



Memorandum Date: November 11, 2023

Order Date: December 5, 2023

TO: Board of County Commissioners

DEPARTMENT: County Administration

PRESENTED BY: Steve Adams, Policy Director
Alex Cuyler, Intergovernmental Relations Manager

AGENDA ITEM TITLE: REPORT/Legislative Committee Update-Measure 110

I. MOTION

Staff recommends the Board move to accept the recommendations as written in Attachment A and adopt order 23-12-05-06 In the Matter of Adopting Legislative Principles and Priorities Related to Measure 110.

II. AGENDA ITEM SUMMARY

This is an update on and discussion of Measure 110 reform the Board adopted at their September 26, 2023, Report Back from the Lane County Legislative Committee's meeting of August 31, 2023. This Memo and the included Order provide additional specificity under the broader reform heading and if adopted will amend the Legislative Principles and Priorities document.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

On September 26, 2023, the Board adopted a Legislative Principle that expressed support for reforming Measure 110 but without additional specificity. The staff report at that meeting suggested that additional work would be undertaken to come back to the Board at a future date to provide additional details with respect to Measure 110 reform.

On September 29, 2023, Legislative leadership announced the formation of a new Joint Committee on Addiction and Community Safety Response, Co-Chaired by

Senator Kate Lieber and Representative Jason Kropf. That Committee met on 10/18/23, 11/6/2023 and 12/4/2023 in a series of informational meetings and is expected to introduce draft legislation to be considered during the 2024 Legislative Assembly.

B. Policy Issues

Lane County actively participates in Oregon's Legislature and the voters' passage Measure 110 had significant impacts to Lane County's organization, including the operations of the Lane County Sheriff's Office, the District Attorney's Office, the Department of Community Justice and Rehabilitation Services, and the Health and Human Services Department.

There is no doubt that Measure 110 reform will be robustly addressed during the upcoming short session of the Oregon Legislature.

C. Board Goals

Strategic Goal #1: Develop an equitable and integrated approach to health, behavioral health, public safety and homelessness so that all residents are safe, healthy, housed, and health outcomes are improved.

D. Financial and/or Resource Considerations

The outcomes of the policy conversations which will occur in Salem during the month of February could have significant implications for a variety of state funding streams important to Lane County:

- De
- Community Corrections Act (Department of Corrections)
- Behavioral Health Resource Networks (Oregon Health Authority)
- Specialty Court Grant (Criminal Justice Commission)
- Community-based treatment resources (Oregon Health Authority)
- State Medical Examiner (Oregon State Police)
- Public Health Modernization (Oregon Health Authority)

E. Health Implications

Measure 110 was designed to provide better access to treatment for those individuals in Oregon who struggle with substance use disorder. Data suggests mixed results with achieving this goal. Oregon has actually seen a fairly dramatic increase in overdose deaths since the passage of Measure 110, but so have most states. The reforms the Legislature could undertake will likely be focused on additional steps that will improve access to treatment and better data collection related to such access will likely be an additional discussion point.

F. Analysis

Staff has provided Attachment A, Position Paper on Measure 110 Reform, December 5, 2023, as a detailed analysis of the recommendations presented for consideration. The Analysis addresses:

- Change in Criminal Sanctions
- Justice System Diversion Options
- Cross System Integrations
- Additional Considerations

G. Alternatives/Options

The Board could:

- Adopt the recommendations as summarized in Attachment A.
- Edit the recommendations as summarized in Attachment A.
- Do nothing.

IV. RECOMMENDATION

Staff recommends the Board Adopt the recommendations summarized in Attachment A. This document has been compiled and reviewed by representatives of:

- Lane County Sheriff's Office
- Lane County District Attorney's Office
- Community Justice and Rehabilitation Services
- Health and Human Services Department.
- County Administration, Policy Division

V. TIMING/IMPLEMENTATION

The Legislature will convene in Salem on February 3, 2024, to begin the 35-day short session. Whatever action the Board takes on this issue will be communicated to the Lane County Delegation to the Legislature as soon as practically possible.

VI. FOLLOW-UP

Staff will advocate to the Legislature regarding Measure 110 reform based on what direction is provided by the Board and that activity will begin as soon as practically possible. Staff will continue to inform the Board on all aspects of the Legislature's activities via the Legislative Committee process.

VII. ATTACHMENTS

Attachment A- Draft Position Paper on Measure 110 Reform

Attachment B- Order 23-12-05-06



Draft Position Paper on Measure 110 Reform

Lane County Board of County Commissioners

December 5, 2023

Background

Lane County's Legislative Committee convened on August 31, 2023, and among other items made a recommendation to the Board of Commissioners to "support Measure 110 reform". At that time, the Committee had access to a limited suite of information; it was aware that two Initiative Petition proposals had been submitted to the Oregon Secretary of State's office by a Portland-based group of stakeholders and that Legislative leadership was also aware that the petitions had been filed.

Subsequently, the possibility of Measure 110-related legislation being introduced in the 2024 short session has increased. On September 29, Legislative leadership announced the formation of a Joint Interim Committee on Addictions and Community Safety Response. Accordingly, CAO Policy Division staff met with the Sheriff, the District Attorney, County Administration, appointed Directors, County Counsel, and division managers responsible for public safety, health, and assistance programming provided by Lane County government. The charge was to assess known reform proposals through the lens of possible impacts to county government operations across multiple departments and to identify specific reform recommendations for 2024 Legislative session advocacy.

This draft position paper summarizes key features of Measure 110 proposals that are shaping the statewide conversation, assesses the extent to which Lane County's advocacy can add value, and offers specific recommendations to the Board to determine how county staff will engage in the legislative arena. Three published reform proposals analyzed here include:

1. Fix and Improve Measure 110 – Measure C (Coalition to Fix and Improve Measure 110)
2. Fix and Improve Measure 110 – Measure D (Coalition to Fix and Improve Measure 110)
3. A Comprehensive Approach to Addressing Oregon's Addiction and Community Livability Crisis – Draft (adopted by the League of Oregon Cities, the Oregon District Attorneys Association, the Oregon Association of Chiefs of Police, and the Oregon State Sheriff's Association)

A fourth avenue – adopting a resolution calling for full repeal of Measure 110 – has been pursued by at least 10 county governing boards via resolution (Clackamas, Clatsop, Coos, Curry, Douglas, Gilliam, Jackson, Klamath, Marion, Yamhill). While adopting a similar resolution remains an option for the Board, it is the judgement of staff that there is insufficient support within the House or the Senate to pass repeal legislation. The net effect of adopting such a resolution would be to remove Lane County staff from ongoing reform conversations within the upcoming short session process. Staff observes that Lane County government can have a much more positive and significant impact on the legislative process around Measure 110 by remaining focused on reform. This position paper is organized around key issues in the reform debate. For each key issue, this paper summarizes proposals that are publicly available and provides a recommended set of positions for consideration by the Board.

Change in Criminal Sanctions for Drug Possession and/or Public Use

In 2021, the Oregon Legislature crafted SB 755 as a comprehensive "fix it" bill to rework and amend the legislative ballot language approved by voters during the 2020 general election. Ballot Measure 110 decriminalized possession of small amounts of controlled substances and classified those offenses as

Class E violations subject to a \$100 fine. If a cited person completed an assessment, the fine would be waived. Senate Bill 755 clarified that E violation citations have a presumptive fine of \$100, that circuit courts will have jurisdiction of E violation citations, and that a person must complete a "screening" to have an E violation citation dismissed.

The Coalition Measure C and Measure D proposals change the SB 755 sanctions structure as follows:

- Creates Class A misdemeanor for "use of a controlled substance in a public place" (except as medically prescribed)
- Reclassifies possession of Schedule I controlled or counterfeit controlled substance as a Class A misdemeanor (rather than Class E violation)
- Defines "designated property misdemeanor" and includes public use (first bullet above) in "designated drug-related misdemeanor"

The Coalition Measure C proposes additional sanctions changes:

- Class C Felony for Tableting/Encapsulating Machines
- Provisions for expunging designated drug-related misdemeanors
- Enhanced sentencing for drug dealing, definitional changes to broaden "controlled substance delivery" following case law interpretation of existing statute, and a "Taylor's Law" provision if delivery of controlled substances results in death

The LOC/ODDA/OACoP/OSSA Comprehensive Approach (Comp Approach) recommends a similar reclassification of Possession of a Controlled Substance (PCS) from Class E violation to Class A misdemeanor and a new Class A misdemeanor for public use of a controlled substance aligned with existing law for public use of alcohol and cannabis. The Comp Approach also recommends an amendment to the statutory definition of controlled substance "delivery" to facilitate enforcement for drug dealing as well as modification to the existing pretrial hold/release processes outlined in ORS 135.230 for individuals charged with Distributing a Controlled Substance (DCS).

Staff recommends that Lane County position its support of the Coalition and Comp Approach proposals specifically for Class A misdemeanors for Possession of a Controlled Substance and Public Use of a Controlled Substance in relation to the other provisions around systems changes also included in any specific reform legislation. Specifically, staff recommends that Lane County oppose legislation that changes only the criminal sanctions in existing law without also improving the downstream systems change needed to better serve Oregonians. Changing sanctions without addressing the specific operational impacts to the criminal justice and behavioral healthcare systems jointly operated by state and county agencies will simply shift system-entry bottlenecks from one place to another and exacerbate existing problems in other systems. The following sections will analyze these downstream impacts in further detail.

Diversion from Misdemeanant Justice System

The Coalition Measures C and D requires anyone convicted or charged with either a "designated property misdemeanor" or a "designated drug-related misdemeanor" be assessed for drug dependency. If found to be "a drug-dependent person," the Measures require treatment as a condition of probation or diversion. State government would be responsible for funding assessments and treatment, including the costs of supervision. Both Coalition Measures create a conditional discharge diversion process for any person charged with "a designated drug-related misdemeanor" to enter into a probation agreement

to defer further proceedings with the court. Upon fulfillment of the agreement, filed charges will be dismissed with prejudice (meaning that charges cannot be refiled later).

The Comp Approach combines the Class A misdemeanor levels for PCS and Public Use with eligibility for diversion programs modeled on existing DUII programs but allowing for multiple diversion entrance opportunities (DUII allows only one). Further, the Comp Approach proposes to fund county probation departments to supervise misdemeanor theft and property crime cases in which the defendant is drug dependent and recommends adequate funding for Oregon's specialty courts.

Staff recommends that Lane County support diversion programming as generally proposed, but contingent only on sufficient systems redesign and investment. Specifically, an ongoing funding allocation mechanism to support specialty courts is needed in statute and should be included in Measure 110 reform legislation. Further, reform legislation should address the limited tools judges have for misdemeanants who present in court as unable to aid and assist in their own defense. Without addressing this issue, efforts to reform Measure 110 will have adverse cost impacts on county service delivery.

Cross System Integration Issues

Senate Bill 755 created Behavioral Health Resource Networks (BHRNs) as "an entity or collection of entities that individually or jointly provide services" with cannabis tax revenue funding allocated by the Oversight and Accountability Council (OAC) housed at OHA. Coalition Measure C removes the OAC from statute and transfers the administration of funds to the Alcohol and Drug Policy Commission with some minor process changes. The Comp Approach is silent on BHRNs.

OHA and the OAC have been broadly criticized for the slowness with which over \$265m in cannabis tax revenue was allocated. OHA has published a dashboard showing that 100% of 2022 funds were allocated to 233 organizations organized into 42 BHRNs around the state with at least one BHRN per county. BHRNs are not required to coordinate services with OHA, counties or other service providers within a given location. Some counties, such as Lane County, have 3 operating BHRNs that are each independently funded with no requirement to coordinate with Lane County Behavioral Health or with each other. Priorities for BHRN funding were delegated by the Legislature to the OHA-supported Oversight and Accountability Council (OAC). Funding for harm reduction services has outstripped all other approved uses, including treatment bed capacity.

Staff recommends strong support for legislation reinventing BHRNs that draw on existing models that couple accountability and community-level collaboration. Examples include the U.S. Department of Housing and Urban Development (HUD) Continuum of Care model integrated into Governor Kotek's "All-In" housing emergency executive orders and the methodology utilized under the Community Corrections Act. Essentially, the model is one in which a state agency administers a biennial appropriation under a formulaic framework for either county-level agencies and/or community action coalitions who then submit spending plans addressing requisite standards, service levels, and partnerships for approval (or modification) by the administering agency. This allows for the maximum application of local knowledge, capacities, and needs, while retaining accountability, statewide flexibility and operational decision making.

Specifically, staff recommends as follows:

- Oppose the Coalition proposal to transfer BHRN funding to the Alcohol and Drug Policy Commission. Frustration with OHA is understandable, but shifting administration of critically

needed funds to an unstaffed commission will simply recreate the problems OHA experienced with the stand-up of the OAC.

- Support for defining BHRNs as being continuums of care anchored by Community Mental Health Programs with formulaic funding allocated to each county BHRN contingent upon the completion of an action plan defining local resource allocations across services and non-profit service providers. This “All In” style would facilitate coordination of multiple state/county funding streams that support joint responsibilities including district court administration, community corrections, and delegated programs around behavioral and public health.
- Support an explicit funding priority within BHRN action plans to expand treatment capacity over all other existing BHRN uses.
- Support legislation that enables BHRN funds to be used to treat justice-involved Oregonians suffering from drug addiction.
- Support legislation creating “plus up” incentives for the local integration of county level action plans and budgets for state programs delegated to or operated by county governments such as the Community Corrections Act, the OHA County Financial Assistance Agreements (CFAA) for local mental health authorities, intergovernmental agreements for local public health authorities, and other programs.

Finally, staff notes that the none of the policy proposals lift up substance use prevention activities. Over the past 30 years, evidence-based interventions and strategies have been developed that systemically address conditions known to increase risk for behavioral problems in vulnerable populations. Building or reinforcing conditions that foster resiliency are effective at preventing substance use disorder in general, and opioid use disorder in particular. Furthermore, prevention strategies are generally highly cost effective. Oregon’s Administrative Rules recognizes the Institute of Medicine Model that outlines strategies for Promotion, Universal Prevention, Selective Prevention, and Indicated Prevention, and these tools are used by local Public Health Authorities statewide. Public Health Authorities have clear programmatic capacities and programs they are required to establish under ORS Chapter 431, and any reforms the Legislature undertakes should provide additional funding to these entities as substance use prevention activities are not structurally consistent within the BHRN framework.

Additional Considerations

Given the possible scope of reform legislation, staff recommend the following concepts as important systems fixes for Oregon’s criminal justice, public health, and behavioral health systems to ensure that they work more effectively together to meet the needs of Oregonians who find themselves at the intersection of each.

- a) Support amendment to ORS Chapter 682 that provides access for County Community Mental Health Directors and Public Health Administrators (and their designees) to the Oregon EMS information system database that ambulance providers use to report transports. Data held in this database is critical to timely information related to probable overdose transports and would enable quicker public health response to prevent further overdoses in Oregon communities.
- b) While both the Coalition and Comp Approach policy proposals speak to jail alternatives, Oregon Statutes are limited with respect to explicit authorities for peace officers or first responders to transport a person experiencing a behavioral health crisis from point A to point B. Lane County seeks to avoid undo risk in all its operations and recommends the statutes be clear that a peace officer, a first responder, or an entity so designated by the Community Mental Health Program Director may transport a person experiencing a behavioral health crisis to a sobering center, a crisis stabilization center, or a residential treatment facility licensed by the Oregon Health

Authority. This will become more functional over time as Mobile Crisis Intervention Teams are rolled out across Oregon and the 988 Crisis Call Center becomes fully operationalized.

Summary Recommendations – Measure 110 Policies and Priorities

In summary fashion, the following will be added to the Lane County Legislative Principles and Priorities.

- Support reform rather than repeal of Measure 110 as amended by SB 755 (2021 Session).
- Support generally the revisions in sanctions outlined by the “Comprehensive Approach to Addressing Oregon’s Addiction and Community Livability Crisis” (adopted by the League of Oregon Cities, the Oregon District Attorneys Association, the Oregon Association of Chiefs of Police, and the Oregon State Sheriff’s Association), provided that the overarching reform legislation attends to needed systems integration and funding supports to accommodate more high acuity misdemeanants coming into existing systems.
- Support diversion programming contingent on sufficient systems redesign and investment.
- Support statutory mechanism for the ongoing allocation of resources for specialty courts.
- Oppose simple transfer of existing BHRN administration from OHA to Alcohol & Drug Policy Commission without significant reform to the BHRN model funding and coordination processes.
- Support modeling BHRNs on Governor Kotek’s Executive Order 23-02 declaring an emergency on homelessness and creating the All-In model of multi-agency coordination as a continuum of care. Fundamental to this model must be the Community Mental Health Program as the BHRN anchor given the many duties and responsibilities that CMHPs carry.
- Support legislation that provides an explicit funding priority within BHRN action plans to expand treatment capacity over all other existing BHRN uses.
- Support legislation that enables BHRN funds to be used to treat justice-involved Oregonians suffering from drug addiction.
- Support legislation creating “plus up” incentives for the local integration of county level action plans and budgets for state programs delegated to or operated by county governments such as the Community Corrections Act, the OHA County Financial Assistance Agreements (CFAA) for local mental health authorities, intergovernmental agreements for local public health authorities, and other programs.
- Support access for Public Health Administrators and CMHP Directors (and designees) to statewide Emergency Management Systems database for increased insights on drug overdoses.
- Support for better defined peace officer, director, and other hold authority needed in statute to limit liability for local government, non-profits, and other contracted service providers.

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 23-12-05-06

In the Matter of Adopting Legislative
Principles and Priorities Related to Measure
110

WHEREAS, the Board of Commissioners supports reforms to Oregon's Ballot Measure 110; and

WHEREAS, the Board of Commissioners has considered a suite of reform recommendations presented by a staff working group; and

WHEREAS, the Oregon Legislature has convened a Joint Committee on Addiction and Community Safety Response; and

WHEREAS, the Legislative Assembly will convene in Salem on February 3, 2025; and

WHEREAS, Lane County actively advocates on issues which affect the operations of Lane County.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. The Lane County Legislative Principles and Priorities Document is to be amended in accordance with the Position Paper on Measure 110 Reform dated December 5, 2023, and provided as Attachment A to this Order.
2. The Administrator will direct staff to share the Position Paper with local Legislators and begin the necessary advocacy to seek the reforms outlined within the Position Paper.

ADOPTED this 5th day of December 2023.

Pat Farr, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date _____

LANE COUNTY OFFICE OF LEGAL COUNSEL