



February 26, 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 4002 -33 and other Amendments

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

Thank you for the opportunity to testify 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 opposes House Bill 4002-33, as well as any and all amendments to HB 4002 that criminalize in any way user-level possession of banned substances, force treatment on people, or now or in the future lower or divert funding from treatment, housing, and related services.¹

Three weeks ago, the ACLU of Oregon provided testimony on our serious concerns about the -1 Amendment to HB 4002. The criminal provisions of the -33 Amendment are, in many regards, even more alarming than the first iteration of this bill. The -33 will still result in jailing people for addiction and will compound existing harms to Oregon's Black and brown communities.

Like the -1 Amendment, the -33 Amendment rests on the fiction that Oregon possesses adequate public defenders for this massive influx of cases and sufficient treatment services for this massive surge of mandatory treatment. We do not.

As of yesterday morning, there were 2,787 unrepresented people in Oregon. Of these individuals, two face murder charges and over 1,300 people face felony charges.² Meanwhile, Oregon treatment providers already turn away hundreds of Oregonians a month who are trying to get voluntary care.³ Our central problem remains that Oregon does not have enough services to meet the needs of people who want them.

¹ In particular, we oppose: -1, -3, -4, -10, -12, -15, -20, -24, -33, -35, -36, -42 Amendments.

² Oregon Criminal Courts, Unrepresented Individual Summaries, February 26 2024, <https://app.powerbigov.us/view?r=eyJrIjoiNDQ2NmMwYWVtNzhiZiooMWJhLWVhMjgtMjg2ZTRhNmNmMjdmIiwidCI6IjYxMzNlYzg5LWU1MWh0NGExYyo4YjY4LTE1ZTg2ZGU3MwY4ZiJ9.>

³ Jamie Parfitt, Portland drug detox centers are turning people away due to a lack of beds, KGW, August 14, 2023, [www.kgw.com/article/news/health/oregon-measure-110-drug-treatment-detox-inpatient-withdrawal/283-5c570fd2-c7ff-4d55-98f9-5eb29829e4d9.](http://www.kgw.com/article/news/health/oregon-measure-110-drug-treatment-detox-inpatient-withdrawal/283-5c570fd2-c7ff-4d55-98f9-5eb29829e4d9)



This means that most people arrested for possession under any of the proposed frameworks will be unable to obtain counsel and released back into the streets, with no treatment referral but a new arrest on their record.

In addition to serious concerns about each amendment's overall approach, the ACLU of Oregon must draw attention to some of the more problematic details of these amendments.

The -33 Amendment Embeds Deep Inequities into Deflection

The -33 Amendment leaves counties to decide *whether* to offer deflection and to determine *what* deflection entails, eroding the vital—if minimal—safeguards set out for deflection in the -1 Amendment. This change would create serious disparities from one county to another and even among counties that choose to implement deflection, creating an unpredictable patchwork of enforcement across Oregon.

Even more worryingly, the -24 Amendment would allow counties to grant case-by-case discretion to law enforcement to decide who is eligible for deflection. The ACLU of Oregon has serious concerns about permitting such discretion. While our criminal justice system entrusts law enforcement to exercise discretion in their decision making, we know such discretion is not immune from racial bias.⁴ Given the severe racial disparities already existing within enforcement of Oregon drug laws⁵—and the deeply racist history of the war on drugs in the United States⁶—we call upon lawmakers to take every step to mitigate racial bias in these decisions.

To mitigate inequities and bias, deflection must, at minimum, have a standard meaning across counties. Deflection must be mandatory in every county. And deflection must not be dependent on an individual officer's good will or case-by-case discretion.

Each of These Re-Criminalization Amendments Would Result in Oregonians Being Jailed for Addiction

Recovery is not linear. For people addicted to opioids, relapse rates during the first year of recovery are as high as 80 to 95 percent.⁷ Yet for the people who are able to obtain counsel and continue through this complex criminal framework, the proposed conditional discharge diversion and probation sentencing structure would create systems that can punish an individual for relapse or inability to acquire treatment. Failing conditional discharge can result in up to 30 days in jail. If a person fails their probation upon sentencing, jail time could last up to 180 days.

⁴ Looking Back, Looking Forward: To Reduce and Resolve Racial Profiling, Constrain Police Discretion, Northern Kentucky Law Review, Vol. 50, No. 2, May 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4456944.

⁵ Oregon Judicial Department, "Measure 110 Class E Violations through 12/31/2023", <https://www.courts.oregon.gov/about/Documents/BM110Statistics.pdf>.

⁶ Nkechi, Taifa, Race, Mass Incarceration, and the Disastrous War on Drugs, May 2021, www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs.

⁷ Understanding and Avoiding a Relapse into Addiction, Hazelden Betty Ford Foundation, April 20, 2021, <https://www.hazeldenbettyford.org/articles/relapse-risks-stats-and-warning-signs#>



Compounding this risk, if a defendant fails to appear at their criminal proceeding at any stage of this exceedingly complex process, the person could face additional Class A misdemeanor charges under ORS 133.076, with penalties of up to 364 days in jail.

While lawmakers may truly intend to help Oregonians acquire treatment, these proposals in practice will jail Oregonians for their addiction. Drug-related incarceration has predictable and deadly consequences, causing surges in overdoses, higher rates of suicide, and the spread of disease.⁸ Fatalities in Multnomah County jails have increased fivefold in recent year

Arrest and Conviction Records Will Add Further Barriers for Recovery

Arrest and conviction records prevent Oregonians from gaining employment, housing, and services, creating enormous obstacles for people on their recovery journeys. If the goal of these amendments is to help Oregonians on the road to recovery, lawmakers must help community members move forward with their lives after an arrest or conviction for possession. This means expungement must be mandatory at the earliest possible stage, not three years out.

As of now, lawmakers have still not provided a solution for Oregonians who successfully complete deflection yet find themselves saddled with an arrest record. This means at any stage of this process, Oregonians will find themselves encumbered with some record that opens them up for stigma, discrimination, or structural barriers to rebuilding stable lives in recovery.

Baseline Accountability Measures

If lawmakers feel they must move forward with criminalization, we call on lawmakers to implement the following accountability measures to lessen the harms of criminalization, including:

1. **Requiring Deflection:** At minimum, offering deflection must be mandatory for counties. Deflection must have a standard meaning across counties. And deflection must not be dependent on an individual officer's good will or case-by-case discretion.

⁸ 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;
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/ Note that Multnomah County jails have experienced a surge in fatalities. Fedor Zarkhin, Immediate reforms needed to prevent more deaths at Multnomah County jails, analyst concludes, The Oregonian, January 16, 2024, www.oregonlive.com/news/2024/01/immediate-reforms-needed-to-prevent-more-deaths-at-multnomah-county-jails-analyst-concludes.html.



2. A Planned Implementation Period: The criminal penalties can not take effect until every county has established a qualified deflection program that is accessible to all people in that county.
3. Defining Possession in Open View: Define the offense to possession of a controlled substance in plain view. This provides tools to police while limiting their ability to profile and harass low income and Black and brown community members.
4. A Sunset: Set an end date for possession in plain view as a criminal offense, at which time lawmakers can review intended and unintended consequences, impacts, and costs of this policy.

While the ACLU of Oregon opposes all amendments that criminalize addiction, if lawmakers feel they must take these steps, we ask that you please enact these crucial protections.

Please vote with your conscience and vote no on House Bill 4002 and its amendments.

Thank you,

Emily Hawley
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