

House passes bill recriminalizing drugs

By PHIL WRIGHT East Oregonian Feb 27, 2024 Updated Mar 1, 2024  0



Rep. Greg Smith, R-Heppner, host a listening session in Boardman on Feb. 17, 2024, for local residents to air their concerns on Measure 110. Smith serves on the Legislature's Joint Committee on Addiction and Community Safety Response, which on Feb. 27 passed House Bill 4002 to revamp 110. The House passed the bill on Feb. 29. [Buy Now](#)
Yasser Marte/East Oregonian, File

SALEM — The Oregon House of Representatives has taken a major step toward revamping Measure 110 and again making possession of small amounts of drugs a misdemeanor crime.

The House on Thursday, Feb. 29, passed House Bill 4002 by a 51-7 vote. Four Democrats and three Republicans voted against the bill, and two lawmakers were excused.

The bill, which would overturn a major portion of the measure that Oregon voters approved in November 2020, was expected to have a vote in the Senate on Friday, March 1.

The House vote came just two days after the Joint Committee on Addiction and Community Safety Response passed House Bill 4002 with amendments on a 10-2 vote.

The nays came from two Democrats — Rep. Andrea Valderrama, of Northeast Portland, and Sen. Floyd Prozanski, of Eugene.

The committee’s vote to send the bill to the House came after wrenching testimony in a series of hours-long meetings by family members who lost loved ones to fentanyl as well as opposition from civil rights advocates and public defense attorneys. To become law, the bill needs to pass the House and Senate and be signed by Gov. Tina Kotek.

Rep. Greg Smith, R-Heppner, said if the Republicans on the committee wanted, they could have voted together with the two Dems and blocked passage of the bill.

“It just turned out to be a bipartisan bill,” he said.

Oregon voters in November 2020 passed Ballot Measure 110, the Drug Addiction and Treatment Recovery Act, approving two shifts in how the state deals with the use of illegal drugs.

First, the law reduces penalties for drug possession, making Oregon the first state to decriminalize the personal possession of illegal drugs. Second, any savings achieved from the cost of enforcing criminal drug possession penalties are combined with marijuana sales revenue to fund a new drug addiction treatment and recovery grant program.

Senate Bill 755 in 2021 modified some of the requirements of 110, including establishing Behavioral Health Resource Networks, which are a group of organizations that partner to provide substance use services for free to individuals seeking care. The measure required the establishment of a network in each county and tribal area in the state.

But critics and many Oregonians consider M110 a failure, in large part for the lack of delivering treatment services and a failure to hold people accountable.

HB 4002 runs to 140 pages and requires the Oregon Health Authority to study Oregon's addiction crisis and directs the OHA to submit findings to the Legislature's interim committees on health no later than Sept. 15, 2025. The bill also sunsets on Jan. 2, 2026.

But the revamp also makes possession of drugs a misdemeanor crime at the same time it directs the Criminal Justice Commission to conduct a study to determine best practices for "deflection programs and make recommendations for funding of the Oregon Behavioral Health Deflection Program." The commission has up to 12 months after the bill becomes law to make the recommendations.

Smith said for him, fixing M110 needed to provide justice and mercy.

"I felt that all along," he said. "What I didn't understand is how that scale should be."

Smith said the law needs to make sure people with addictions have resources to help them.

"Those folks who want to turn their backs on some assistance — chances are they're going to have to face some justice," Smith said. "But those who reach out and say, 'You know what, I want some help, I want to figure this out,' we're going to tip the scale towards mercy, and I think that's the right thing to do."

Putting people with behavioral health and addiction issues in jail without assistance "does zero good," Smith said.

Rep. Bobby Levy, R-Echo, during a video meeting Feb. 22 with city of Pendleton and Blue Mountain Community College officials expressed doubt the House would make any progress on moving a bill to revise Measure 110.

Smith said sheriffs, district attorneys, chiefs of police, the League of Oregon Cities, behavioral health specialists and others who would be involved in this issue met during the weekend with lawmakers and “just hammered out what they believed was the solution.”

Legislators, for the most part, “followed the expertise of the professionals,” Smith said. Come the morning of Monday, Feb. 26, he said, he received an email saying the efforts paid off with revisions to HB 4002.

“I’m not an expert in this stuff, so if the experts are saying, ‘This is what we think is the next best step,’ then it was logical for me to proceed,” Smith said. “And I think a lot of other members this evening felt the same way.”

The bill usually would go to the Ways and Means Committee, he said, but Ways and Means Co-chairs Sen. Elizabeth Steiner, D-Northwest Portland, and Rep. Tawna Sanchez, D-North Portland, also are members of the M110 committee. So the bill is headed to the House and Senate.

Smith said he anticipates two-thirds of the Legislature voting for the bill.

“This isn’t a political issue. I mean, this is a societal issue,” he said. “And I really think a lot of folks with different political views came together and said, ‘We gotta do something.’ ”

This is not going to be the final solution, Smith also said, “But it’s the next step towards something.”

The wide-ranging proposal has a current estimated cost of \$211 million, which includes funding for new programs, residential treatment facilities, clinics, special court programs and medication in jails.

Opposition from ACLU and others

The ACLU of Oregon, Latino Network and Urban League of Portland pushed hard against the proposal on Monday, demanding that lawmakers not cave to the wishes of law enforcement and cities.

Sandy Chung, executive director of the ACLU of Oregon, called it “step backwards.”

“The ACLU of Oregon urges you to vote for an Oregon filled with healing and thriving communities, not more jails and prisons,” Chung said.

In a press conference, Chung outlined a variety of concerns, such as the maximum jail time of 180 days if probation is revoked, as well as missed court appearances also stretching jail time out with failure to appear charges that can carry up to nearly a year in jail.

The group, and others, said the bill could leave too much discretion in the hands of police and prosecutors about whether to use deflection programs.

“Lawmakers are making many false promises,” Chung said. “This bill will likely send thousands of people to jail.”

An analysis of the bill by the Oregon Criminal Justice Commission, a state agency that studies and tracks criminal justice policies, estimates that under the bill, the state of Oregon would have nearly 2,300 misdemeanor drug convictions annually when accounting for people who wouldn't

have the option of entering a deflection program, would fail the program or wouldn't be eligible. Of those, the state estimates about 83% would be white.

Nevertheless, the study predicted a racial disparity, with a disproportionate number of Black people convicted.

That study also estimates 226 jail beds would be filled with people whose probation would be revoked if the measure were fully in effect, the report found.

Jails aren't the only part of the system that would have to make changes.

Public defenders, who represent people in court who cannot afford an attorney, warned that they are already stretched too far and would need more personnel and resources to keep up.

The Oregon Public Defense Commission, which runs the state's public defender system, has told lawmakers that the state lacks representation for about 3,000 defendants. This means additional defendants could also lack a public defender, the commission said in a letter.

Lawmakers also got pushback from Carl Macpherson, executive director of the Metropolitan Public Defender, which provides public defense services in the Portland area.

He warned lawmakers that there's already a lack of treatment programs and urged them to focus more on treatment, housing and education.

"There's nowhere to deflect people to," he said.

Chris O'Conner, another public defense lawyer, was even more blunt. He warned the bill would be a failure and that decades from now an academic will be researching why Oregon's system

failed. Peering into his computer, he told the future researcher: “You found it. This was the reason. We tried to warn them.”

Counties, law enforcement support proposal

Twenty-three out of Oregon’s 36 counties have signaled a desire to participate in the new programs and work with law enforcement and behavioral health providers to set up new programs. They represent more than 80% of the state’s population.

Counties that have signed on, stretching from urban Portland to rural counties, could seek state grants for the programs, which lawmakers have promised to fund. The estimated available funding is \$30.5 million, which would go to counties and community mental health programs, which contract with counties.

State organizations representing district attorneys, police chiefs and sheriffs said they support the latest version of the proposal, along with the League of Oregon Cities.

“What we have seen over the last few years as fentanyl has hit the West Coast is unacceptable, and we need to take action to help those struggling with addiction,” Multnomah County District Attorney Michael Schmidt told lawmakers. “In Portland, we see open use of hard drugs on our streets — in front of our businesses, our parks, and our schools. We absolutely cannot continue to tolerate this.”

The proposal would provide the community support that Measure 110 did not, said Daniel Primus, Umatilla County district attorney and the president of the Oregon District Attorneys Association.

“The amendment makes it clear that Oregon is not open for business to drug dealers,” Primus said.

Sheriffs and police organizations also support the measure. Hood River Sheriff Matt English, speaking for the Oregon State Sheriffs' Association, called the bill a "true partnership" that would provide accountability and offer pathways to treatment and, for those who ended up in jail, addiction medication. The proposal would put \$10 million toward medication and treatment in jails.

Another police official urged lawmakers to weigh the widespread impact of the overdose crisis.

"Oregon's drug addiction and fentanyl overdose crisis is destroying lives, devastating families and eroding the safety and livability of our communities," said Matt Scales, McMinnville's police chief and president of the Oregon Association of Chiefs of Police. "There isn't a community anywhere in the state that isn't significantly impacted by the crisis."

— *Oregon Capital Chronicle* reporter Ben Botkin contributed to this report.