

# FIX & IMPROVE

---

## MEASURE 110

December 19, 2023

Dear Lawmaker:

We represent a coalition of Oregonians, supported by an overwhelming majority of voters, who want to fix and improve Measure 110 so that we can deliver on the original promise of the law. Our goal is more treatment, for more people, more quickly. This is an urgent issue that demands immediate attention as people are dying and communities are struggling across our state.

According to the CDC, overdose deaths in Oregon rose by an estimated 28% over last year, and we are ranked first in the nation for growth in youth overdose deaths.

Our sincere hope is that the legislature addresses this issue in the upcoming February short session. But if the legislature fails to take sufficient and meaningful action, we will bring a ballot measure to the voters in November.

### OUR PROPOSAL

In Initiative Petition 47 (IP 47), we propose a comprehensive and balanced solution that addresses the shortcomings of Measure 110 while preserving important aspects such as funding and prioritization of treatment. We do not seek to simply repeal Measure 110 and return to the drug policies that existed in 2019. Rather, our desire is to establish a new law that Oregonians can proudly say represents an evidence-based approach that balances both public health and public safety considerations and, most importantly, one that works.

Our proposal is [available here](#) for your review. We believe IP 47 is a foundation upon which the legislature can fix and improve Measure 110. As you are aware, there are limitations regarding the scope of what may be included in a ballot measure. We urge you to also review the thoughtful proposal [available here](#) advanced by the League of Oregon Cities, Oregon Law Enforcement, and the DA's Association.

### BANNING PUBLIC USE FALLS SHORT

There is no "quick fix" to address the shortcomings of Measure 110. The complex challenge of addiction requires a multi-faceted approach to address a variety of issues, including drug use, drug trafficking, programs to ensure treatment, and funding.

Many have called for simply criminalizing "public use" of drugs as a solution. While we believe making public use a crime can be *part* of a comprehensive approach, we know that public use

criminalization alone will fall short of accomplishing the goal of saving lives and communities. It is a reactionary step that will accomplish little more than hiding the problem from immediate view. Tragically, we fear that public use criminalization alone will drive drug use into the shadows and increase overdose deaths in a way that will disproportionately harm vulnerable members of our community, including those who are experiencing homelessness and those who are members of historically marginalized communities. Additionally, public use criminalization creates an impractical “catch in the act” standard for law enforcement that will make actual enforcement difficult.

If the goal of the legislature is to hide the problem from the public so that people don’t “see” actual drug *use* occurring, then public use criminalization alone may accomplish that result. But if the desire is achieving meaningful change that will save lives and communities and will reduce not only drug use but also the negative consequences that flow from drug use (e.g., overdose deaths, crime, homelessness, negative community impact, etc.), then comprehensive law enforcement solutions are necessary.

## **JUSTICE SYSTEM CAN SAVE LIVES**

The infrastructure of the justice system, through its use of rewards and consequences, is uniquely situated to ensure more people engage in treatment, which will save both lives and our communities.

Our proposal seeks to use the justice system tools and resources *only to the extent minimally necessary* to ensure people engage in treatment. This means making drug possession a crime again but keeping it at the misdemeanor level and building in multiple opportunities for diversion and expungement.

Much of the rhetoric from those defending Measure 110 flows from an ideological belief that law enforcement and the justice system should have no role in addressing addiction. We disagree. And so do many of the experts who presented to the Joint Committee on Addiction and who spoke at the Attorney General’s recent Fentanyl Convening. The complexity of the challenge requires the use of all our resources to address it, including law enforcement, public health, and health care systems.

Our goal is to fix Measure 110 and save lives by using law enforcement and the justice system to steer people into treatment and recovery. Our proposal draws inspiration from successful drug court models and innovative community-based programs like the LEAD pre-booking diversion program.

In a stark difference from other states, Oregon has not sent people to prison for drug use or possession since at least the 1980s. But people with substance use disorder often end up in jail or prison because they commit more serious crimes while experiencing addiction. Results from LEAD-style programs show that our proposal will not only save lives now by reducing overdose

deaths, but it will also save lives by providing early intervention to people to divert them away from using drugs and avoid long-term life, health, and criminal justice consequences.

Although our proposal favors recriminalizing possession of lethal street drugs to a class A misdemeanor, our measure attempts to mitigate the impact of justice system engagement by providing diversion alternatives and expungement.

### **THREE JUSTICE SYSTEM “OFF-RAMPS”**

Our proposal provides three opportunities for Oregonians who are using or possessing drugs to engage in supervised treatment and avoid a criminal conviction or time in jail. Each is a new provision that was not part of Oregon law before Measure 110 and would represent a step forward toward a more progressive and effective approach to drug policy.

#### **Opportunity 1: Pre-Booking Diversion (also sometimes called “deflection”)**

Our proposal provides funding for cities and counties to develop pre-booking diversion programs. Under these programs, if a police officer or non-law enforcement outreach worker encounters someone using or possessing drugs, they may offer that person an opportunity to engage in treatment immediately and, if they do so successfully, to avoid the entire criminal justice system process. A person is not arrested and never sees the inside of a jail cell or courtroom. There is no criminal record because the criminal process never began.

#### **Opportunity 2: Conditional Discharge Diversion**

If a person does not wish to engage in pre-booking diversion or attempts but fails to engage successfully, they are eligible for a second diversion opportunity called “conditional discharge diversion.” Like DUI diversion, persons charged with drug possession or use would be allowed to engage in a court-supervised diversion program with required drug treatment. If they complete this diversion program successfully, they do not receive a criminal conviction.

#### **Opportunity 3: Supervised Probation and Automatic Expungement**

If a person does not wish to engage in conditional discharge diversion, or if they attempt but fail to engage successfully, they may be convicted of a misdemeanor for drug use or possession. Following that conviction, they will be ordered to engage in supervised probation with required drug treatment. If they complete their supervised probation and treatment successfully, their misdemeanor conviction will be automatically (erased) from their record. If they do not complete successfully, then they will need to wait the standard period (typically three years) before their misdemeanor conviction may be expunged.

Our proposal seeks to balance the needs of individuals with substance use disorder while mitigating the harm to communities caused by habitual users and their suppliers. We are strongly supportive of solutions that intervene early and often, requiring people to consider treatment and sobriety. Measure 110 has demonstrated that without those rewards and consequences, the system will not work.

## **GUARANTEED FUNDING FOR SERVICES**

One of the most important and successful features of Measure 110 is the dedication of cannabis tax revenue to fund addiction services. Across Oregon, many organizations are building capacity and providing meaningful treatment, peer support and recovery services. We strongly believe they need continued funding and support. However, cannabis tax revenue is unstable and may decrease, which threatens this important funding source.

Therefore, our proposal includes a guaranteed funding floor for prevention, treatment, and recovery services. Based on the severity of Oregon's addiction and overdose crisis, it is clear current Measure 110 money alone will be insufficient to meet this challenge. Put simply, we believe that without our proposed guaranteed funding floor, the primary aspect of Measure 110 that works well (dedicated funding for addiction services) is in jeopardy. We therefore encourage you to find additional sources of revenue, blended streams of federal, state, and local funding, to address this challenge.

## **ALL EYES ON OREGON**

Decriminalizing hard drugs like fentanyl, meth and heroin did not create Oregon's current problems with drugs, homelessness, mental health, and crime. But it is making these challenges more severe and these problems worse. Under Measure 110, more lives have been lost to overdose and addiction, communities are less safe, and Oregon's national and international reputation has been tarnished. For the first time in decades, there is a flight of residents, tourists, and capital investment from Oregon and Portland in particular. The recent recommendations from the Governor's Downtown Task Force are an acknowledgment of the severity of the problems and underscores the need for major policy changes to transform both the reality and perception of Oregon.

We strongly urge you to embrace the comprehensive policy reforms reflected in IP 47, including the criminalization of the use and possession of dangerous street drugs, and to take meaningful and sufficient action this February short session. The lives of people and communities throughout Oregon struggling with the impact of addiction and its consequences are at stake.

Regards,

Max Williams  
Former Legislator

Kevin Barton  
District Attorney for Washington County