug enforcement misdemeanor constituting PCS the court shall, within 60 days after the three-year period has concluded, order all records relating to the arrest or citation, charges, and criminal proceedings be sealed. Directs the clerk of the court to forward a certified copy of said order to applicable agencies.
- Directs the Judicial Department to develop a standardized form for obtaining requisite information necessary for entities to comply 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.

### **Repealing Class E Violation Provisions (Sections 57 - 72)**

- Repeals provisions relating to PCS as a Class E violation.

### **Operative Dates and Applicability (Sections 73 and 74)**

- Provisions establishing the new drug enforcement misdemeanor constituting PCS and related to sentencing, supervision, and expungement of records for the crime, become operative on September 1, 2024, and apply to conduct occurring on or after that date.
- Authorizes specified agencies to take any actions necessary before the operative date specified to meet obligations created by the measure.

### **Data Tracking (Section 75)**

- Requires the Oregon Criminal Justice Commission (CJC) to collect and analyze certain data and demographics concerning deflections, arrests, charges, and convictions for unlawful possession of a controlled substance and delivery of a controlled substance offenses.
- Directs the CJC, beginning August of 2025, to provide a report annually to the judiciary committees containing an analysis of the data.
- Exempts any information collected by the CJC that may reveal the identity of any individual from public disclosure in any manner.

### **Oregon Behavioral Health Deflection Program (Sections 76 - 79)**

- Defines “deflection program” as a collaborative program between law enforcement and behavioral health systems that assist individuals who may have substances 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.
- Establishes the Oregon Behavioral Health Deflection Program (BHDP) within the Improving People’s Access to Community-based Treatment, Supports and Services (IMPACTS) grants program and directs the CJC to develop a separate grant application and review processes for community mental health programs.
- Provides minimum requirements for grant applications and programs to be eligible for funding.
- Directs the CJC, in cooperation with the Oregon Health Authority, to monitor progress of and evaluate program outcomes for applicants that receive grant funds and to report annually, beginning September 2025, to the relevant interim committees of the Legislative Assembly.
- Establishes the Oregon Behavioral Health Deflection Program Account and appropriates funds for the purpose of carrying out the provisions relating to the BHDP.
- Increases membership of the IMPACTS grants review committee from 19 to 21.

### **Expansion of Welfare Holds (Section 80)**

- Extends authority provided in ORS 430.399 for a director of a treatment facility to hold an individual from up to 48 hours to up to 72 hours.

### **Opioid Use Disorder Medication Grant Program (Sections 81 – 89)**

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- Establishes the Oregon Jail-Based Medications for Opioid Use Disorder Grant Program in the Oregon Criminal Justice Commission (CJC) to provide treatment and transition planning services to persons in custody in local and tribal correctional facilities.
- Directs the CJC, in collaboration with the Oregon Health Authority (OHA), to administer the grant program and establishes certain requirements for grant applicants.
- Requires at least 10 percent of total moneys awarded be to local correctional facilities in rural areas as defined by the measure or to tribal correctional facilities.
- Includes directives on how grant awards may be used by recipients.
- Establishes the Oregon Jail-Based Medications for Opioid Use Disorder Fund within the State Treasury to be continuously appropriated to the CJC for purposes of carrying out the obligations as directed by these sections.
- Directs the CJC to report on the grant program as described, no later than December 1, 2024, to the interim committees of the Legislative Assembly related to judiciary and health care.

### **Emergency Clause (Section 91)**

- Declares an emergency, effective on passage.

### **ISSUES DISCUSSED:**

- The disparate impact of drug crime enforcement on communities of color and homeless
- Obstacles to finding and entering drug treatment programs currently will be exacerbated
- Availability and effectiveness of existing deflection program models around the state and nationally
- Effectiveness of criminalization of drug possession and use to address substance abuse disorders and encourage access to treatment
- Lived experiences of persons who have experienced substance abuse disorders and family members of persons with substance abuse disorders
- Effectiveness of current treatment models around the state, obstacles to providing treatment
- Ballot Measure 110 and decriminalization of possession of controlled substances
- Impact of public drug use on Oregon businesses
- The role of law enforcement in addressing substance abuse
- Insufficient funding for behavioral health and substance abuse treatment services
- Workforce shortages and burnout in behavioral health and substance abuse treatment service providers

### **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.