

SEPTEMBER 1, 2024

## KEY TAKEAWAYS

- Statewide criminal penalties for drug possession returned on September 1, 2024. Promised deflection programs were not ready, meaning people will be arrested and prosecuted because of their addictions.
- Under drug recriminalization, drug use will be used as an excuse to arrest Black and Brown Oregonians at higher rates, who are statistically more likely to face incarceration and harsher sentencing due to targeted policing and enforcement. It will also increase overdose risk as research shows that jails and prisons, as well as forced treatment, increases the risk of an overdose death.
- Oregon's public defender shortage continues. People who are arrested will likely have their cases dismissed for lack of counsel.
- In a return to the failed war on drugs, people will cycle through the criminal legal system without connection to services.
- The successes of Measure 110 should neither be downplayed nor contributed to H.B. 4002. Measure 110 provided over \$500 million for addiction services, including a program where police connect people to care without arrest.
- Policymakers must focus on implementing a thorough public health approach to drugs and real solutions to other pressing issues, not on the false promises of criminalizing drug possession.

## DRUG RECRIMINALIZATION IN OREGON IS NOT DELIVERING THE CHANGE IT PROMISED

In 2020, Oregon voters overwhelmingly approved Ballot Measure 110. This made Oregon the first state in the U.S. to decriminalize possession of small amounts of all drugs while greatly expanding addiction services and social supports. Because of Measure 110, over \$500 million from marijuana tax revenue and an additional \$39 million from [law enforcement savings](#) supported expanded substance use disorder treatment, harm reduction, peer support, housing services, and more. Measure 110 also resulted in [thousands fewer Oregonians arrested for drug possession](#) and subject to the collateral consequences that come with a drug arrest record.

But in 2024, state leaders recriminalized drug possession after a disinformation campaign led by drug war defenders, including the former chief of Oregon's prisons, and [backed by corporate interests](#). Instead of meaningfully addressing urgent, longstanding issues of homelessness, public suffering, and inadequate health infrastructure, state leaders scapegoated Measure 110, a policy that was not even three years old.

The challenges that Oregonians face are real. But homelessness, public suffering, and overdose deaths are problems that jurisdictions across the country also struggle with – jurisdictions where there was no Measure 110 or drug decriminalization. These challenges are due to the unaffordability and inaccessibility of housing, the social fallout from the COVID-19 pandemic, the increase of fentanyl in the drug supply, and decades-long underinvestment in health and social services.

## NEW LAW CREATES A REVOLVING DOOR OF ARRESTS AND FAILS TO CONNECT PEOPLE TO CARE

Under [H.B. 4002](#), criminal penalties for possession took effect on September 1, 2024. State leaders promised Oregonians the new law would incentivize people to engage in treatment by improving connections to services and preventing criminal penalties for those who do engage. The aftermath of recriminalization will expose the fallacy of this promise as a return to the failed tactics of the war on drugs.

H.B. 4002 makes possession of small quantities of drugs a misdemeanor punishable by up to 180 days in jail (under Measure 110, this was a violation punishable by a \$100 fine). The default sentence for a conviction is 18 months probation. Defendants are eligible to enter into “conditional discharge” – a pre-plea, 12-month minimum probation agreement. However, district attorneys can oppose conditional discharge, and the court can deny it.

The new law encourages counties to establish “deflection programs.” Lawmakers promised that these programs would connect people to health services in lieu of arrest and prosecution, but that’s not the reality. Deflection is optional, and counties are free to determine the parameters of their program if they choose to have one. H.B. 4002 established a grant program administered by the Criminal Justice Commission to fund county deflection programs.

### WHAT IS “DEFLECTION?”

Deflection is a political term that is only vaguely defined in H.B. 4002. This means [counties can essentially interpret deflection however they want, if they choose to have a deflection program at all](#). Deflection will look vastly different from one county to the next. In some counties, like in [Clackamas](#) and [Marion](#), programs plan to operate like court-based diversion programs, which is not aligned with the understanding of [deflection as occurring before involvement with the criminal legal system](#).

Lawmakers promised connection to care. Yet, many counties will return to arresting and prosecuting people with no such connection. Others plan to inappropriately utilize law enforcement as gatekeepers to health services. Counties whose deflection programs are overly restrictive will drive many people into the criminal legal system, giving them records that serve as barriers to housing, employment, and needed community supports.

Moving forward, deflection programs must employ pre-arrest diversion models operated from a health-based approach. These models minimize law enforcement involvement and focus on providing voluntary, intensive, low-barrier health and social services.

Because deflection programs are not mandatory, not all counties will have one. Even for the counties that are planning on implementing a deflection program, few are operational as of September 1. As a result, law enforcement will default back to arresting and cycling people through the criminal legal system without providing connections to addiction services.

**H.B. 4002 reboots the failed approach of arresting and jailing people only to return them to the community without connection to services – a hallmark of the war on drugs.**

## DEFLECTION PROGRAMS FAILED TO LAUNCH BY SEPTEMBER 1

With the return of criminal penalties for possession on September 1, the default response to drug possession will be to arrest and prosecute people for their addiction. This directly contradicts the promises policymakers made when passing H.B. 4002 and is antithetical to a public health approach to drug use. [The burden will also fall heaviest on communities of color](#).

[Only 28 of Oregon's 36 counties sought state funding to implement a deflection program](#). In the remaining eight counties, there will likely be no deflection option. People will be arrested and processed through the court system for drug possession.

In the counties that have begun preparation, [most were not ready by September 1](#). The default response will be to arrest and prosecute people. Even when programs are finally operational, services will not be at capacity to meet people's needs. Multnomah County officials have already admitted that ["There is no guarantee of immediate treatment for drug users who enter the program."](#)

Because each county can determine how its deflection program operates, [whether people qualify will depend on where they are in the state](#). In response to [backlash](#), the [proposed Multnomah County program](#) will disqualify anyone who has "failed" deflection in the past month. This exclusion demonstrates a lack of understanding of how addiction works and a shortsightedness that will drive people into the court system. Further, the more restrictions and discretion a program has, the more likely that [Black, Brown, and Indigenous people will be left out](#). Programs may become even more restrictive as time goes on if politics continues to drive decision-making.

**In sum, recriminalization will expose lawmakers' promise of connection to services in lieu of arrest for the false hope that it is.**

**"As a career law enforcement professional, I know that relying on police to address drug use is a losing battle. [H.B. 4002] relies on police officers in Oregon to solve the homelessness crisis. That is not their job, nor are they equipped or qualified to do it. Police are already overwhelmed and overstretched. More police isn't the answer. We need to connect people to the care they need, and the first step toward making that happen is decriminalization."**

**- Lt. Diane Goldstein (Ret.), executive director of the Law Enforcement Action Partnership (LEAP)**

## THE NEW LAW WILL FURTHER BACKLOG THE CRIMINAL LEGAL SYSTEM

Oregon faces an enormous public defender shortage. A recent [report](#) found the state has less than one-third of the public defenders needed to provide constitutionally adequate defense to people facing criminal charges. Currently, [courts routinely dismiss cases due to lack of defense attorneys](#). This will only become worse now that drug possession is a crime again. Even [Oregon judges warned](#) that H.B. 4002 will further overburden public defender caseloads. A realistic possibility is that people arrested for drug possession will simply have their case dismissed due to lack of a defense attorney, and no connection to services will ever be made.

## CRIMINALIZING DRUGS WILL NEVER EFFECTIVELY ADDRESS HOMELESSNESS, ADDICTION, OR OTHER PROBLEMS OREGONIANS FACE BECAUSE IT DOES NOT ADDRESS THE ROOT CAUSES

As noted in a recently published [Portland State University report](#), "Historically, the criminal justice system has connected only a small proportion of those in need with treatment services." There is little reason to believe this will change under H.B. 4002. [Treatment engagement is more related to availability, accessibility, affordability, and stigma associated with drug use and criminal penalties](#). While some deflection programs may provide funding for more treatment services, much (or in some cases, most) of the funding will go to law enforcement. That money would be better spent on further expanding services.

**The new law also does not address the main reasons for Oregon's staggering [homelessness crisis](#).** Homelessness rates are closely tied to the state's [eviction policies, rising housing costs, and limited housing supply](#).

**The new law will not improve overdose death**

**rates.** In contrast, research shows that [arresting](#) and [incarcerating](#) people dramatically increases overdose risk. [Oregon's elevated overdose deaths are part of a national trend driven by fentanyl permeating the drug supply.](#) Public health approaches, not criminal ones, are needed to effectively address the overdose crisis.

The problems Oregonians face are real. H.B 4002 was falsely billed as a fix for many of those problems, but it will not provide the results Oregonians want and deserve.

**"Criminalizing people for addiction will never be an effective pathway to recovery. Effective solutions treat addiction like the public health issue it is by offering a wide range of accessible voluntary care that connects people to the services they need – that's what Measure I10 did. We can't reverse engineer police into health care providers, nor should we try. To truly heal communities, people need care, not handcuffs."**

*- Dr. Kimberly Sue, assistant professor of Medicine and Public Health at Yale University School of Medicine*

**H.B. 4002 SHOULD NOT GET CREDIT FOR MEASURE I10'S SUCCESSES**

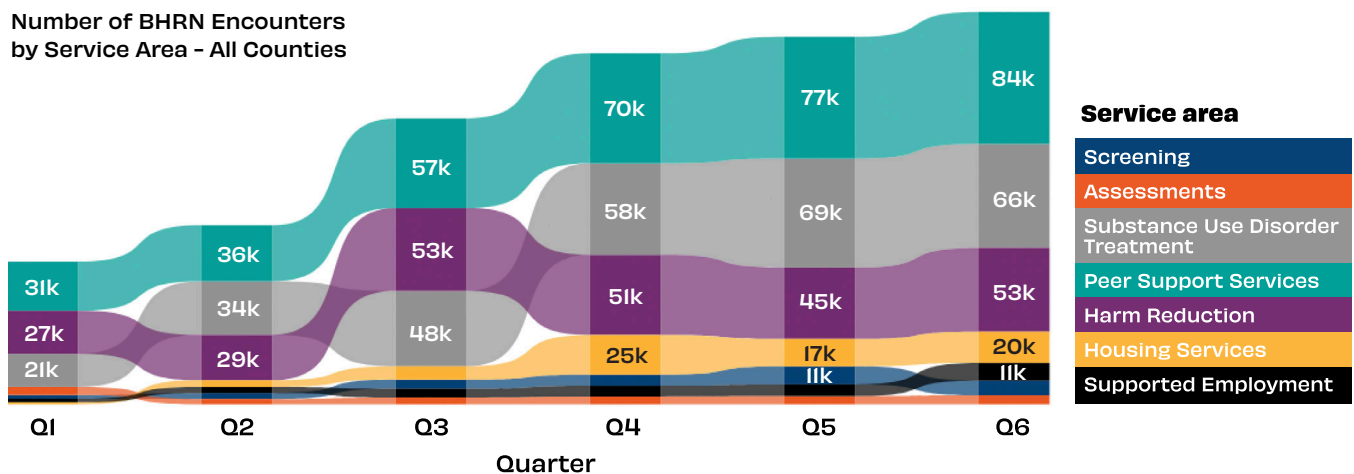
Research consistently refuted [unsubstantiated claims](#) that Measure I10 increased [overdose](#) and [crime](#). The narrative of Portland as an [unlivable hellscape](#) appears to have subsided, and [officials have touted](#) a Portland turnaround after H.B. 4002 passed, even though its main provisions had not yet been implemented. The truth is that major crime rates have been declining in [Oregon](#) and [Portland](#) since 2021, the year Measure I10 took effect.

Measure I10 was also blamed for dismantling drug courts in Oregon. [New research](#) debunks this claim, finding that drug court participation declined during COVID-19 but stabilized by early 2022 and that drug courts adapted to serve high-risk/high-need individuals (the population for which [research](#) shows drug courts are most effective). H.B. 4002 should not be credited for saving drug courts because they were never at risk.

**Measure I10 was successful — hundreds of millions of dollars for services, thousands of Oregonians getting help, and an enormous drop in drug possession arrests.**

Measure I10 provided hundreds of millions of dollars to expand addiction services in its first two years alone, [resulting in dramatic increases in the number of clients accessing services](#) (see Figure I).

**Figure I: Measure I10-funded Behavioral Health Resource Network (BHRN) Service Encounters by Service Area (Source)** (Note: Timeframe is from July 1, 2022 to December 31, 2023.)



Many of the services funded by Measure IIO could be involved with new deflection programs, but would not have existed at their current capacity without Measure IIO. For example, [Measure IIO spurred a program in Portland](#) where police take people who want connections to addiction services to a resource hub for immediate handoffs to services. This is exactly the type of innovation that Measure IIO sought to inspire and is possible without relying on criminal penalties for possession.

As deflection programs come online, law enforcement will predictably seek more funding. Policymakers must protect the funding made available by Measure IIO and continue to expand resources for the health and social services that are needed if deflection programs are ever to be successful. They must never let law enforcement turn the funding into their own windfall.

## **POLICYMAKERS MUST FOCUS ON REAL SOLUTIONS**

Oregon's leaders need to quit playing political games and focus on providing actual solutions to the problems their constituents face. A thoughtful public health approach to drug use does not rely on the false hope of criminal penalties as a pathway to treatment. Rather, policymakers must strive to ensure a wide variety of services and supports are available, accessible, affordable, and appealing. Real solutions lawmakers should focus on include:

- Increasing affordable and supportive housing options;
- Implementing non-law enforcement outreach teams to engage people on the street in services;

- Expanding evidence-based public health approaches to substance use, including voluntary substance use disorder treatment, syringe service programs, naloxone distribution, and overdose prevention centers;
- Defending Measure IIO funding from being diverted and bolstering funding for mental health and addiction services;
- Ensuring the state has enough public defenders to provide adequate representation;
- Monitoring deflection programs for efficacy and racial disparities and intervene to prevent them from becoming boondoggles and/or law enforcement windfalls.

## **LEARNING THE LESSONS OF THE WAR ON DRUGS...AGAIN**

For over 50 years, we have tried to arrest and incarcerate our way into a drug-free world. We know that this approach has failed. Unfortunately, after recriminalizing drug possession, Oregon policymakers will learn these lessons the hard way once again. Continued pressure must be put on elected officials to monitor H.B. 4002 implementation and work towards policies that will actually address Oregonians' legitimate concerns.

### **For more information or questions:**

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