



TO: Joint Interim Committee on Addiction and Community Safety Response
FROM: Brian Sjothun, City Manager
DATE: February 7, 2024
POSITION: **Comments on HB 4002**

The City of Medford would like to provide these comments on the amendments for House Bill 4002.

Behavioral Health Provisions:

City staff have collaborated with local non-profit providers to provide the following comments:

- There is general support for this section of the bill.
- This is not support for additional studies.
- We would request that the group authorized to distribute Measure 110 funds be changed to the Alcohol and Drug Policy Commission.

Public Safety Provisions:

Please see comments below from:

- Virginia Greer – Medford Municipal Court Judge
- Justin Ivens – Medford Chief of Police

HB 2002 - Comments on Public Safety Provisions by Virginia Greer – Municipal Court Judge

1. Delivery of controlled substances (DCS)

Possession with Intent to Deliver – any legislation that fixed the *Boyd/Hubbell* issue is a great idea. When Boyd was overturned it hindered the ability of drug task forces to arrest under a possession with intent to deliver theory even if it was substantial quantity. The result was more charges were filed under Manufacturing of a Controlled Substance (MCS) but only if there were scales, baggies etc. Bringing back an intent to deliver based on possession alone would be a logical readjustment of the law.

Increased Sentencing – Under the existing law delivery within 1000 feet of a school is a crime category 8 offense. There is nothing in the sentencing guidelines for public parks, treatment facilities or shelters. It seems like a logical extension of the law considering the legislative goals surrounding homelessness. The question that comes to mind is what quantity qualifies as a delivery with the enhanced sentencing category? Is it proximity alone or coupled with a weight? Then, how does this enhanced sentencing – which by the levels proposed could lead to a prison sentence – coexist with the generalized goal of sending fewer people to prison for non-violent offenses?

On the whole this section is moving in the right direction, especially the *Boyd/Hubbell* fix.

2. Possession of controlled substances and affirmative defense

Proposals under this section are simply M110 with the ability to arrest. There is no real enforcement at the back end which was the problem to begin with. Prior to statutory revisions, Possession of a Controlled Substance (PCS) cases were class C felonies. When they were felonies, defendants were sentenced to supervised probation and 10 days jail (which was generally suspended so the PO could use the sanction units for violations). It was the supervision piece that got people to treatment or at least were forced to engage with the PO. Prohibiting courts from imposing a fine, cost or fee for an appointed attorney for this has no benefit to the system as a whole. In general, this would be a complete drain on the system that is already taxed – especially with defense attorneys.

A “deflection program” again is simply M110 and very few if any defendants engaged in the assessment. Based on experience, people that are drug addicted do not care about a class C misdemeanor. It has no teeth and no actual repercussions. This section would fix nothing about the current system in any real way.

3. Deflection Program

This raises more questions than it answers. Where does the money come from to accomplish this? Who is part of the collaborative team between law enforcement and behavioral health? Are these new positions? Is this a PO? What is a community-based pathway treatment that would comply with this provision? Where does that money come from? Does this fall on the county or on the cities?

Similar to M110, there is no proposed infrastructure for this. If there is no program in place, or money for a program to develop, or people to man the program, how is this supposed to work or to help anyone involved in the criminal justice system?

4. Community-based Supervision

If a community doesn't have DOC locally, how would this work?

5. Conditional Discharge

Conditional Discharge was a program that had been used for many years in the courts. It got changed to a “probation agreement” which was utterly ineffective. Bringing back the conditional discharge program would be helpful for structure. However, it is expensive because it requires supervision of the program.

6. Expungement

This is consistent with the trend to allow expunctions.

HB 2002 - Comments on Public Safety Provisions by Justin Ivens – Medford Police Chief

The City has many concerns about the proposed language in all the listed sections. Many of the provisions listed may look good on paper but in practical application we don't see them being successful. Additionally, in many of the provisions I don't see how the State, Counties, and Cities can fund or staff many of the listed requests.

1. Delivery of Controlled Substance – The City supports the second paragraph where it defines DCS. Regarding enhanced sentencing based on certain locations I have never been a fan of this. My thought is making it consistent and some level felony conviction regardless of where it occurs. The fact of the matter is the person is selling drugs, does it really matter where it is occurring? I think it brings in too many variables when you ask a prosecutor to prove there was a temporary shelter, treatment facility, etc. within a certain distance. I feel this is just window dressing and isn't needed.
2. Possession of Controlled Substances and Affirmative Defense – I am not in support of PCS being a C Misdemeanor. This to me is no better than making it an infraction violation (which we currently have.) I am not in support of this entire section. There is no accountability at all. This might seem like a great idea, but I feel it will be a bigger disaster than what we are already experiencing. Why would a person enter any type of diversion, or court mandated treatment program when they can plead guilty and receive absolutely no consequences except maybe a class “C” conviction on their record. To me this will have no impact on substance abuse and changing behavior.
3. Deflection Program – In section (a) defining “deflection program,” who is determining if the individual being arrested has a behavioral health disorder or co-occurring disorders? Is this going to be done by a doctor, therapist, police officer, judge, attorney? Again, I feel this might look good on paper, but I feel is not practical. Regarding section (C-i) stating this will be coordinated by a community health mental health program etc., who is going to do this? These organizations will need to be vetted prior to being established. I feel this was one of the major reasons why Measure 110 failed in the first place. Who is going to be responsible for the oversight of these programs.
4. Community-based Supervision – Having the Department of Corrections do this makes no sense to me. Department of Corrections handles people who are incarcerated in prison, not misdemeanor drug users. This in my opinion is a complete waste of resources and should be done at the County level who already have probation programs in place.
5. Conditional Discharge – Again this might look good on paper, but I have serious concerns. Like I have mentioned about who is going to be responsible for the supervision piece of this. Additionally making PCS a C misdemeanor is not the answer. Rarely do you see people take Class A misdemeanors to trial, let alone a C misdemeanor, they plead out because there are very little consequences and accountability. I would see people taking the community service, credit for time served and being done with it. There are no teeth in a C Misdemeanor conviction where a judge can direct someone to get help.
6. Expungement – I am in complete opposition to this section for multiple different reasons. Since January of 2022 and the passing of SB 397 and 575 our expungements have gone up 240%. The manpower behind this request is not sustainable. This would put a huge burden on records divisions, courts, and the DA's Offices. There is no accountability of the individual to make the request or pay any fees. Lastly an expungement must be signed by a judge and there is no language in this provision mentioning that fact. We also don't know the effects Measure 114, the gun control law, will have on staff.