

TO: Joint Committee on Addiction on Community Safety Response
FROM: Benjamin D. Fischberg
DATE: 2/6/24
RE: Oppose M110 Recriminalization Bills: HB 4002, HB 4036, SB 1555

Chair Lieber and Chair Kropf and Members of the Committee:

I am a criminal defense attorney, and I would like to state my strong opposition to HB 4002, HB 4036, and SB 1555. I have been practicing criminal defense for nearly five years in Tillamook. As a criminal defense lawyer, I ask you to reject the recriminalization approach and look for meaningful solutions that will use behavioral health services instead of the criminal justice system. These bills punish individuals for the state's failure to adequately fund treatment services. As new addiction services are starting to become available and crime rates post-pandemic are dropping, the legislature should focus on solutions that let mental health and drug treatment professionals help people who need treatment, instead of implementing controversial policies that disproportionately harm people of color and the homeless.

Recriminalization would return Oregon to the failed and harmful policies of the War on Drugs. Government has attempted to arrest our way out of this crisis for decades, but it resulted in higher addiction rates, lethal and less expensive drugs on our streets, more overdose deaths, mass incarceration, and disproportionate harm to minority and low-income communities. The voters of this state have accepted that the War on Drugs has not succeeded, which is how Measure 110 passed to begin with. Recriminalizing addiction will make it more difficult and expensive to address drug addiction and homelessness. It will increase the risk of overdose, disrupt current treatment investments, and once again saddle people with criminal records that can create lifelong barriers to housing, employment, education, and other services.

The recriminalization bills would also increase the number of misdemeanor cases in Oregon at a time when the public defense system is in crisis. We have a shortage of lawyers available to take on the existing cases. These bills could bring thousands of new people into the criminal legal system, making a bad situation even worse.

The bills up for discussion are not just arbitrary and harmful; they are misguided in focus. Incarcerating and punishing those struggling with substance abuse does not help those struggling, nor does it prevent others from falling into addiction. Despite good-faith efforts by the Oregon Department of Corrections and various police agencies, incarceration has been ineffective in treating most people with substance problems. Many of my former clients with substance problems turned to illicit substances due to untreated mental health problems. Punishment does not address the root cause of addiction, nor does it equip those addicted with the tools to fight addiction. Similarly, decriminalization does not lead to increased drug use; it leads to more visibility of the reality for hundreds of Oregonians. The drug problem has always been here; not keeping addicts incarcerated just makes it more noticeable, as those normally behind bars are out in public. The only real result that will come from incarcerating those with

substance abuse is to put them out of view of the public, leading to no further addressing of the problem. A carceral approach will lead to short-term comfort for those who don't want to confront reality, but it will not achieve any results in the long term.

Those complaining that Measure 110 has not succeeded in eliminating substance use problems do not understand that decriminalization was not meant to be the only step taken. It is true that our current social services are not adequate to help all those suffering from substance abuse. However, that is not the fault of Measure 110—it is due to inadequate services being in place from the get-go. Decriminalizing is not enough: there must be adequate treatment facilities, proper funding for mental health services, increased financial assistance for those in need, more accessible health care, and other government programs to be part of a comprehensive network for treating substance abuse. This will take much time and resources, but it is the right thing to do if Oregon ever wants to seriously address substance abuse. No one law will fix everything; it will be a long process with several steps. Criminalizing possession will set this process back and will not help anyone at the end of the day.

Thank you for your patience and consideration. I hope you will carefully consider all perspectives in this serious matter.