



February 7, 2024

Joint Interim Committee on Addiction and Community Safety Response  
Oregon State Legislature  
900 Court St. NE  
Salem, OR 97301

**Testimony in Opposition of House Bill 4036**

Co-Chair Kropf, Co-Chair Senator Lieber, and Members of the Committee,

Thank you for the opportunity to testify today on behalf of the ACLU of Oregon. The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 27,000 members statewide.

**The ACLU of Oregon strongly opposes House Bill 4036, which abandons Oregon’s vital, evidence-based, and human-focused approach to drug addiction as a health issue.**

HB 4036 would reverse course on Oregonians’ bold and compassionate decision to provide health care to people struggling with drug addiction rather than responding with punishments like arrest and incarceration. HB 4036 deals a devastating blow to the nascent yet promising program expansion enabled by Measure 110, which has barely had three years to get underway amidst a global pandemic. As it stands, the proposed bill would re-criminalize possession of small quantities of illegal drugs in Oregon with a Class A misdemeanor, a cruel and punitive measure that will harm community members struggling with a health issue. We would also note the specific cruelty of penalizing possession of personal quantities of Methadone, a drug relied upon by individuals for Medically Assisted Treatment for opioid use disorder, as a Class A Misdemeanor.

Moreover, it is all but guaranteed to exacerbate some of the most inhumane and unfair aspects of our criminal legal system: severe racial disparities and the unfair denial of defense attorneys for people who cannot afford them.

Oregon has tried criminalizing possession. We relied on criminalization of possession for decades. Yet when Oregonians passed Measure 110 in 2020, we had the second-worst addiction rates in the country.<sup>1</sup> Criminalization of possession had failed. And the cost of this failure fell disproportionately upon Black, Indigenous, and other Oregonians of color. Statewide, Black Oregonians had twice the rate of convictions of their white counterparts for possession of

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<sup>1</sup> Sophia Prince, “Oregon had second-highest addiction rates in the nation in 2020”, OPB, Feb. 3 2022, [www.opb.org/article/2022/02/03/oregon-had-second-highest-addiction-rates-in-the-nation-in-2020/](http://www.opb.org/article/2022/02/03/oregon-had-second-highest-addiction-rates-in-the-nation-in-2020/).



methamphetamine, heroin, and cocaine even though Black and white people use and sell drugs at comparable rates.<sup>2</sup>

Oregon has not fixed the entrenched and systemic racism within its criminal legal system in the few years since the passage of Measure 110. Indeed, the racial disparities in possession citations endure. Data collected by Oregon’s Judicial Department demonstrates that law enforcement issues Class E citations for drug possessions to Black Oregonians at twice the rate of white Oregonians.<sup>3</sup>

These racial disparities are all the more alarming when considering the dangerous — and even deadly — impacts of drug-related incarceration. Drug-related incarceration poses unique and specific harms to community members. Drug-related incarceration is linked to surges in overdose rates, higher rates of suicide, and the spread of disease, like HIV and hepatitis C.<sup>4</sup> And according to the Oregon Department of Corrections’ own report to the House Judiciary Committee last year, despite about 50% of Oregon’s population in custody having a severe treatment need, only about 9% of people in custody actually receive the treatment they need.<sup>5</sup>

In making possession of small quantities of drugs for personal use a class A misdemeanor, lawmakers would be returning to a system that wields our carceral system as a cudgel against community members struggling with a devastating health condition: addiction.

Any policy that would so overtly single out one long-marginalized group would warrant considerable scrutiny. And this proposal cannot withstand such examination. In the City of Portland—the epicenter of much of the political ire—fifty percent or more of their arrests for the past several years have been of homeless people, often for low-level offenses that do not involve

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<sup>2</sup> “Oregon study finds racial disparities in drug convictions”, Associated Press, December 2016, <https://www.seattletimes.com/seattle-news/law-justice/oregon-study-finds-racial-disparities-in-drug-convictions/>.

<sup>3</sup> Oregon Judicial Department, “Measure 110 Class E Violations through 12/31/2023”, <https://www.courts.oregon.gov/about/Documents/BM110Statistics.pdf>.

<sup>4</sup> Gan, Kinner, Nichols, et. al., “Risk of overdose-related death for people with a history of incarceration”, Society for the Study of Addiction, Oct. 13, 2020, <https://onlinelibrary.wiley.com/doi/full/10.1111/add.15293>;

Hartung, McCracken, Nguyen, et. al., “Fatal and nonfatal opioid overdose risk following release from prison”, Journal of Substance Use and Addiction Treatment, Volume 147, April 2023,

[www.sciencedirect.com/science/article/abs/pii/S2949875923000218?via%3Dihub](http://www.sciencedirect.com/science/article/abs/pii/S2949875923000218?via%3Dihub);

Fazel, Hawton, and Ramesh, “Suicide in prisons: an international study of prevalence and contributory factors”, The Lancet: Psychiatry, December 2017, [www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(17\)30430-3/fulltext](http://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(17)30430-3/fulltext);

Stone, Fraser, Lim, et al., “Incarceration history and risk of HIV and hepatitis C virus acquisition among people who inject drugs: a systematic review and meta-analysis”, The Lancet: Infectious Disease, December 2018,

[www.ncbi.nlm.nih.gov/pmc/articles/PMC6280039/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC6280039/).

<sup>5</sup> “Adolescent Drug Dealing and Race/Ethnicity: A Population-Based Study of the Differential Impact of Substance Use on Involvement in Drug Trade”, American Journal of Drug and Alcohol Abuse, March 2021, [ncbi.nlm.nih.gov/pmc/articles/PMC2871399/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2871399/).



safety. These alarmingly high arrest rates have clearly not prevented or addressed unsheltered homelessness and drug addiction on the streets of Portland.<sup>6</sup>

When voters passed Measure 110, Oregon was last in the nation in providing treatment and recovery services.<sup>7</sup> Given Oregon's decades-long neglect of this infrastructure, a 2022 study found that even with Measure 110's roll-out, Oregon still barely met 50% of people's addiction service needs.<sup>8</sup> The ACLU of Oregon supports the sections of HB 4036 that invest in the addiction services system and the crucial changes it makes to reduce barriers to treatment. At a moment when Oregon's addiction health care system remains deeply underfunded, however, every dollar we can invest matters. We must also consider the expense of criminalization. The cost of arresting, adjudicating, incarcerating, and supervising a person taken into custody for drug use in Oregon can cost up to \$35,217 for a misdemeanor. Comparatively, life-saving treatment only costs an average of \$9,000.<sup>9</sup>

The eye-watering expenses for drug-related incarceration do not capture the burden criminalization will place on our overloaded public defense system — a system that already routinely violates low-income Oregonians' constitutional rights to counsel under the Sixth Amendment. Despite the important investment lawmakers made last year with Senate Bill 337, Oregon's public defense system remains in crisis. As of this morning's data, there were 2,738 unrepresented individuals in Oregon.<sup>10</sup> Making personal possession and public use a class A misdemeanor will compound this Constitutional crisis.

Because of Measure 110's decriminalization, Oregon is expected to recoup 37 million dollars this biennium, money Measure 110 redirects to addiction service providers and the care our

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<sup>6</sup> Alison Frost, Data show about half of Portland police arrests are people who are unhoused, OPB, July 6, 2022, <https://www.opb.org/article/2022/07/06/data-show-about-half-of-portland-police-arrests-are-people-who-are-unhoused/>.

<sup>7</sup> Prince, *supra*.

<sup>8</sup> Sheraz Sadiq, "New study finds large gaps in services for substance use disorder treatment in Oregon", OPB, Oct. 10, 2022, <https://www.opb.org/article/2022/10/10/new-study-finds-large-gaps-in-services-for-substance-use-disorder-treatment-in-oregon/>; see November 2023 analysis by PSU of the 2022 data at

<https://www.oregon.gov/adpc/SiteAssets/Lists/MeetingEvents/EditForm/OHSU%20Gap%20Analysis%20Oregon%20ADPC.pdf>; see a January 2024 draft report with further analysis on gaps specifically related to Oregon residential facilities here: <https://www.oregon.gov/oha/HSD/AMH/docs/OR-BH-Residential-Facility-Study-January-2024.pdf>.

<sup>9</sup> Andrew Dyke, Sadie DiNatale, and Joel Ainsworth, "Cost Savings in Oregon From Drug Decriminalization", ECONorthwest, August 2019; Amanda Arden, Measure 110: Oregon to save \$37M from drug convictions, will redirect to treatment, Koin, May 2023, <https://www.koin.com/local/measure-110-oregon-to-save-37m-from-drug-convictions-will-redirect-to-treatment/>.

<sup>10</sup> Oregon Circuit Courts, "Unrepresented Individuals, updated February 7, 2024", <https://app.powerbigov.us/view?r=eyJrIjoiNDQ2NmMwYWVWtNzhiZi00MWJhLWE3MjgtMjZTRhNmNmMjdmIiwidCI6IjYxMzNiYzg5LWU1MWVtNGExYy04YjY4LTE1ZTg2ZGU3MwY4ZiJ9>.



communities need.<sup>11</sup> Lawmakers must also recognize that the promise of criminalization is illusory. States with more drug arrests do not have less drug use.<sup>12</sup>

We are further by the bill's expansion of the definition of delivery to include "possession with intent to deliver" or the *Boyd* standard. This formalization of a problematic anachronism within Oregon criminal law is unjustified and incongruous with the rest of Oregon criminal law. As applied, we know *Boyd* was used to sweep up low level "addiction-motivated" dealing offenses of individuals who very much would benefit from treatment and care rather than harsh criminal sentences. Data suggests that **Black people were 4.8 times more likely to be convicted of Boyd deliveries than white people, and Hispanic people were twice as likely to be convicted of Boyd deliveries than white people.**<sup>13</sup> These appalling disparities reveal deeply racist impacts, as these demographic groups generally sell drugs at similar rates.<sup>14</sup>

And finally, we are deeply alarmed by the proposal to pass a drug-induced homicide law, that would make these tragedies a Class A felony; these laws are far more likely to impact and ensnare individuals involved in low-level dealing or sharing amongst communities of users. Moreover, they are likely to discourage or delay emergency calls in moments where every minute counts: at the scene of an overdose. The prospect of a "downward disposition" is hardly sufficient to mitigate this deadly risk. This proposal will not meet lawmakers' stated intent and will have harmful, likely deadly consequences for community members in crisis.

**Please do not pass HB 4036 out of committee.**

Thank you,

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<sup>11</sup> Mark McMullen and Josh Lehner, "May 2023 Economic and Revenue Forecast, Oregon Office of Economic Analysis", May 17, 2023, <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/CommitteeMeetingDocument/274107>.

<sup>12</sup> Pew, "More Imprisonment Does Not Reduce State Drug Problems", March 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>.

<sup>13</sup> See *State v. Hubbell*, Brief amicus of Oregon Justice Resource Center, 29 September 2021.

<sup>14</sup> "Adolescent Drug Dealing and Race/Ethnicity: A Population-Based Study of the Differential Impact of Substance Use on Involvement in Drug Trade", American Journal of Drug and Alcohol Abuse, March 2021, [ncbi.nlm.nih.gov/pmc/articles/PMC2871399/](https://pubmed.ncbi.nlm.nih.gov/pmc/articles/PMC2871399/).

