OCDLA
OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

TO: **Joint Committee on Addiction on Community Safety Response**
FROM: **Mae Lee Browning, Oregon Criminal Defense Lawyers Association**
DATE: **February 9, 2024**
RE: **Oppose M110 Recriminalization and Drug Delivery Bills: HB 4002, HB 4036, SB 1555**

Chair Lieber and Chair Kropf and Members of the Committee:

My name is Mae Lee Browning. I represent the Oregon Criminal Defense Lawyers Association. OCDLA's 1,200 members statewide include public defense providers, private bar attorneys, investigators, experts, and law students. Our attorneys represent Oregon's children and parents in juvenile dependency proceedings, youth in juvenile delinquency proceedings, adults in criminal proceedings at the trial and appellate level, as well as civil commitment proceedings throughout the state of Oregon. Our mission is championing justice, promoting individual rights, and supporting the legal defense community through education and advocacy.

I am writing in opposition to HB 4002, HB 4036, and SB 1555.

You've heard a lot of statements about needing to stop drug dealing and about a recent court case (*Hubbell*) that overturned 30 years of caselaw (*Boyd*). Just because something was the law for 30 years doesn't mean we should go back to it.

Oregon's history is full of damaging responses to addiction that led to more arrests, incarceration, and stigma of people who suffer from addiction. It's ineffective, causes more harm, and wastes taxpayer dollars that can be spent on treatment. As we learn more about the right ways to address addiction and other behavioral health issues, it's our responsibility to change laws so that our communities have the benefit of that growth and learning. *Boyd*'s rationale is rooted in an outdated view on addiction, treatment, drugs and addiction-driven crime. *Boyd* is completely at odds with everything we know about how we should be responding to people who struggle with addiction, which is to treat addiction as a medical and behavioral health issue, and to treat people who use drugs as human. The law under *Boyd* made it more difficult for people with substance use disorder to get treatment.

To be clear, law enforcement and prosecutors did not lose any tools because of recent caselaw. **The law does not need to be changed to "get drug dealers off the street."** Under current caselaw, there are the crimes of attempted delivery, and delivery. Law enforcement can arrest people for attempted delivery and prosecutors can charge that crime. Additionally, Oregon statute allows for the prosecution of commercial drug offenses. Those are tools that can be used *now*.

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In *Boyd*, the court treated attempted deliveries the same as completed deliveries. That is an anomaly in the law and Oregon was a national outlier in that respect for decades. The ordinary hierarchy of crimes is that completed crimes are more serious than attempted crimes and thus treated more severely than attempted crimes. Attempted crimes are one class lower than completed crimes (an attempted Class A felony is a Class B felony). Currently, under *Hubbell*, there are the crimes of attempted delivery, and delivery. What *Boyd* does is eliminate the crime of attempted delivery by treating it the same as delivery.

What *Boyd* did was send an addiction-driven person to prison… even if it was a first-time offense with no criminal history. That person would be ineligible for drug treatment before prison; it is straight to prison. And we know that in prison, there is no or very limited opportunity for drug treatment.

In closing, our Court of Appeals wrote:

> Moreover, were we to retain Boyd's erroneous reading of the statute, we ask ourselves whether we risk perpetuating a construction that would not only be wrong and unjust, but one whose effects may be disproportionately borne along racial and ethnic lines.[1]

[1] *State of Oregon v. Hubbell,* 314 Or App 844, 866 (2021).