TO: **Joint Committee On Addiction and Community Safety Response**
FROM: **Mae Lee Browning, Oregon Criminal Defense Lawyers Association**
DATE: **February 27, 2024**
RE: **Opposition to HB 4002 -24 and all other amendments**

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 -24 and all other amendments.

The -24 amendment is worse than the -1 because the -24 no longer requires all jurisdictions to establish deflection programs and because the -24 increases the amount of jail time for the new Possession of a Controlled Substance (PCS), among other reasons.

HB 4002 -24 may, to some, look good on paper, or may have been pitched as a recriminalization framework with lots of off-ramps. HB 4002 does not create a kinder gentler version of the criminal legal system. Everything is still shoved through probation and jail. We know that jail is dangerous and harmful for folks with substance use disorder and mental illness. We know that the threat of incarceration does not *make* people get clean. Addiction is an attempt to soothe the pain of childhood trauma. Addiction is a response to pain. So the idea is to traumatize the person even more and impose more pain so that they will "get over" their addiction? That doesn't make any sense.

I'll use conditional discharge (-24, page 83) as an example of something that might look on paper, but has underlying problems.

The DA objection language is new, compared to the -1. Allowing the DA to object and the court to make a determination about whether probation serves the interests of the person and the community is going to lead to really different outcomes depending on jurisdictions. For example, we expect the Washington Co DA's office will object to everything. We really hope that we do not see DAs object to conditional discharge because the person has done treatment before and "failed" or were not "successful" because that would be a misunderstanding of the nature of addiction and recovery.

A person has 30 days after the first appearance to request to enter conditional discharge, unless good cause can be shown. We know that people charged with the new PCS will not get an attorney for well over a year. So will the person be appointed an attorney first, who

can advise them of their rights, before deciding whether to enter conditional discharge? Will the person have access to all the discovery before they enter conditional discharge? There are long standing, statewide issues with defense attorneys not receiving full and timely discovery from prosecutors.

The language about what does not constitute good cause is new, compared to the -1. The language explicitly states that the filing of a motion to suppress (among other things) does not count as good cause for an extension of the 30 days to request to enter conditional discharge. This language was pulled from the DUII diversion statute. In HB 4002, we are talking about PCS. There are going to be way more search and seizure issues with PCS than there are with DUII. We want defense attorneys to file motions to suppress (MTS) and we want omnibus hearings on them because we want to protect people's constitutional rights against search and seizure in order to deter bad police conduct. That is what motions to suppress will do.

A motion to suppress evidence is filed by defense counsel because there has been some violation of the person's constitutional rights. The reasoning is if the government obtains evidence by violating a person's constitutional right (which protects them against unlawful searches and seizures), the government doesn't get the benefit of using that evidence against the person. With PCS cases, we expect that there will be unlawful searches. PCS cases are all about searches.

So, DUII and PCS are different. There will be more search issues with PCS. One way to mitigate the harm of the increased bad searches that will be the result of this bill is to remove the language that the filing of a demurrer, motion to suppress, and request for omnibus hearing does not constitute good cause.

The 30-day requirement to enter conditional discharge plus the language about good cause creates barriers to conditional discharge that will make conditional discharge less attractive to folks, so it won't be used that often. If the legislature is going to pull language from the DUII diversion statute (such as the 30 day language and good cause) for HB 4002, they should also use the language that allows a person 14 days after they get their lab results to request to enter conditional discharge. OCDLA made this proposal over and over again, but it has not been adopted. I understand that the desire is to avoid a fiscal for OSP for the state crime lab. The state crime lab is a cost of prosecution. If the legislature is going to recriminalize, there is a cost to that. The cost shouldn't be hidden from the public.

HB 4002 -24 will be a nightmare to implement and will come at a cost, not just for human lives, but for the already strained criminal legal system.

OCDLA urges your NO vote on HB 4002 and all of its amendments.

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