

Co-Chairs Lieber and Kropf, Members of the Committee,

I write to voice my serious concerns about this bill. In nearly a decade as a public defender, I've worked closely with thousands of Oregonians in every phase of the struggle with substance use disorder, alongside every kind of mental health struggle, and every kind of housing struggle.

It's important to start at the beginning. Criminalization of substance use disorder only makes sense if you start from the belief, popularized during the drug war, that people use drugs, sometimes become addicted, then suffer cycles of mental illness, chaos, and houselessness.

This 'drugs are bad' myth has been disproven by science and experience. Instead, we now know that **misery is the gateway drug**. In all my years serving this community, I've never met someone who got sober without getting out of the cycle of despair.

People take drugs because they work. They offer relief from intractable misery. Cages can't cure misery. Coercion can't cure misery. Isolating people, alienating them, labeling them inferior or failures, degrading them, and shaming them only serves to force them further into a hole where simple solutions are the only way. And no solution is simpler than one you can drink, snort, smoke, or inject. If we want to cure the misery that leads to substance use disorder, we need to fight against the sources of that misery. Our brothers and sisters need hope, they need dignity. They need shelter. They need community.

Ballot Measure 110 stood for a mass recognition that caging people in order to force them into treatment is horribly cruel and stupid. It doesn't work - Multnomah County's low level treatment court, modeled on the best practices available, had a graduation rate of 17%. That means only 17% of users, threatened with a year or more in jail, managed 90 days of abstinence. Threats don't work. **Threats make people want to get high**. Instead, Measure 110 acknowledged the emerging consensus among public health professionals that the way to success is to eliminate the threat of violence and offer people a way out of misery.

Every person who suffers from a substance use disorder has moments when they are ready to reach out. Those moments come and go. Hope's light flickers. The only sane and moral goal of drug policy is to lower the barriers to entry so that when that moment comes, there's someone reaching back out with tools that can alleviate not just the impairment caused by drugs, but the circumstances that led to their problematic use.

Measure 110 required two things: the State needed to create a large number of new treatment resources, including low-barrier options, outpatient options, and residential options with wraparound services to help people get a new start. Police also needed to take on a new role by referring people they found in possession of drugs to these new treatment options.

Of course, as we're now painfully aware, neither of those things happened.

There are lots of plausible explanations for the delays in expanding treatment capacity. OHA was simultaneously burdened with COVID, it took longer to get the money out the door than anyone expected, existing treatment providers lacked the capacity to expand facilities, and the workforce didn't exist to operate them.

At the same time, police seem not to have taken to their new role. Citations for drug possession in Multnomah County have only been issued at a fraction of the rate that police arrested people for possession of drugs (or paraphernalia) pre-Measure 110. Many counties hardly issued any at all.

In short: we didn't try and it didn't work. It would be a mistake of the highest order to conclude that the plan is to blame, rather than those charged with its execution. Accepting that false premise - which underlies this legislation - will have horrible consequences for exactly the people you propose to help.

Decriminalizing possession will result in a return to a policing culture of mass arrests. It will undermine the 4th Amendment rights of Black, brown, poor, and mentally ill Oregonians. It could have disastrous consequences for Oregonians who aren't citizens. It will require the appointment of attorneys in thousands and thousands of new criminal cases. Making it an affirmative defense that a defendant wasn't offered treatment will require them to go to trial to protect their rights, imposing costs on courts and police.

What can you do?

- 1) **Do not criminalize possession.** Do not return to the failed, wrongheaded belief that punishment is a means to recovery. To say that jail helps people recover is a fallacy born of mistaken and cruel policies that belong in the rearview mirror.
- 2) **Request the Criminal Justice Commission to prepare a Racial and Ethnic Impact Statement as described in ORS 137.683 and 685.** Communities of color have historically suffered unconscionable abuse and disparate impacts as a result of the criminalization of possession of drugs, and have been similarly discriminated against in the enforcement of public intoxication, vagrancy, and sit/lie laws, and no credible analyst could expect that this measure would not have a disparate impact on communities of color.
- 3) **Expand housing and low-barrier shelter resources.** If your constituents are concerned about public drug use, consider that, for example, fewer than 50% of unhoused people in the Portland Metro area have any shelter, and HUD ranks Oregon second-worst for our rate of unsheltered homeless people. The most direct solution to people sleeping on sidewalks, or using drugs in stoops, is to afford them the dignity of shelter and privacy. Studies have also shown, perhaps counterintuitively, that housing people without barriers creates an environment where they can become more healthy across the board, including with respect to substance use disorders.
- 4) **Invest in treatment courts.** If your constituents are concerned about people selling drugs, they should know that selling drugs, or merely possessing large quantities of

them, are already serious crimes for which people are routinely sent to prison, often for a long, long time. Enhancing penalties and making it easier for prosecutors to prove delivery charges against people who are not dealing drugs does nothing to make the public safer. The public interest would be better served by following Speaker Rayfield's lead and investing in the treatment courts that some counties already use to help people get out of the cycles of legal trouble that make people unhousable and unemployable so that they can actually change how they get their basic needs met.

- 5) **Permit and fund safe use sites.** I understand that they are polarizing and that many are uncomfortable with the prospect. However, if we are in the business of having clear eyes and swallowing bitter pills and if what we really care about is overdoses and public use, safe use sites are an excellent solution.
- 6) **Make it fair.** If, in your judgment, it is necessary to criminalize public use, don't make it a defense that the person wasn't offered a diversion to treatment - make it an element of the offense instead. That way, if the police don't do what they're required to do, a defendant isn't put in the position of proving they didn't. We're really concerned about how much public defense time will go into these cases

I know that our community is hurting. Downtown business owners want a reliable return. Folks running businesses want happy customers. Our cities want a good image. Our towns want to deal with issues other than health crises. Our neighbors want peace of mind.

This measure would not accomplish those goals. It might make people feel better in the short term, but Oregonians aren't going to be satisfied with a solution that boils down to a return to a historically misguided, racist, failed policy program. I hope that you will counsel your constituents to seek patience, hope, and to invest in their neighbors. Invite them to get involved in community organizations that provide resources to Oregonians in need, and do all that you can to make the structure Oregonians passed into law actually happen.

Thank you for your careful consideration of these matters,

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