

February 20, 2024

To: Governor Tina Kotek  
Speaker Dan Rayfield  
Senate President Rob Wagner

Re: Request for Racial and Ethnic Impact Statement on HB 4002

Governor Kotek, Speaker Rayfield, and Senate President Wagner,

We are writing to express our significant concerns regarding the anticipated language in HB 4002. We ask that you, as Oregon's political leaders, call for a Racial and Ethnic Impact Statement (REIS) on HB 4002.

The REIS, passed in 2013 via SB 463, requires the Oregon Criminal Justice Commission to prepare a REIS that describes the effects of proposed legislation on the racial and ethnic composition of individuals impacted by the criminal legal system. A REIS cannot be conducted without the request of one member of the Legislative Assembly from each major political party. The Oregon Justice Resource Center (OJRC) urges you to use your positions to publicly call for a REIS on HB 4002.

Subject matter experts, attorneys, and community leaders have all pointed to historical data and firsthand accounts about how the rollbacks incorporated in HB 4002 will disparately impact vulnerable populations, especially people and communities of color. A primary concern of OJRC is the return to *Boyd* prosecutions<sup>1</sup> and the rollback of *State v. Hubbell* (2023), which is included in HB 4002.

A comprehensive data analysis of the 62,403 criminal cases involving delivery convictions from 1990 to 2021 suggests that *Boyd* disparately affected Black and Hispanic<sup>2</sup> people: compared to White people, Black people were nearly five times as likely to be convicted of *Boyd* deliveries, while Hispanic people were twice as likely to be convicted.<sup>3</sup> Further analysis also revealed that Hispanic people were more often convicted of delivery offenses with the highest crime seriousness levels of '8,' '9,' or '10'; Black people were more often convicted of level '6' delivery offenses; and White people were more often convicted of delivery offenses with the lowest crime seriousness level of '4.'

*Boyd* prosecutions are just one piece of the puzzle. Recriminalization of drug possession will result in the same disparities that harmed communities before Measure 110 passed. Statewide,

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<sup>1</sup> In 1988, the Court of Appeals ruled in *Boyd* that people could be convicted of delivery of a controlled substance even when they had not provided drugs to anyone but where the circumstances were deemed to be incriminating, such as having drugs already divided into smaller baggies.

<sup>2</sup> We use the term "Hispanic" because it is used by the Oregon Criminal Justice Commission and the 2010 United States Census, which were used in our analysis.

<sup>3</sup> For more detail on our review findings, see Brief for Respondent as Amicus Curiae, *State v. Hubbell*, 371 Or 340 (2023), <https://ojrc.info/s/Amended-Final-OJRC-OCDLA-HUBBELL-BRIEF-1.pdf>.

Black Oregonians had twice the rate of convictions of their White counterparts for possession of methamphetamine, heroin, and cocaine even though Black and White people use and sell drugs at comparable rates.<sup>4</sup> These racial disparities are even more concerning when considering the dangerous, and potentially deadly, impacts of drug-related incarceration, which pose unique and specific harms to community members. Drug-related incarceration is linked to surges in overdose rates, higher rates of suicide, and the spread of diseases.<sup>5 6 7 8</sup>

There is little doubt that HB 4002 will have a disparate racial and ethnic impact on Oregonians upon passage and implementation. Based on the devastating and long-lasting harm that the failed War on Drugs has had on this nation and on Oregonians, legislators, and the public deserve to know the extent of the future impact of the bill. Therefore, **we strongly urge you to call for a REIS on HB 4002. Importantly, we ask that you commit to *not* passing any legislation unless a REIS has been completed.**

Oregonians of color need to know, without equivocation, that you stand for racial justice and the equitable treatment of all Oregonians. Passing legislation that historical evidence clearly shows will have a disparate impact on Oregonians of color without a REIS would only affirm to these communities that they hold a second-class status in Oregon, and would contradict the values protected by the U.S. and Oregon Constitutions.

Thank You,

Bobbin Singh  
Founding Executive Director  
Oregon Justice Resource Center

Zach Winston  
Director of Policy and Outreach  
Oregon Justice Resource Center

Ben Haile  
Senior Counsel  
Civil Rights Project  
Oregon Justice Resource Center

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<sup>4</sup> “Oregon study finds racial disparities in drug convictions”, Associated Press, December 2016, <https://www.seattletimes.com/seattle-news/law-justice/oregon-study-finds-racial-disparities-in-drug-convictions/>.

<sup>5</sup> Gan, Kinner, Nichols, et. al., “Risk of overdose-related death for people with a history of incarceration”, Society for the Study of Addiction, Oct. 13, 2020, <https://onlinelibrary.wiley.com/doi/full/10.1111/add.15293>.

<sup>6</sup> Hartung, McCracken, Nguyen, et. al., “Fatal and nonfatal opioid overdose risk following release from prison”, Journal of Substance Use and Addiction Treatment, Volume 147, April 2023, [www.sciencedirect.com/science/article/abs/pii/S2949875923000218?via%3Dihub](https://www.sciencedirect.com/science/article/abs/pii/S2949875923000218?via%3Dihub).

<sup>7</sup> Fazel, Hawton, and Ramesh, “Suicide in prisons: an international study of prevalence and contributory factors”, The Lancet: Psychiatry, December 2017, [www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(17\)30430-3/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(17)30430-3/fulltext).

<sup>8</sup> Stone, Fraser, Lim, et al., “Incarceration history and risk of HIV and hepatitis C virus acquisition among people who inject drugs: a systematic review and meta-analysis”, The Lancet: Infectious Disease, December 2018, [www.ncbi.nlm.nih.gov/pmc/articles/PMC6280039/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6280039/).

CC: Andrea Cooper, Chief of Staff, Office of Governor Tina Kotek  
Constantin Severe, Public Safety Advisor, Office of Governor Tina Kotek  
Kimberly McCullough, Legislative Director, Office of the Attorney General  
Representative Jason Kropf, Chair of the House Committee on Judiciary  
Senator Kate Lieber, Senate Majority Leader  
Senator Floyd Prozanski, Chair of the Senate Committee on Judiciary  
Representative Ricki Ruiz, Co-Chair of the BIPOC Caucus  
Senator Winsvey Campos, Co-Chair of the BIPOC Caucus  
Ken Sanchagrin, Executive Director, Oregon Criminal Justice Commission  
Chief Justice Meagan Flynn, Oregon Supreme Court