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Sent Via Email: elections.sos@oregon.gov

Measure 44 Explanatory Statement Committee

The Honorable Richard Baldwin

Kevin Barton

Kimberly McCullough

Jim Ferraris

Anthony Johnson

Re: Comments and Objections to Explanatory Statement

Dear Committee Members:

I am James F. O'Rourke, Jr. I am an Oregon Elector and registered to vote in Multnomah County, Oregon. I respectfully submit the following objections to the Proposed Explanatory Statement for your consideration during your deliberations.

I am very concerned about this proposed measure as a parent of children who have been addicted to drugs, a person in long term recovery (35 years) and an attorney who has focused on representing people with addictions for the last 35 of my 42 years as a criminal defense lawyer. I invite you to learn more about me by reading the biography page from my website attached as Exhibit "1."

My experience informs me that people facing criminal penalties for drug related behavior are often motivated to address addiction issues rather than risk going to jail. External motivation is necessary because people active in their addictions lose the ability to choose whether or not to use drugs despite great negative consequences. That is, by definition, the nature of addiction. Criminal charges provide the necessary external motivation. "Drug Court" and Judicial diversion programs facilitate "legal interventions" upon them. In recovery jargon: "addicts see the light when they feel the heat."

To sustain recovery, addicts need to be held accountable. Judicial diversion programs do a very effective job of providing motivation and requiring accountability as do professional licensing board diversion programs. The latter worked for me.

Without outside pressure and a requirement of ongoing accountability, many if not most addicts can not get sober on their own.

Over the years, I have heard hundreds of addicts share that they saw the light and went to treatment when they felt the heat from a criminal charge. Many express gratitude to court programs for giving them what they needed to get and stay clean and sober.

These days no one goes to prison for the criminal charges affected by Measure 44. On information and belief, I can tell you that not one person is in the Oregon Department of Corrections for user quantity drug possession charges. I mention this because the Measure mentions the historical effects of “Criminalizing Drugs” numerous times. See attached Exhibit “2” (The first two pages of IP 44).

House Bill 2355 has been successful in addressing those concerns about the effects of “Criminalizing drugs.” The Criminal Justice Commission published a report on the success of House Bill 2355 that showed a dramatic reduction in misdemeanor drug possession convictions and racial disparity in arrests. There are less convictions because more people are being diverted. Please see: <https://www.oregon.gov/cjc/CJC%20Document%20Library/2019PCSReport.pdf>.

Since House Bill 2355 was passed in 2017, the vast majority of persons charged with misdemeanor possession of user amounts of heroin, cocaine, methamphetamine, MDMA, LSD, psilocybin, methadone and oxycodone have been given opportunities to go treatment and do not get convictions.

During the legislatures deliberations, there were many references to the disastrous effects of decriminalizing drugs in other states where the decriminalization did not involve a requirement that the persons charged get treatment.

The judicial system now uses misdemeanor possession charges to motivate juveniles, adults, veterans, homeless persons and the mentally ill to accept treatment and to participate in specialty courts and other services instead of prosecution and or conviction. The programs are highly successful.

As a matter of law, if you decriminalize heroin, cocaine, methamphetamine, MDMA, LSD, psilocybin, methadone and oxycodone for adults, you decriminalize those drugs for juveniles, children, youth, minors and adults. (Please see discussion infra at pages 8-10).

On a sad day, I became one of those baffled, desperate, terrified and helpless parents I had sat with over the years while I represented their addicted children. Like them, I did everything possible and I could not get my children clean and sober. There was no one to see, no one to call and nowhere to go for help.

Like many desperate parents, I hoped that my child would be arrested and intervened upon and placed in a court “diversion” program. I prayed that my child would not be arrested for

a serious crime with a mandatory minimum sentence.

Now, there are LEAD (Law Enforcement Assisted Diversion) programs in Multnomah and Marion counties where parents can call for assistance with their addicted children. See attached Exhibit "3" for information and statistics on the Marion County LEAD Program. The Multnomah County LEAD Program Statistics can be found at <https://multco.us/file/86776/download>. The LEAD Programs allows for law enforcement to direct individuals arrested for drug possession to treatment in lieu of arrest or, in some circumstances, even in lieu of ever facing criminal charges.

In Multnomah County, misdemeanor drug possession offenses are referred to the Treatment First Program. The policy statement for Treatment First includes a general policy reducing (non-commercial) felony drug possession offenses to misdemeanors under most circumstances. Treatment First provides assessment and treatment for those who choose to enter the program and has treatment programs that last from 6 to 18 months depending the person's needs identified at the assessment. The program is designed to be sensitive to issues of race.

All counties use some method for diverting misdemeanor drug offenders to treatment, including: Conditional Discharge (ORS 475.245); District Attorney Diversion (ORS 135.886-901); and Probation Without Entering Judgment of Guilt (ORS 137.533)

Decriminalizing misdemeanor PCS charges for heroin (1 gram or less), cocaine 2 grams or less), methamphetamine (2 grams or less), MDMA (less than 40 user units), LSD (less than 40 user units), psilocybin (less than 12 grams), methadone (less than 40 user units) and oxycodone (less than 40 user units) will remove addicts, including juveniles, from the reach of these judicial intervention programs and their attendant treatment resources. Thousands of addicts who do and can receive effective help from these programs will be left behind. I am talking about the addicts who cannot or will not get to or stay in treatment on their own.

Leaving one addict or one child behind is too great a price to pay for the possibility of increasing access to treatment. I say possibly because it is only a possibility, mere speculation, that passage of Measure 44 will result in more residential treatment beds for addicts. The measure does not require the creation of additional treatment beds. No one knows who will be on the Oversight and Accountability Committee or how they will decide to spend money other than to institute assessment and referral centers throughout the state. They could decide to build wet hotels.

There is a shortage of residential treatment beds in Oregon. There is not a shortage of assessment and referral facilities.

We are talking about decriminalizing heroin, cocaine, methamphetamine, MDMA, LSD, psilocybin, methadone and oxycodone for adults and children. I use the word children intentionally because they are included within the range of the effects of decriminalization. These drugs are illegal because they are dangerous. According to the CDC in 2019 the U.S. had

71,000 overdose deaths, the highest ever recorded overdose deaths in the U.S. Decriminalizing illicit opioids during an opioid epidemic seems counterintuitive to both public policy and our current state of emergency.

There is a better way to address Oregon's needs around addiction and treatment without leaving anyone behind. A broad based coalition has been working on the treatment problem since 2017. Their efforts have created a lot of public and private energy for solving Oregon's addiction and treatment need problems.

Their plan includes getting everyone involved in assessing resources and needs and developing a solution which involves all service providers working together with accountability to the goals and an oversight committee.

Attached as Exhibit "4" is a summary of that plan.

Measure 44 sets up an independent body which is accountable to no one and does not have an evidenced based plan. It has not done studies and the Measure does not provide for any studies. It perpetuates and amplifies the problem of lack of coordinated cooperative planning which is essential to success. HB 2355 is an example of how successful cooperative plans can be. Drug Courts are another example where Law Enforcement, the Courts, Prosecutors, the Defense bar and treatment providers cooperate to help people get clean and sober.

I want to be clear that I disagree with decriminalizing the specified drugs, although I do understand the position of those who want to ease the effects of criminal convictions on individuals who recover from addiction. Those issues can, and should, be addressed with changes to other laws without leaving anyone behind. I support setting aside (expunging) criminal records for people who get into recovery. In any event, the first order of business is to get people sober. Lack of a criminal record does not do any good for someone who is dead.

I would like to phrase my objections in a manner that places my own bias in check. The explanatory statement is designed to be "unbiased, simple and understandable." However, for those who support the Measure, I hope that they, too, can put their bias in check. The object of this process is to give the average voter the opportunity to understand the full impact and effect of his or her vote.

This committee is engaged in a legal/political process. Most committee members are lawyers and familiar with reconciling the desire to win and the duties of your office by following certain principles. You are charged with one of the same guiding principles here, not to mislead the tribunal. The voters are the most important tribunal in our democracy and they should be fully and accurately informed.

I viewed that last committee meeting. There were expressions of concern by some committee members about using the terms including decriminalize and juvenile, which although technically and legally accurate, might dissuade voters from passing the measure. If the terms are

accurate and most precisely descriptive of the effects in their contexts, then they should be used. They may describe something that is unattractive or show that Measure 44 is a bad idea. It is what it is and it is for *informed* voters to decide if it is a good idea or not.

Please forgive me if I am not diplomatic. I am passionate about protecting my children, all children, all parents, my brother and sister addicts and my clients. I would rather have them in programs which have proven they work rather than an experimental program. Make no mistake, Measure 44 proposes an experimental program. There are no studies or data to prove its efficacy. The programs, including juvenile drug courts it will try to replace have proven their effectiveness.

Measure 44 is regressive in that it erases 40 years of progress in changing police attitudes toward addicts from one of indifference to being active trained interventionalists for LEAD, Treatment First and other programs.

Everyone wants more treatment. By treatment I mean treatment in the commonly understood meaning of the word: outpatient and residential treatment. That is what people think of when they hear the word treatment.

Most people do not want children and adult addicts cut off from existing effective programs. By the way, any suggestion that children and addicts can get equivalent treatment from Measure 44 assessment and referral centers is untrue, unrealistic and at best speculative.

The voters need to be given clear and accurate information in order for them to understand the choice before them.

Applicable Law for Explanatory Statements

Under ORS 251.215(1) an explanatory statement is required to be “impartial, simple and understandable.” The purpose of the explanatory statement is to inform voters of the effects of the Measure that are not speculative.

When reviewed by an appellate court, the review standard is to determine whether a explanatory statement is “insufficient or unclear.” *June v. Roberts*, 310 Or 244, 797 P2d 357 (1990). The appellate courts “do not resolve disputes over the meaning of a measure, but only determine whether the statement ‘falls short to the point of being insufficient.’” [Citing *Macafee v. Paulus*, 289 Or 651, 655, 616 P2d 493 (1980)]. In order to sustain a challenge to an explanatory statement, the court will not modify it “unless its insufficiency is beyond reasonable argument.” *Teledyne Wah Chang v. Powell*, 301 Or 590, 593, 724 P2d 319 (1986). The standard of review is straightforward and remains unchanged since the *June* case in 1990. The statute requires a simple explanation of the effects of the measure that are not speculative.

The *Teledyne* case is instructive in terms of full disclosure of the primary effects of a ballot measure. In *Teledyne*, the ballot measure dealt with the regulation of radioactive waste.

The advocates for the company objected because the explanatory statement did not reveal that their company was the only company in the State of Oregon affected by the Measure. In that case, the Oregon Supreme Court agreed that the failure to identify that fact in the explanatory statement made the statement “insufficient.” *Teledyne*, 301 Or 590 at 594-595.

A description of these primary impacts may not be desirable for those who support Ballot Measure 44, because the inclusion of adverse effects may lead voters to vote against it. However, these are real impacts that are deserving of “simple and understandable” explanation for Oregon Voters. *See e.g. Dudley v. Jenks*, 331 Or 1, 7, 10 P3rd 257 (2000) (“The statutes [regarding explanatory statements] do not promise that any statement will cause a voter to be disposed favorably toward a measure; they promise only that a statement will not turn a voter against a measure unfairly”).

The point is that the case law requires that a “sufficient” explanatory statement should address the primary effects of the legal changes implemented by the measure.

Summary of Objections

I have five specific objections to the description of the primary effects of this explanatory statement: (1), the term “decriminalization” should be used in describing the legal effect of the measure because it is legally accurate; (2), I think the effect on juveniles needs to be stated clearly, because it is accurate; (3), the actual substances and threshold quantities being decriminalized must be stated clearly; (4), the statement should explain the reallocation of tax dollars currently spent on schools, state and local governments, the Oregon State Police, mental health and addiction services and drug abuse prevention programs; and (5) An explanation of Section 21 pertaining to a “presumption of fitness” for professional licensing must be included in order for the explanatory statement to be sufficient.

In my submission, I list secondary effects of each law change. I list them because these are the issues that voters must consider in deciding whether or not the secondary consequences justify the changes proposed. The specific objections listed above contain the information that will lead voters to fully explore and sufficiently understand the paradigm shift that the measure proposes. Listing the primary effects of the measure will lead voters to consider the full consequences of the measure. For example, disclosing the fact that this measure decriminalizes heroin and methamphetamine will provoke more thoughtful consideration of the measure.

This committee’s purpose is to make a full disclosure. If my proposed terms are seen as “loaded” by some members of the committee that it is because the changes are important and consequential.

I have attached a copy of the committee draft of the explanatory statement which includes the changes I am requesting through my objections (please see Exhibit “5”)

My Objections Are As Follows:

1). This is Decriminalization and the Explanatory Statement Should Say that Clearly

The Measure provides that certain drug possession offenses are no longer “crimes” (a “crime is defined in ORS 161.515 as a “felony” or a “misdemeanor”). A violation is an “offense” (defined in ORS 161.505), which is not a “crime.” This is “decriminalization” in every legal sense and in keeping with the use of the word “crime” as a legal term of art.

The proposed revised explanatory statement is insufficient and unclear on this important point. The voters need to understand what they are doing. The term “reduces the criminal penalties” is so neutral that it has no meaning. The next sentence in the revised statement admits that the measure creates a “non-criminal violation.” Using the term “decriminalize” in the first sentence makes the creation of a “non-criminal violation” make full sense (i.e. makes the explanation “sufficient”).

The term “effectively legalizes” would also be applicable and conveys the effect of placing persons beyond the reach of the criminal courts. That term might say too much. The phrase “reduces criminal penalties” is better, but still not sufficient because the new penalties are for a violation not a crime. The term “decriminalize” is the most accurate and understandable description. It is also the clearest and most accurate statement of the actual legal effect of the measure.

During the July 24, 2020 Committee meeting one of the members of the committee argued that the Measure does not include the term decriminalize as justification for not including the term in the Explanatory Statement.

The measure does include the subject of decriminalization. It purports to remedy the evils of “Criminalizing drugs.” The logical solution to the “criminalizing” of drugs is the “decriminalizing of drugs.” See Exhibit “2” (pages 1 and 2 of the Measure in which the references to criminalization/decriminalization are highlighted in yellow).

Another member of the Committee argued that violations are not decriminalized because people could be arrested for not paying their fines. If anyone was ever arrested for not paying a fine it would be for that conduct - contempt of court - and not for possession of drugs. Oregon stopped arresting people for not paying fines long ago.

Secondary Effects of Decriminalization on Adults

Decriminalization will leave an entire class of low level offenders behind. There are currently a variety of programs that provide treatment opportunities for user quantity offenders and leave them without a criminal record. In Multnomah and Marion County, there is the LEAD (Law Enforcement Assisted Diversion) program, which allows people to avoid being charged

with a crime at all if they enter treatment (including referrals from concerned family members). Specialty drug courts offer dismissal for low level drug offenses for people who enter treatment and accept accountability for their drug use. There will be no incentive for people to enter these programs against the penalty equal to a parking ticket.

Decriminalization is a real and direct effect of this measure. The criminal penalties are the incentive that leads people into drug courts, veterans courts and mental health courts. These people will be left behind, at least until their behavior escalates into more serious criminal trouble.

Other secondary effects of decriminalization which may be of interest to voters are:

Most parents will not want the use of heroin etc. “normalized” our society as are alcohol and marijuana. What I mean by “normalized” is the perception, particularly by juveniles and minors that there is nothing wrong with using heroin “recreationally,” it is simply a matter of age. That is going to lead children and others to experiment with these dangerous drugs, in the midst of an opioid epidemic.

Given how extremely addictive the drugs are, the period of recreational use will be very short for many people.

One must assume that if these drugs are decriminalized, that there will be increased demand for the drugs. The principle source of these drugs is the Cartels. From their perspective, this could be referred to as the “Cartel Bail Out Act.”

There is already widespread concern over the ingredients in street drugs. Fentanyl is used to make street oxycodone and is added to heroin. Death rates are rising.

Decriminalization will hamper law enforcement efforts to keep the Cartels in check. They start with recreational users and work their way up the distribution chain to the Cartel dealers. Many voters do not want a stronger Cartel presence in Oregon nor for the Cartels to have more influence.

2). *The Committee’s Proposed Draft is Insufficient Because It Does Not Disclose That the Decriminalization of Possession of Drugs Extends to Juveniles*

This is a simple, clear and legally correct statement of the effect of the measure.

Juvenile Courts and Juvenile Drug Courts both receive jurisdiction over minors under ORS 419C.005, which provides:

“The juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and who has committed an act that is a violation, or that if done by an adult would constitute a violation, of a law or ordinance of the United States or a

state, county or city.”

The Court has jurisdiction over juvenile offenses that are violations, as opposed to “crimes” (misdemeanors or felonies). So, a Juvenile charged with a class E violation offense of PCS (heroin, cocaine, methamphetamine, MDMA, psilocybin, oxycodone or methadone) would be subject to the jurisdiction of a Juvenile Court, unless the offense is subject to a county wide automatic remand order.

Any youth subject to delinquency adjudication is entitled to the full rights of due process (notice and an opportunity to be heard), including the rights of confrontation, privilege against self incrimination, right to cross examination and right to counsel. *See, In Re Gault*, 387 US 1, 87 S. Ct. 1428, 18 L.Ed 2nd 527 (1967).

The point here is that juveniles are treated co-equally with adults in terms of penalties and due process rights, with the exception of the right to a jury trial.

The Juvenile Code also explicitly sets out the maximum periods of detention or institutionalization available to the Court based on the adult penalties for a misdemeanor. ORS 419C.501 provides (excluding felony classifications):

“The court shall fix the duration of any disposition made pursuant to this chapter and duration may be for an indefinite period. Any placement in the legal custody of the Department of Human Services or the Oregon Youth Authority ... shall be for an indefinite period. However, the period of institutionalization or commitment may not exceed:

“a) The period of time specified in the statute defining the crime for an act that would constitute an unclassified misdemeanor if committed by an adult;

“b) Thirty days for an act that would constitute a Class C misdemeanor if committed by an adult;

“c) Six months for an act that would constitute a Class B misdemeanor if committed by an adult;

“d) Three hundred sixty-four days for an act that would constitute a Class A misdemeanor if committed by an adult”

Under this statutory scheme, a Juvenile Court would not have the authority to authorize detention or institutionalization for a Juvenile charged with a Class E violation without a change in substantive law. Customarily, juvenile violation offenses are automatically remanded to adult court.

I have suggested the use of the term “juveniles” because I believe it to the most factually

and legally accurate word. The term “youth” is used in the parlance of Juvenile Courts but that reference may not be obvious to the average voter. The term “minor” would not distinguish between people under 18 and those between 18-21. The term “children” would be accurate, but is, perhaps, too “loaded.” The term “juveniles” is the most accurate because the average voter would understand that to refer people under 18 who are within the jurisdiction of the Juvenile Court.

This Measure would place a 15 year old in possession of a half a gram of heroin of outside the delinquency jurisdiction of the Juvenile Court. That is a fact. If the Explanatory Statement does not say so, it is “insufficient.”

Secondary Effects of Decriminalization of Upon Juveniles

Decriminalization of heroin (1 gram or less), cocaine 2 grams or less), methamphetamine (2 grams or less), MDMA (less than 40 user units), LSD (less than 40 user units), psilocybin (less than 12 grams), methadone (less than 40 user units) and oxycodone (less than 40 user units) would remove the ability of juvenile courts to get juveniles to enter and complete treatment programs.

The potential criminal penalties of detention and institutionalization attached to misdemeanor drug possession offenses provide leverage for courts and court counselors to use to get juveniles to participate in juvenile drug courts and other treatment programs to avoid detention and institutionalization.

Some counties offer youths the option of participating in a juvenile drug court. Juvenile drug courts have been very successful. Almost all counties offer the juvenile an informal resolution of the misdemeanor possession charge which allows them to avoid prosecution by getting an assessment and successfully completing recommended treatment. One county requires the youth to be prosecuted but allows the youth to avoid conviction by successfully completing treatment.

For example, Marion County has the STAR Program (Supervised Treatment And Recovery) which has been quite successful in assisting youth offenders with drug addiction issues. See <https://www.co.marion.or.us/JUV/programs/Pages/probation.aspx>.

Youths are subject to the same limitations on penalties as adults. If drugs are decriminalized for adults, then they are decriminalized for Juveniles. If Juvenile Courts lose their ability to assist youths with treatment, or detain them, the incentive for a youth to treat will be lost, severely impeding the Court’s mission to intervene with rehabilitative services.

Young people lack the life experience to see the risks and harms from addiction. The reason we have Juvenile Courts and Juvenile Counselors is to provide guidance and insight to vulnerable young people until they develop the life experience to self correct their behavior.

Juvenile Courts can use punitive options as leverage to get Juveniles into treatment, by giving the youth choices: go to detention for a month; get checked into an Oregon Youth Authority Facility for 364 days; *or* choose to enter and complete a drug and/or alcohol rehabilitation program.

Juvenile Courts will lose this leverage to motivate youth to participate in and complete treatment if Measure 44 is passed. Measure 44 will effectively eliminate access for many persons to Adult and Juvenile Court intervention programs which have proven to be effective.

Judicial interventions work because they use the threat of consequences as leverage to get the addict to get started in treatment and because they hold the addict accountable for completing treatment.

3). The Names of the Substances and the Quantity Thresholds should Be Set Forth in the Explanatory Statement in Order to Provide a Sufficient, Understandable and Clear Explanation of the Effects of Measure 44 For the Voters.

This law specifically applies to certain drugs in certain amounts: heroin (1 gram or less), cocaine 2 grams or less), methamphetamine (2 grams or less), MDMA (less than 40 user units), LSD (less than 40 user units), psilocybin (less than 12 grams), methadone (less than 40 user units) and oxycodone (less than 40 user units).

I have been a lawyer for 42 years. In reading the text of the measure and the controlled substances affected, with bracketed deletions and additions in bold and italics, it took me about a half an hour to understand the scope of the measure. That is too much to expect of an average voter. A voter must understand the substances affected and they need the assistance of this committee to sort this out in simple and understandable way. I know how to read law changes because of years of experience. The average voter will have little hope of teasing that out of the text of the measure. This is where the explanatory statement is supposed to help the average voter understand the scope of the law change. This is about “sufficiency.” At the very least, the primary drugs (heroin (1 gram or less), cocaine 2 grams or less), methamphetamine (2 grams or less), MDMA (less than 40 user units), LSD (less than 40 user units), psilocybin (less than 12 grams), methadone (less than 40 user units) and oxycodone (less than 40 user units) affected by the measure should be listed.

This is a primary effect that applies to specific drugs, by the measure’s own text. I do not believe that any explanation of the effect of the measure can be “sufficient” without specifying the substances and quantities. To be sure, there may be a negative reaction from voters when they are told that heroin and methamphetamine are being decriminalized. Perhaps, among some people, there would be less of a negative reaction to the decriminalization of cocaine, LSD or MDMA. Nonetheless, it is the duty of the committee to state the actual effects of the measure simply and clearly so that voters can judge the soundness of the law change. The committee should err on the side of disclosure. “Simple and understandable” should mean that the explanation is such that primary effects are explained completely within the constraints of space

(500 words). A reference to each actual effect is necessary for “sufficiency” of the explanation.

Voters should be told the names and amounts of the drugs involved. Two grams of meth is a lot of meth! Parents should be advised on how much their children will be able to possess. Please see the pictorial representation of the amount of two grams of meth attached as Exhibit “6.”

4). *In Order for the Explanatory Statement to be Sufficient it Must Explain the Reallocation of Marijuana Tax Revenue*

Taxation issues and the distribution of currently levied taxes are important to voters in Oregon. A simple reference to where revenues currently are directed and where they will be redirected is essential to a complete understanding of any measure.

Currently, the money from marijuana taxes goes in proportions to schools, state and local governments, the Oregon State Police, mental health and addiction services and drug abuse prevention programs. This Measure diverts a large amount of money from those purposes. Voters should know where the marijuana tax money currently goes so they can evaluate whether redirection of tax dollars for the purposes of the Measure is appropriate. It is notable that when marijuana was legalized, providing tax money to schools and addiction treatment programs was a significant selling point. Identifying the changes in the allocation is critical to voters understanding the effects of the Measure on the present recipients of the Marijuana funds. See attached Exhibit “7” demonstrating the reallocation based on revenues from the 2019 fiscal year.

It is easy to tell the voters how the marijuana money is distributed among various “state and local governments”. The amount of money diverted from schools is substantial. While the numbers from the 2019 fiscal year may be speculative and not worthy of inclusion in the Explanatory Statement, the fact that money is being diverted from schools is a primary effect (based on FY 2019, a reduction 22.8 million dollars is a significant amount of money). The committee may not have the space to include an estimate, but the fact of the reallocation is a very real, primary effect of this measure. Informing the voter of the details of the reallocation in simple terms takes 19 words.

5. *The Explanatory Statement Must Include a Description of Section 21 in Order to be Sufficient.*

Legislative Counsel suggested the following description of Section 21 of the measure:

“The measure creates a rebuttable presumption that a person applying for an occupational or professional license or other authorization, and who was convicted of a controlled substance Class E violation, is not unfit to hold the license or other authorization.”

At the July 24, 2020 Committee meeting, there was no real discussion of this change in current law. See video record at 1:21:21.

It is significant.

Some Committee members wondered out loud about the meaning of Section 21. Committee member Johnson wrote the section and did not offer any explanation about its meaning or purpose.

What Section 21 means is that a surgeon with 5 Class E violation convictions for possession of less than two grams of meth within one year would be presumed to be fit to hold a medical license.

This is a significant change in the law. I would note that the measure also applies the “presumption of fitness” to those who *hold* professional licenses and are convicted of violation possession offenses.

This is an entire section of the measure that would go unexplained. Omitting the section entirely from the explanation is not informative and is insufficient.

Conclusion

This committee’s job is to tell unbiased truth even if the unbiased truth may be unappealing to voters.

Thank you for your consideration of my comments.

Very truly yours,

/s/ James F. O’Rourke, Jr.

JAMES F. O’ROURKE, JR.

JFO/dqo
Enclosures

ABOUT MR. O'ROURKE

Mr. O'Rourke has been practicing law since 1978 after he received a Juris Doctorate Degree from Gonzaga University School of Law.

He has extensive experience practicing law as a Criminal Defense and DUII Defense Lawyer throughout the State of Oregon and Clark County, Washington.

He has extensive experience practicing law as an automobile accident injury and wrongful death lawyer.

He represents health care and other professionals in licensing board proceedings which are often connected to criminal proceedings or alcoholism or other addiction.

Since 1985, a major focus of his criminal defense practice is representing people who suffer from addiction and alcoholism

MR. O'ROURKE'S DEVELOPMENT AS A CRIMINAL DEFENSE LAWYER

For the first six years of practicing law, I was rising into prominence as a criminal defense and appellate lawyer. I enjoyed a lot of success and was honored to be invited to work with and be taught by Nick Chaivoe who was one of the best criminal defense, personal injury and civil rights lawyers in Portland at that time. By the time I was entering my seventh year of practice, I was falling into alcoholism and addiction.

A group of lawyers who were practicing Twelve-Step recovery took an interest in me and helped me get into recovery. Certainly, my career was saved and probably my life as well.

It became apparent to me that many of my clients were also suffering from alcoholism and addiction. My recovering lawyer mentors, who called themselves "The Other Bar," encouraged me to share my experience and recovery with my clients and to help those who were interested to get into recovery.

We took our clients' recovery stories to Court and showed the Judges and Prosecutors that alcoholism and addiction were the underlying causes of their criminal behavior. We told them that while there was no cure for alcoholism or addiction, their diseases could be managed with treatment followed by Twelve-Step recovery. We argued that the solution to the criminal conduct was in Twelve-Step Recovery and that it was more likely than jail to keep my clients from re-offending.

We were making these arguments in the 1980s and we had to argue long and hard just to get Judges to believe that addiction was a disease rather than a failure of willpower.

Although there was tremendous stigma in being identified as an alcoholic or an addict in

the 1980s, we disclosed our own addictions and told them about our own successful recovery stories in open court. Even though Judges and Prosecutors were shocked by our revelations, it was persuasive.

Judges took chances that we were right and sentenced clients to treatment instead of jail. Many of these clients had long criminal records.

Ultimately, the proof of our arguments was the success of many of our clients in remaining alcohol and drug free and out of trouble with the law after treatment and getting into Twelve-Step recovery.

As I went on, I started representing people with both addiction and mental health issues. I helped them get appropriate treatment for both conditions at the same time and they were able to stay sober and crime free.

I have represented first responders, veterans and other trauma and abuse survivors with PTSD and addiction diagnoses who have committed crimes. Many trauma survivors self-medicate with alcohol and/or drugs.

Even though the Criminal Justice System's response to addiction and mental-health-driven criminal conduct has been tremendous, there are still cutting edge cases and new Judges and district attorneys to educate and persuade. We are still changing minds and using successful treatment and recovery solutions to get excellent results for our clients in and out of Court.

The "war on drugs" is a one person at a time, one day at a time and, one case at a time process. The war is against a disease, not people! The war is won each day by people getting into and remaining in recovery.

MY GREATEST LIABILITY HAS BECOME ONE OF MY GREATEST ASSETS FOR HELPING MY CLIENTS

My alcoholism and addiction almost took my profession and my life.

My recovery from alcoholism and addiction allows me to understand and to be understood by alcoholics and addicts. I am able to help them get through the challenges in their cases in a way that allows them to experience their cases in a positive way. I am able to help them get what I have received in life through recovery and to get excellent results in court.

I am able to be of service to my family, friends, clients and the community as a whole.

I am grateful for my recovery.

SERVICE TO THE COMMUNITY

Lecturer for Hazelden/Betty Ford Treatment Centers (Inpatient and Outpatient) and Serenity Lane Treatment Centers (Outpatient) and many other Treatment Centers (Inpatient and Outpatient). (12 years)

Consultant to numerous treatment centers on how to effectively support their patients through criminal court cases. (20 years)

Legal Advocate for Clients needing to get into recovery and in Recovery in the Criminal Justice System. (35 years)

Sponsor of the Friends of the Columbia Gorge Hiking Program. (6 years) link: <https://gorgefriends.org>

SERVICE TO LAWYERS IN RECOVERY

Volunteer for The Oregon Attorney Assistance Program. (21 years)

President of The Other Bar Oregon. (15 years) link: <https://theotherbaroregon.com>
The Other Bar Oregon is a non-profit group dedicated to providing outreach and fellowship for lawyers, law students and judges in recovery. The Other Bar hosts two spiritual retreats per year, one exclusively for attorneys, law students and judges and the other for attorneys, health care and treatment professionals.

Oregon State Bar State Lawyer's Assistance Committee (SLAC). (3 years)

Presenter for the International Lawyers in Alcoholics Anonymous (ILAA) and the American Bar Association Committee on Lawyer Assistance Programs. (CoLAP)

OUR CAUSES

THE NEED FOR A POSITIVE PEER RECOVERY COMMUNITY OF YOUNG PEOPLE

These days, most of our young people have been affected by alcoholism and addiction and its resulting dysfunction before they reach high school. They are exposed to alcohol and all manner of drugs in high school where there are deeply entrenched drug and alcohol peer cultures.

Thousands of Oregon young people attempt to get into recovery each year.

Historically, Oregon has had few resources for effectively treating moderate to severely addicted adolescent and young alcoholics and addicts.

Most Oregon young people (13-25) who need treatment have to go out of state to get

positive peer recovery culture oriented treatment.

Over the years I have represented many young people who have gone out of state to treatment where they and their peers have gotten into recovery and became part of a positive peer recovery culture where they were valued, fit in and in which they achieved and maintained sobriety. Upon completion of treatment, they returned to Oregon where most of them were not able to find sober peers with whom to share recovery. It is difficult for many 18 year olds to assimilate into a recovery group where most of the people are over 35.

Eventually, they reconnected with their former peers with whom they had drank and used before recovery and which, in most cases, led to a return to of addiction and criminal conduct.

THE SOLUTION - OUR CAUSES

We at James F. O'Rourke, Jr. and Associates support the following programs:

4D Recovery (18-35)

I am a founding sponsor and advisory board member of this organization. 4D started in a warehouse in East Portland where a group of young people had established a sober club with activities for young people in recovery. Since its inception in 2013, 4D has grown into a leading recovery organization for young adults in Oregon. 4D provides free addiction recovery support to thousands of young adults every month through peer-recovery mentoring, drop-in recovery centers, pro-social and positive recovery support, recovery housing, and leadership development. We currently have programs in Portland and Hillsboro, OR, and we are currently working on opening programs in Gresham and Clackamas County. Please read more about their history and services by visiting their website: www.4drecovery.org

The Harmony Academy

In the Fall of 2019 the first recovery high school opened in Lake Oswego. The new school, Harmony Academy, provides access to education for teens in recovery and provides an environment in which recovered young people can associate with their peers who have similar experiences. This environment gives teens access to an alternative peer group supportive of recovering teens. This resource is vitally important to support young people recovering from addiction. [link: <https://www.harmonyacademyrhs.org/>]

The Family Inspired Recovery

Family Inspired Recovery, an Alternative Peer Group (APG) model, is designed to address the emotional, psychological, spiritual, and social needs of teens struggling with substance use disorders. FIR provides a proactive environment where adolescents are experiencing substance use/misuse and other high-risk behaviors can receive recovery support through a family-centered, professionally staffed, positive peer-supported program. The APG model offers pro-social activities and case-management for adolescents with a proven holistic model of recovery support.

By integrating peer support and fellowship with clinical oversight, the APG model has proven to be an effective intervention to address substance use/misuse by youth. APGs are a much better fit for adolescents who struggle with substance use and co-occurring disorders because the main focus is to offer and shape a new peer group that utilizes positive peer pressure to stay in recovery. APG's focus is on making sobriety more fun than using by organizing and staffing after-school sober social functions throughout the week, weekends, and summers. Website: [The Family Inspired Recovery](https://www.faminsrec.org/)

This West Linn organization provides adolescents with social activities, counseling and assistance with strengthening family relationships based on an Alternative Peer Group model. The organization was formed and is supported by some of the finest nationally known counselors and physicians. I am proud to lend support for their mission. [link: <https://www.faminsrec.org/>]

TESTIMONIALS

“Jim’s leadership can only be characterized as servant-first. In my interactions with him since the first fundraiser at 4D, I have come to deeply appreciate Jim’s unwavering devotion to raising others up. Through his law practice, 12-Step program, and philanthropic activities, Jim is healing our community one person at a time.” — Tony Vezina, 4D Recovery Executive Director. Since 4D’s inception, Jim has given much of his energy and resources to our mission. He is our biggest fan and single largest individual supporter. We can always count on Jim to support our ideas while providing insight and mentorship. We are growing in-part from his wisdom, guidance, and advocacy.”

DRUG ADDICTION TREATMENT AND RECOVERY ACT

Whereas, Oregonians need adequate access to drug addiction treatment. Oregon ranks nearly last out of the 50 states in access to treatment, and the waiting lists to get treatment are too long. Every day, one or two Oregonians die because of drug overdoses. Drug treatment and recovery ought to be available to any Oregon resident who requests it.

Whereas, Oregonians suffering from substance use disorder also need adequate access to recovery services, peer support and stable housing. One in every 11 Oregonians is addicted to drugs. Drug addiction exacerbates many of our state's most pressing problems, such as homelessness and poverty.

Whereas, Oregon needs to shift its focus to addressing drugs through a humane, cost-effective, health approach. People suffering from addiction are more effectively treated with health care services than with **criminal** punishments. A health care approach includes a health assessment to figure out the needs of people who are suffering from addiction, and it includes connecting them to the services they need.

Whereas, Oregon still treats addiction as a **criminal problem.** Law enforcement should spend more time on community safety, but Oregon law enforcement officers in 2017 arrested more than 8,000 people in cases where simple drug possession was the most serious offense. In many instances, the same people were arrested for drug possession, again and again, because they are unable to get treatment.

Whereas, punishing people who are suffering from addiction ruins lives. **Criminalizing** drugs saddles people with **criminal** records. Those records prevent them from getting housing, going to school, getting loans, getting professional licenses, getting jobs and keeping jobs. **Criminalizing** drugs disproportionately harms poor people and people of color.

Whereas, punishing people who are suffering from addiction is expensive. It costs an average of \$15,000 per case where a misdemeanor drug conviction is the most serious offense. That is more than the typical cost to provide treatment.

Whereas, marijuana tax revenue has grown significantly. Oregon now receives more than \$100 million in marijuana tax revenue a year. The amount of marijuana revenue is expected to grow by more than \$20 million per year.

The People of Oregon therefore propose this Drug Addiction Treatment and Recovery Act of 2020 to expand access to drug treatment and recovery services and pay for it with marijuana tax revenue.



Be It Enacted by the People of the State of Oregon:

FINDINGS AND POLICY

Section 1. (1)(a) The people of Oregon find that drug addiction and overdoses are a serious problem in Oregon and that Oregon needs to expand access to drug treatment.

(b) The people of Oregon further find that a health-based approach to addiction and overdose is more effective, humane and cost-effective than **criminal** punishments. Making people **criminals** because they suffer from addiction is expensive, ruins lives and can make access to treatment and recovery more difficult.

(2)(a) The purpose of this Drug Addiction Treatment and Recovery Act of 2020 is 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.

(b) It is the policy of the State of Oregon that health assessment, treatment and recovery services for drug addiction are available to all those who need and want access to those services.

(3) The provisions of this Act shall be interpreted consistently with the findings, purposes and policy objectives stated in this section and shall not be limited by any policy set forth in Oregon law that could conflict with or be interpreted to conflict with the purposes and policy objectives stated in this section.

EXPANDING TREATMENT AND SERVICES

Section 2. Grants Program. (1) The Oversight and Accountability Council shall oversee and approve grants to implement Addiction Recovery Centers and increase access to community care, as set forth below.

(2) **Addiction Recovery Centers.** The Oversight and Accountability Council shall provide grants to existing agencies or organizations, whether government or community-based, to create Addiction Recovery Centers for the purposes of immediately triaging the acute needs of people who use drugs and assessing and addressing any on-going needs thorough intensive case management and linkage to care and services.

(a) Grants must be disbursed such that at least one Center shall be established within each existing coordinated care organization service area. Centers within each existing coordinated care organization service area shall be established and operational by October 1, 2021.

(b) Grantees must be able to provide or display an ability to provide the following services to any Oregon resident who requests it, in order to receive funding as an Addiction Recovery Center:

(i) **24/7 Triage:** Centers shall assess a client's need for immediate medical or other treatment shortly upon the client's arrival to determine what acute care is needed and where it can be best provided. Centers shall provide this service twenty-four hours a day, seven days a week, 365 days a year.

(ii) **Health Assessment:** Centers shall conduct a comprehensive behavioral health needs assessment for each client, including a substance use disorder screening by a Certified Alcohol

MARION COUNTY

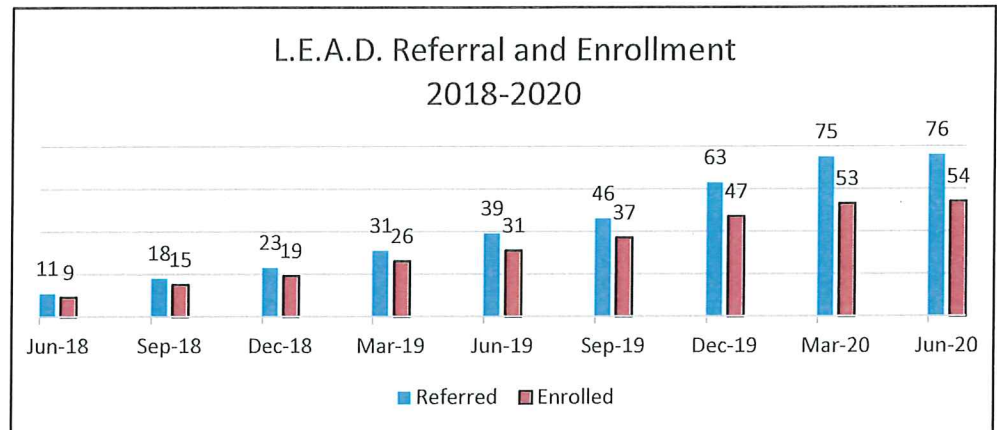
LAW ENFORCEMENT ASSISTED DIVERSION (L.E.A.D.)

L.E.A.D. is a pre-booking diversion program that allows officers to use discretion to divert individuals AWAY from the criminal justice system and TOWARD community-based intensive case management. For an in-depth look at the design of the L.E.A.D. model, visit

<https://www.leadbureau.org/>.

Program Updates

- 75 Law Enforcement Officers Trained
- 4 Law Enforcement Agencies Participating
- 4 L.E.A.D. Navigators
- 57 Arrest Diversions
- 19 Social Referrals



All Referrals (76)

98% Struggle with Substance Abuse /Addiction

83 % Unemployed

59% Unsheltered

49% Have Children

All Enrolled (54)

70% Actively Participating

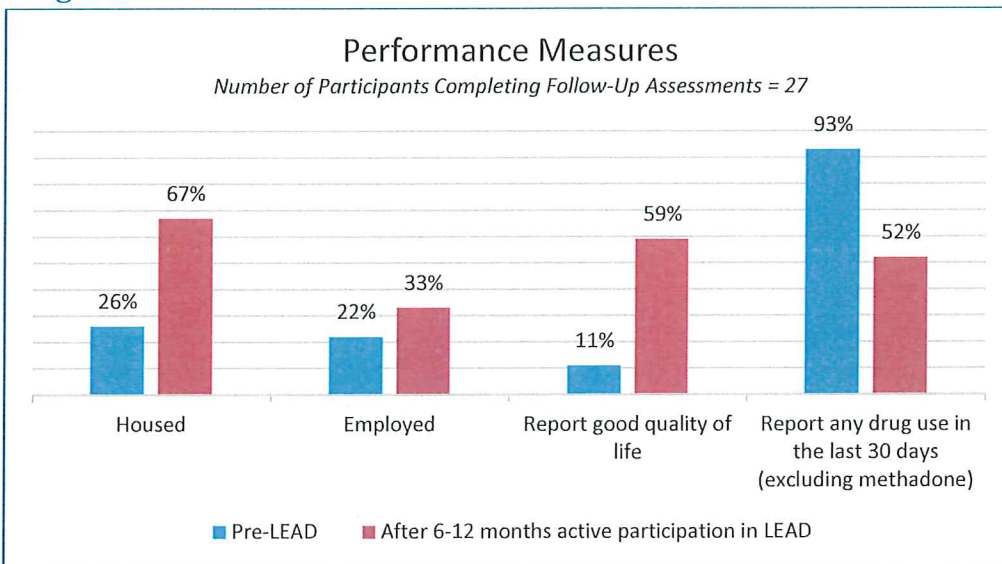
6% Alumni*

53% Engaged in Treatment

24% Inactive

*Clients no longer in need of intensive case management or have transferred to another L.E.A.D. program outside of Marion County.

Progress



¹ "Housed" is defined as being in permanent or transitional housing.

² "Employed" is defined as pursuing self-sufficiency through part-time or full-time employment, military service, disability, school, or retirement.




³ "Good Quality of Life" is defined as good or excellent quality of life, as reported by the participant.

⁴ Full list of included drugs: alcohol to intoxication, heroin, opiates, barbiturates, sedatives, cocaine, amphetamines, cannabis, hallucinogens, inhalants.

EXHIBIT 3

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Success

| | | | | |
|---|---|--|--|--|
| <p>6</p> <p>Regained custody of their children!</p> |  | <p>9</p> <p>Celebrating one year of sobriety!</p> |  | <p>3</p> <p>Taking leadership roles to help others who are struggling</p> |
|  | <p>A client who is a survivor of domestic violence believes she wouldn't be here today without the support of the L.E.A.D. program. She is grateful to everyone who helped her escape the violent, abusive relationship and the assistance she is receiving through this program to get back on her feet again.</p> | | | |

Client Spotlight – Greg*

Before Greg came into the program, he believed his future was either prison or death on the streets. Greg was homeless, unemployed, addicted to Meth, and estranged from his family. In February, 2019, Sgt. Vidrio from the Salem Police Department contacted Greg coming out of a known drug house. Greg was reluctant to give up his name, as he knew he had a warrant and did not want to go back to jail. In a turn of events, Sgt. Vidrio instead offered a hamburger and an opportunity to enter L.E.A.D. When asked why, Sgt. Vidrio stated, *"I could just tell he really wanted help. He wasn't happy with the path his life was on, but he didn't know how to change it."*

When he first started the program, Greg identified some of his highest needs as food, clothing, shelter, treatment, and employment. Sixteen months later, Greg is fully employed (although his hours had to be cut due to COVID-19) and he also serves as house manager of the transitional living facility where he lives, helping others stay on course. Greg is in the best physical and mental health he has been in years, celebrating his first year of sobriety after successfully completing treatment. Greg is learning how to manage past trauma from time in prison and on the streets. He is definitely happy with the path his life is on now.

Client Spotlight – Wendy*

Wendy's addiction to heroin took her down a path that no mother ever wants to go. Wendy was living in her car with her three children when she was arrested in a Salem parking lot. The kids were turned over to DHS and placed into temporary foster care. It was a chance encounter with Deputy Hickam from the Marion County Sheriff's Office that brought Wendy into the L.E.A.D. program through a social referral in March, 2019.

Wendy is now 1 year sober. She graduated from fostering attachment court, paid off her court fines, got her driver's license back, was reunited with her children and is now preparing to move into her own place. She most recently started a peer support group for those in fostering attachment court to help families going through a similar situation. In the future, Wendy would like to go back to school to help others who are struggling with addiction.

These results came from a combination of **arresting officers** recognizing/referring clients into L.E.A.D., **the prosecutor's office/court system** working with individuals to help unravel past mistakes, **the navigator** walking alongside to help break down client barriers, and **the client** being ready and willing to take steps toward change -- trusting those involved in the L.E.A.D. program truly want them to succeed.

This is what the L.E.A.D. program did for Greg and Wendy. This is what the L.E.A.D. program is doing for many others just like them. **Thank you to all the partners who make this program a success.**

**Names changed to protect privacy*

For questions on this fact sheet or other program data related to Marion County L.E.A.D., contact **EXHIBIT 3** Program Coordinator

Lisa Miller at 503-584-6209 or lmiller@co.marion.or.us.

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In 2017, Oregon began a systematic process in addressing our addiction epidemic that was largely driven by people but included wide stakeholder participation. The core components of Oregon's Recovery Movement are below.

1. Get everyone together to collaborate in solving the problem. Addiction touches everyone and everything. This includes children, workplaces, schools, roads, health care, and criminal justice entities. It is only practical that everyone would be involved in fixing the problem. No one should be left behind in providing input and insight. ***Oregon Recovers has meaningfully engaged thousands of people and community partners all over Oregon in the last three years.***

2. Get Oregon elected officials and governmental agencies to support the communities' efforts. Without elected officials and proper policies, creating an adequate system of care would be impossible. In fact, it would likely just lead to simply, and irresponsibly throwing money at a problem. **Oregon Recovers has established working relationships with legislatures and government employees in creating a strategic plan to solve Oregon's addiction crisis. The plan consists of these basic features:**
 - a. Find out how bad the problem is and what services are needed to help them. Oregon simply needed to answer the following questions. How many people have an addiction? Who are they? What are their needs? And, what evidence-based services will help them get into recovery?
 - b. Research what services are currently available, how much they cost, and how effective they are. In doing this, Oregon is able to minimize financial waste by responsibility funding the services are missing, maintaining those that are effective, and not duplicating efforts.
 - c. Find out how much it would cost to insure all Oregonians' could assess the services they needed to recover.
 - d. Find a way to pay for the services. The truth is that Oregon has one of the lowest alcohol taxes in America while alcohol is estimated to kill between 3-5 people Oregon a day. The plan being developed will be linked to new revenue paid for by alcohol and will not require revenue to be taken from other priorities like school or health care.
 - e. Create a means to track the effectiveness of the plan and adjust resources as needed throughout time.

3. Lastly, implement the plan by passing a widely support bipartisan bill in the 2021 legislative session.

Revised Ballot Measure

Ballot Measure XX mandates the establishment of at least one addiction recovery center in each existing coordinated care organization service area in the state. The centers triage the acute needs of persons who use drugs, provide connections to other services and offer peer support. The measure requires that services provided by the centers be free of charge and allows service providers to seek reimbursement from insurance providers. All services provided at the centers must be evidence-informed, trauma-informed, culturally responsive, patient-centered, non-judgmental, and centered on principles of harm reduction. The measure establishes the Oversight and Accountability Council appointed by the Oregon Health Authority to provide grants to existing agencies or organizations to establish the centers. The measure directs the council to oversee the centers and requires that the centers be operational by October 1, 2021. The measure requires that the authority establish a temporary telephone addiction recovery center by February 1, 2021, and terminate the temporary center by October 1, 2021.

To fund the centers, the measure requires legislative appropriations to the authority, redirects marijuana tax account balances above \$11,250,000 quarterly to the authority and dedicates to the authority any savings to the state from reductions in arrests, incarceration and supervision resulting from the measure. Current law allocates marijuana tax revenue for other uses by [state and local governments] *schools, state and local governments, the Oregon State Police, mental health and addiction services and drug abuse prevention programs*. The measure reduces the marijuana tax revenue for [other] *current* uses. The measure also requires that the Secretary of State biennially conduct a financial and performance audit of the fund established by the measure.

The measure [reduces criminal penalties for] *decriminalizes* possession of specified quantities of controlled substances [to non-criminal] *by adults and juveniles involving: heroin (1 gram or less), cocaine 2 grams or less), methamphetamine (2 grams or less), MDMA (less than 40 user units), LSD (less than 40 user units), psilocybin (less than 12 grams), methadone (less than 40 user units) and oxycodone (less than 40 user units)* to Class E violations. The measure creates a non-criminal Class E violation for which the maximum punishment is a \$100 fine or completion of a health assessment with an addiction treatment professional. The measure also reduces penalties for possession of controlled substances, other than possession constituting a commercial drug offense, in amounts greater than specified quantities, to a misdemeanor with less than a year imprisonment, a \$6,250 fine, or both *for adults and juveniles*.

The measure creates a rebuttable presumption that a person applying for an occupational or professional license or other authorization, and who was convicted of a controlled substance Class E violation, is not unfit to hold the license or other authorization.

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EXHIBIT 6
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Funding impact based on 2019 tax revenue

In 2019 around \$102,000,000 was distributed under the present distribution method:

| | | |
|---|-----|------------|
| States, Counties & Cities | 20% | 20,400,000 |
| Schools | 40% | 40,800,000 |
| Mental Health and Addiction Services | 20% | 20,400,000 |
| State Police | 15% | 15,300,000 |
| Drug Prevention | 5% | 5,100,000 |

Under the proposed new law, the \$102,000,000 would be distributed as follows:

| | | |
|---|--------|------------|
| New Fund | 55.88% | 57,000,000 |
| Present recipients: | 44.12% | 45,000,000 |
| State, Counties etc. | 20% | 9,000,000 |
| Schools | 40% | 18,000,000 |
| Mental Health and Addiction Services | 20% | 9,000,000 |
| State Police | 15% | 6,750,000 |
| Drug Prevention | 5% | 2,250,000 |