

April 1, 2024

The Honorable Rob Wagner
President of the Senate
S-201 State Capitol
Salem, OR 97301

The Honorable Julie Fahey
Speaker of the House
H-269 State Capitol
Salem, OR 97301

RE: House Bill 4002

Dear President Wagner and Speaker Fahey,

Today I am signing House Bill 4002. I write this letter to address potential issues regarding implementation of the bill.

House Bill 4002 is an omnibus public safety and behavioral health bill. House Bill 4002 makes changes to the criminal consequences for possession of a controlled substance (PCS), the criminal standard for delivery of a controlled substance, and the criminal consequences for delivery of a controlled substance within certain spaces. The bill also establishes task forces concerned with behavioral health, establishes a behavioral health workforce program, and reduces barriers to consumer access to substance use disorder treatment.

When paired with related programmatic and behavioral health investments in Senate Bill 5204, the bill represents a package that encourages treatment first, while balancing the need for accountability.

The public had significant interest and concern regarding the recriminalization of possession of a controlled substance and related criminal justice offramps proposed by House Bill 4002. I will focus my comments on these policies found in sections 34 through 56 of the bill.

On September 1, 2024, a new misdemeanor crime of possession of a controlled substance will be available for drug enforcement use. House Bill 4002 provides three pathways to avoid incarceration for individuals who possess small amounts of a controlled substance by encouraging pre-arrest deflection, providing conditional discharge upon criminal justice interaction, and pursuing formal probation. If all three options fail and an individual is revoked, incarceration with eligible release for treatment is an option. Finally, the bill provides conditions for sealing or expunging records related to individual possession of a controlled substance.

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Success of this policy framework hinges on the ability of implementing partners to commit to deep coordination at all levels. Prior to signing this bill, I met with leaders from the Oregon Judicial Department (OJD), Oregon Public Defense Commission (OPDC), Criminal Justice Commission (CJC), Department of Corrections (DOC), Oregon District Attorneys Association, Association of Oregon Counties, Oregon Association Chiefs of Police, Oregon State Sheriffs' Association, and Association of Community Mental Health Programs. Additionally, my office met with the Oregon State Police.

I strongly encourage the inclusion of all implementing parties as a part of the design of deflection programs authorized by House Bill 4002. Courts, Oregon State Police, local law enforcement, defense attorneys, district attorneys, and local behavioral health providers are all critical to these conversations and necessary partners to achieve the vision for this legislation. We must balance local programmatic design with the need to achieve statewide consistency and standardization where appropriate. I am pleased to hear that the implementing partners my office has met with broadly recognize this need.

House Bill 4002 encourages law enforcement to prioritize pre-arrest deflection. Committing to this approach is one strategy to reduce collateral consequences of justice system involvement and can help mitigate the racial and ethnic disparities this legislation is projected to create. For example, pre-arrest deflection for all standalone PCS charges can support a simplified sealing process later by reducing the number of records created and, based on historical data, could potentially reduce the disparate impact of criminalization on communities of color. Simplification and standardization of court and other administrative processes will help reduce confusion and support successful completion of programs necessary to achieve future expungement.

We must acknowledge that Oregon's number of unrepresented persons will likely increase due to House Bill 4002. I am appreciative of the Oregon Public Defense Commission's efforts to reduce the population of those who are unrepresented while in custody. I will continue to be an engaged partner as we identify resources and strategies to make progress on this shared concern, especially as we prepare for the executive branch to absorb OPDC in the future.

Implementation of House Bill 4002 will be complex, but committing to clarity and coordination is one way to improve its likelihood of long-term success. Therefore, I direct the Criminal Justice Commission to leverage their full authority for deflection programs to use a standardized certification document that is easily identifiable as evidence of a person's successful completion. CJC must also use the tools available to them to encourage and prioritize the deep collaboration I believe is necessary for this framework to work.

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I also direct the CJC to collaborate with OPDC to assist the OPDC in forecasting the potential inflow of cases stemming from House Bill 4002. CJC will do this by sharing deflection program implementation timelines as well as program data, trends, and outcomes.

The Department of Corrections shares my expectation that implementation of House Bill 4002 cannot be business as usual. DOC will exhaust non-jail opportunities for misdemeanor sanctions through rulemaking and work to promote a consistent approach for supervision when an individual is released to treatment. Rulemaking will address how to provide supervision during the treatment period.

My staff will work directly with the CJC to ensure the data counties are funded to collect serve the overall goals of this bill. Data collected must tell a complete picture of how individuals are interacting with the criminal justice system. Quality and consistency in data collection both within and across programs will allow for active monitoring by my staff and the CJC of program successes and challenges, while also providing the CJC with the ability to identify and track disparities, and work with county partners to implement strategies to avoid disparate outcomes.

I have also directed my staff to collaborate with local partners on the upcoming implementation and training symposium on May 9th to ensure that the need for culturally and linguistically specific programming is adequately represented and understood.

As Governor, I understand that a continuum of care in our communities is foundational to this work. I am committed to addressing capacity gaps in the treatment continuum, and my office will focus on successful completion of funded projects. My office is actively working on strategies to develop the behavioral health workforce needed in our state, including entry into the field, timely certification or licensure, reducing vacancies, and increasing retention in partnership with communities statewide. The Legislature's continued support and funding for this work will be necessary in years to come.

Finally, my office is committed to supporting the ongoing investments needed to ensure sustainability of the work that House Bill 4002 requires. I urge you to provide counties who have committed to deflection programs with the confidence that new deflection programs will be sustained.

Sincerely,

Governor Tina Kotek