

DRUG ADDICTION TREATMENT AND RECOVERY ACT 2020 AND THE TREATMENT COURTS

INTRODUCTION

Members of the League of Women Voters of Lane County approved, at the 2021 annual meeting, the board proposal to research and prepare a program to examine the outcomes of implementing the *Drug Addiction and Recovery Act of 2020 (Measure 110)* and to compare them with those of the Lane County Drug Courts. The LWVLC position *Mental Health Services for Adults in Lane County* supports a community-based mental health delivery system that provides a variety of services for those living with mental and emotional illness, alcohol and drug addiction, substance abuse disorder (SUD), intellectual and developmental disabilities, guided by a comprehensive long-range plan. ¹

BACKGROUND

In Oregon, at any given time, nearly 23,000 men, women, and children are incarcerated in Oregon's federal and state prisons, county jails, and youth correctional facilities. Nearly half of those in prisons have been diagnosed with a mental illness or developmental disability. ²

According to Oregon Recovers, Oregon has the third highest untreated addiction rate in the country and ranks 47th in the nation providing access to addiction treatment. Other reports now rank Oregon last in available substance abuse treatment. Addiction is costing Oregon taxpayers \$6.7 billion annually. The consequences of addiction consume 17% of state funding, while <1% is spent on treatment and prevention. The 2019 Lane County Health Rankings Report states that during 2015-2017 the rate of county drug overdose deaths was 210/100,000. ³

The Oregon Criminal Justice Commission (CJC) Racial and Ethnic Impact Statement states that there were 2,139 misdemeanor convictions and 1,918 felony convictions for possession of controlled substances across Oregon in 2019. Black and Native American individuals accounted for 4.7 and 1.3 percent of the convictions, despite each representing a smaller share of Oregon's population based on census data. ⁴

During the 1980's and 1990's the War on Drugs focused on heavy fines or incarceration and not on rehabilitation or treatment for illegal substance possession or use. More recently the mindset is changing, and substance abuse is seen more as a behavioral health issue. One key development in Lane County in 1994 was the Drug Court, patterned after the Miami, Florida model. It was designed to place drug-affected defendants into appropriate treatment programs with close supervision by a single judge familiar with both treatment and the offender.

Research shows that nearly 75% of the crimes committed at the state and local levels are drug related. According to the Oregon Judicial Department, it costs about \$96 per day to house an offender in the County Jail and the addicted offender comes out still addicted and lacking the ability to change. It costs about \$9 per day to treat and educate drug offenders through the Drug Court.

DRUG COURT

The Drug Court frees up jail space for more serious offenders. The program includes treatment for at least nine months with regular, random urinalysis testing to check compliance. Also included are frequent court appearances in front of the Drug Court Judge. Treatment progress and compliance is discussed and, if necessary, sanctions and/or incentives may be imposed to achieve compliance.

Research on the efficiency and cost effectiveness of the Drug Court shows the following:

1. Higher rates of retention in treatment than other criminal justice programs;
2. Not just treatment for first time offenders, but also those drug offenders with long criminal records;
3. Closer, more comprehensive supervision;
4. Savings and cost avoidance in reduced jail/prison use, reduced lower criminal justice costs;
5. Treatment for longer periods of time, than in other justice programs; and
6. Substantially reduced recidivism.⁵

Lane County Circuit Court has four treatment courts. Emergence is the primary contract treatment provider for three of the four: Lane County Adult (Drug) Treatment Court, Lane County Veterans Treatment Court, and Lane County Mental Health Court. Looking Glass is the treatment provider for the fourth, the Juvenile Treatment Court.

The partners who fill the core treatment roles in all three treatment courts are the Lane County Circuit Court (court), Lane County District Attorney's Office (prosecutor), Lane County Public Defender Services (defense attorney), Lane County Parole and Probation (supervision), and Emergence (treatment). The Veterans Administration (VA) is a core partner for the veterans court. The Department of Human Services (DHS) is involved when a participant has an open DHS case. Laurel Hill Center is also a core partner for the mental health court. The Lane Council of Governments (LCOG) fills the evaluator role on the team.

The capacity of the Adult Treatment Court Program is 125 participants, the Veterans Treatment Court and the Mental Health Court, 25 each. The program is currently operating at approximately 50 percent capacity. The standard amount of time a participant spends in the Emergence program is 14-18 months. The most recent recidivism statistics from the CJC are included in the Appendix.

Lane County Treatment Courts are funded by appropriation from Lane County and grant funding from the Criminal Justice Commission, the Substance Abuse and Mental Health Services Administration (which is funded by the U.S. Department of Health and Human Services), and other grant sources. Emergence, a core partner for the new Lane County One Network Coordinated Engagement Behavioral Health Network, receives funding from the court to serve clients for whom services cannot be billed to an insurance carrier or the Oregon Health Plan.⁶

MEASURE 110

The Drug Addiction Treatment and Recovery Act of 2020 (Measure 110) was an initiative measure placed on the November 2020 ballot and was passed with 58% approval of the measure. The purpose of the act was to make health assessment, treatment, and recovery

services for drug addiction available to all those who need and want access to those services and to adopt a health approach to drug addiction by removing criminal penalties for low-level drug possession. Measure 110 reduced the penalties for most Possession of Controlled Substances (PCS) offenses from a felony or misdemeanor to a new Class E violation, with a \$100 maximum fine. The reduction of penalties took effect on February 1, 2021.⁷

The CJC predicted an almost 91 percent reduction in convictions if measure 110 passed. The commission estimated that the total number of misdemeanor convictions would fall to approximately 276 and the total number of felony convictions to approximately 102. The CJC also estimated that the disparity affecting Black and Native American Oregonians would close substantially with total convictions for those groups reduced by 93.7 and 94.2 percent respectively. The number of possession-related arrests would also follow a similar downward trend.⁸

Much of the *Yes on Measure 110 Campaign* was funded by the New York based advocacy group Drug Policy Alliance. Arguments in favor stressed the need for more drug treatment and recovery services and accessibility, considered drug addiction as a mental health issue, and explained the prosecution of possession of large amounts of illegal substances and the selling and manufacturing would continue to be criminal offenses. Many Oregonians supported the measure, including the Oregon Nurses Association, Oregon Chapter of American College of Physicians, Healthcare for All Oregon, AFL-CIO, Oregon Latino Health Coalition, NAMI of Southern Oregon, ACLU of Oregon, Centro Latino Americano, Community Alliance of Lane County, and NAACP Portland and Springfield/Eugene.

Those opposing the act expressed the fear of an increase in homelessness, a lack of funds to provide adequate treatment facilities, and a diversion of marijuana tax dollars that should go to public schools, a possible loss of \$73 million in 2021-2023. Oregonians opposing the measure included the Oregon Association Chiefs of Police, Oregon District Attorney's Association (including Lane County District Attorney, Patty Perlow), Oregon Recover, and Oregon Council on Behavioral Health.⁹

There are positives and negatives with implementing the measure. The formula for distributing the marijuana tax has changed, capping the amount of funding available for existing recipients at \$45 million per year maximum. Schools received 40%; Oregon Mental Health, Alcoholism, and Drug Services, 20%; local governments, 20%; Oregon State Police, 15%, and the Oregon Health Authority (OHA), 5%.

SENATE BILL 755 (SB 755)

After Measure 110 was approved by the voters, the Senate Judiciary and the Ballot Measure 110 Implementation Committee introduced SB 755 with alterations, recommended by private workgroups, to the structure of state funded treatment programs. The Legislature passed SB 755, which took effect on July 19, 2021. This law became the vehicle to implement and modify Measure 110. SB 755 made major court-related changes, which now include requiring law enforcement to provide screening information with the citation, establishing a \$100 maximum fine and a \$45 minimum fine, requiring all Class E violations to be filed in circuit courts, and

requiring courts to dismiss the offense if it receives verification that the person received a qualified screening or treatment contact within 45 days of receiving the citation. Verifications are then to be sent to the Oregon Health Authority (OHA), which will electronically file them with the court. From April 21, 2021 to August 31, 2021, there were 116 Circuit Court cases with Class E violations in Lane County. Most Class E violations were for methamphetamines (67%) and heroin (23%) possession.¹⁰

CLASS E VIOLATION

SB 755 states that the penalty for a Class E violation is a presumptive \$100 fine with \$45 as the minimum fine. If an individual completes a screening through the statewide phone screening hotline run by the OHA or through another Behavior Health Resource Network (BHRN), originally titled Addiction Recovery Center (ARC), within 45 days of receiving a ticket and submits verification, the E violation is dismissed by the court. A person can also complete any equivalent or more intensive treatment contact and provide proof to the court. Officers issuing an E violation citation are required to provide the cited person with information on how to complete a treatment screening.

The unlawful possession of a controlled substance qualifies as a Class E violation, a Class A misdemeanor, or felony if the possession is a Substantial Quantity or a Commercial Drug Offense. The criminal designations for drug offenses involving delivery or manufacturing do not change. The penalty designations are included in the Appendix.

BEHAVIORAL HEALTH RESOURCE NETWORK (BHRN)

The Senate bill modifies the treatment provisions of Measure 110 by increasing the requirements of one ARC per coordinated care organization service region to 36, one complete BHRN for each county and one for each tribal area. A BHRN is an entity or a collection of entities working together or individually to fulfill certain service and staffing requirements. It may be governmental or community based and involve cross county collaboration.

The bill establishes the Drug Treatment and Recovery Fund (DTRF), which receives the excess amount over the \$45 million from the Marijuana Fund. In the first year, at least \$57 million is required to be transferred to the DTRF. Any savings as a result of the implementation of the law and E violation fine revenue must also be transferred to the fund. DTRF monies are first distributed to pay for OHA administrative costs, not to exceed 4% of the monies deposited per biennium, and then to the grants programs administered by the Oversight and Accountability Council (OAC).

The BHRN service requirements include a screening entity to provide the screenings required to address class E violation citations, comprehensive behavioral health needs assessments, individual intervention planning and case management, ongoing peer counseling and support, mobile or virtual outreach services, harm reduction services, low-barrier substance use disorder treatment, and lastly transitional and supportive housing.

The staffing requirements include at least one certified alcohol and drug counselor or other credentialed addiction treatment professional, a case manager, and certified addiction peer support or a wellness specialist.

Other entities, other than a BHRN, may receive grant funding from the OAC. The entity must increase access to any of the service requirements listed for BHRNs. The OAC must prioritize funding to community-based organizations serving communities most impacted by the War on Drugs. Tribes and tribal-affiliated organizations can receive grant funding. The bill requires that the OAC must distribute funding to ensure access to historically underserved populations and effective, equitable, and quality care, and services that are responsive to diverse cultural beliefs. The OAC was created by the measure to determine the distribution of grants and oversight of the centers. It must be composed of 17 qualified individuals with experience in substance abuse disorder treatment and other addiction services.¹¹

In May 2021 the OHA selected 48 organizations to receive a total of \$10 million in initial funding to provide services required by the measure. The first installments of BHRB grants is scheduled to be sent to grantees starting April 1, 2022. The OAC oversees the implementation of the BHRNs and will provide ongoing funding for the management of harmful substance use and substance use disorder through Access to Care and Behavioral Health Resource Network grants. The OAC council has 22 members from across the state, composed of people from diverse communities. Members include behavioral health providers, tribal members, culturally specific service providers, and people in recovery from substance abuse disorder.¹²

IMPACT TO DATE

According to Katharine V. Gallagher, the Leadership and Policy Coordinator of Centro Latino Americano (CLA), the measure's funds have been hugely positive for the continued development, expansion, and success of the organization's Alcohol and Addictions Program. It allowed CLA to implement a new peer mentoring program and to staff two Certified Alcohol Drug Counselors and three certified, trained bilingual and bicultural recovery peer mentors.¹³

Paul Solomon, of Sponsors, Inc. sees the measure promoting a positive mind shift with emphasis on addiction as a health issue instead of a criminal issue. Sponsors has its own inhouse psychiatrist and relies on grants and donations for its funding. The organization works with other organizations, such as Tiny Home Village, which assists with housing, Cahoots, and White Bird, as well as Lane County Veterans Mental Health.¹⁴

Chris Wig, Emergence Program Director, was asked what he saw as the major impact of the passage and implementation of Measure 110 on his agency and those struggling with addiction. His response was that the positive impact is that individuals with higher severity of crimes are being referred to treatment court, meaning, more people are being helped. The negative impact is that people with substance abuse disorders are not being referred into treatment.¹⁵

Documented in the Lund Report, from data collected by OHA, this first year more than 16,000 Oregonians accessed services through the measure's new grant program, but less than 1% were

reported to have entered treatment. Nearly 60% of those who accessed the services engaged with harm reduction programs such as syringe exchange and naloxone distribution.¹⁶

Tina Hurst, executive director of the Oregon Health Justice Recovery Alliance, says of Measure 110 that the money is going where it needs to be going. The Alliance is the statewide recovery advocacy coalition working to ensure that the Drug Addiction Treatment and Recovery Act is implemented fully and without delay. The coalition represents more than seventy-five community-based organizations across the state, including Sponsors, NAACP, CAUSA, and CALC, to name a few.¹⁷

DISCUSSION QUESTIONS

1. Do you think that Oregon has adequate facilities, trained counselors, etc. to implement Measure 110?
2. Do you think that the penalties specified in SB 755 are adequate to provide incentive to pursue treatment under 110?
3. The state of Oregon has often been a pioneer in social and political innovations. Would you have preferred it if other states had provided templates for Oregon?
4. Do you agree with the use of marijuana funds to fund treatment under 110?
5. What ways do you suggest to increase the number of drug counselors and counseling programs?
6. Are there any other possible incentives to utilize drug courts or their equivalents?

FOOTNOTES

¹ *Issues for Action*, 2019, p.18

² www.klcc.org/crime-law-justice/2020-01-20/city-club-of-eugene-lock-them-up-the-costs-of-incarceration (Accessed 1/7/22)

³ www.OregonRecovers.org

⁴ <https://sos.oregon.gov/elections/Documents/fec/IP44-REI-Statement.pdf> (Accessed 1/7/22)

⁵ www.courts.oregon.gov/courts/lane/programs-services/Pages/Specialty-Courts.aspx

⁶ Chris Wig, Program Director, Emergence Addiction and Behavioral Therapies, email 3/7/22

⁷ <http://www.oregonvotes.org/irr/2020/044text.pdf>. (Accessed 12/27/21)

⁸ <https://sos.oregon.gov/elections/Documents/fec/IP44-REI-Statement.pdf> (Accessed 12/9/21)

⁹ *Voters' Pamphlet General Election 2020 for Lane County*, pages 137-165.

¹⁰ <https://olis.oregonlegislature.gov/liz/2021i/Downloads/committeemeetingDocument/250365>

¹¹ [https://www.oregonlegislature.gov/1pro/Publications/SB%20755%20Issue%20Brief%20\(2021\).pdf](https://www.oregonlegislature.gov/1pro/Publications/SB%20755%20Issue%20Brief%20(2021).pdf)

¹² <https://www.oregon.gov/oha/hsd/amh/pages/measure110.asp> (Accessed 1/24/22)

¹³ Katharine V. Gallagher, Leadership and Policy Coordinator, Centro Latino Americano, email 2/23/2022

¹⁴ Paul Solomon, Executive Director, Sponsors, phone interview 2/18/22

¹⁵ Chris Wig, Program Director, Emergence Addiction and Behavioral Therapies, email 3/7/22

¹⁶ <https://thelundreport.org/content/few-obtain-treatment-first-year-oregon-drug> (Accessed 2/14/22)

¹⁷ <https://healthjusticerecovery.org>

APPENDIX

Recidivism Statistics from Oregon Criminal Justice Commission:

	Incarcerated within 3 years	Convicted within 3 years	Arrested within 3 years
All Participants	10%	22%	21%
Terminated status	24%	45%	40%
Graduated	0%	8%	20%

The chart contains designations under the Bill for each substance.

Note*SQ= substantial quantity; CDO= Commercial Drug Offense

SUBSTANCE	DESIGNATION UNDER THE BILL
Hydrocodone	<40 pills, tablets, or capsules = Class E Violation ≥40 pills, tablets or capsules= Class A misdemeanor CDO= Class A misdemeanor
Methadone	<40 user units= Class E violation ≥40 user units= Class A misdemeanor CDO= Class C Felony
Oxycodone	<40 pills, tablets, or capsules= Class E violation ≥40 pills, tablets, or capsules= Class A misdemeanor CDO= Class C Felony
Heroin	<1 gram= Class E violation ≥1 gram= Class A misdemeanor SQ or CDO= Class B felony
Methylenedioxymethamphetamine	<1 gram or 5 pills, tablets, capsules= Class E violation ≥1 gram or 5 pills, tablets, capsules= Class A misdemeanor SQ or CDO= Class B felony
Cocaine	<2 grams= Class E violation ≥1 2 grams= Class A misdemeanor SQ or CDO= Class C felony

Methamphetamine	<2 grams= Class E violation ≥2 grams= Class A misdemeanor SQ or CDO= Class C felony
Fentanyl	<1 gram= Class E violation ≥1 gram= Class A misdemeanor SQ or CDO= Class C Felony
Remaining Schedule 1 Substances	Class E violation 40+ units of lysergic acid diethylamide= Class A misdemeanor 12 grams + psilocybin or psilocin= Class A misdemeanor SQ or CDO=Class B felony
Remaining Schedule 2 Substances	Class E violation unless: SQ or CDO= Class C felony
Remaining Schedule III, IV, V Substances	Class E violation

Juveniles cited with an E violation are directed through the juvenile system and permitted to enter into formal accountability agreements.

([https://www.oregonlegislature.gov/1pro/Publications/SB%20755%20Issue%20Brief%20\(2021\).pdf](https://www.oregonlegislature.gov/1pro/Publications/SB%20755%20Issue%20Brief%20(2021).pdf))

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