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OREGON STATE SHERIFFS' ASSOCIATION
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Ballot Measure 110 Policy Framework

EXECUTIVE SUMMARY:

In November of 2020 voters in the State of Oregon approved Ballot Measure 110 (Drug Decriminalization and Addiction Treatment Initiative) with over 58% approval.

The Ballot Measure 110 workgroup crafted the following policy framework for all Oregon law enforcement agencies to use in creating their own policies. Each agency should determine how officer discretion is used in enforcing violations of Ballot Measure 110.

Each agency may / should determine how officer(s) within their respective departments use discretion in the enforcement of Ballot Measure 110.

PURPOSE OF POLICY:

The purpose of this policy is to ensure agency personnel have been trained on and are in compliance with Oregon's Ballot Measure 110, Drug Decriminalization and Addiction Treatment Initiative (2020), which makes personal non-commercial possession of a controlled substance no more than a Class E violation (max fine of \$100) and establishes a drug addiction treatment and recovery program funded in part by the state's marijuana tax revenue and state prison savings.

DEFINED USER AMOUNTS:

VIOLATION:

Possessing less than:

- 1 gram Heroin
- 2 grams Cocaine
- 2 grams Methamphetamine
- 40 pills of Oxycodone
- 40 tabs of LSD
- 1 gram or 4 pills of MDMA (Ecstasy)
- 12 grams of Psilocybin
- 40 units of Methadone
 - Or any amount of other Schedule 1 to 5 drugs

Charged with a:

Class E Violation

- Maximum \$100 fine, or a completed health assessment
- Failure to pay the fine will not be a basis for further penalties or for a term of incarceration

MISDEMEANOR:

Possessing amounts above those subject to a class E Violation of:

- Heroin
- Cocaine
- Methamphetamine
- Oxycodone
- MDMA (Ecstasy)
- LSD
- Psilocybin
- Methadone

Charged with a:

Class A Misdemeanor

- Maximum sentence: Fine up to \$6,250 and/or up to 364 days in a county jail

MISDEMEANOR OR FELONY:

Manufacturing, delivering, or committing a commercial drug offense.

- **A Felony:** Heroin, Fentanyl, LSD, GHB, Schedule 1 drugs
- **B Felony:** Cocaine, Methadone Schedule 2 drugs, manufacturing/delivery Methamphetamine
- **C Felony:** Ketamine, steroids, Tylenol III, Suboxone, Schedule 3 drugs
- **B Misdemeanor:** Xanax, Valium, Ambien, Schedule 4 drugs
- **C Misdemeanor:** Lomatil, Motofen, Lyrica, Schedule 5 drugs

Charged with a:

Felony or Misdemeanor

- A Felony: 20 years, \$375,000
- B Felony: 10 years, \$250,000
- C Felony: 5 years, \$125,000
- B Misdemeanor: 6 months \$2,500
- C Misdemeanor: 30 days \$1,250

SCHEDULE I

Heroin- Less than 1 gram-Class E violation

METHYLENEDIOXYMETHAMPHETAMINE (AKA MDMA, MOLLY, ECSTACY) - Less than 1 gram or less than 5 pills- Class E violation

Methamphetamine- Less than 2 grams Class E violation

Lysergic acid diethylamide- Less than 40 user units Class E violation

Psilocybin or Psilocin- Less than 12 grams Class E violation

SCHEDULE II

Cocaine- Less than 2 grams-Class E violation

Methadone- Less than 40 user units- Class E violation

Oxycodone-Less than 40 pills, tablets or capsules of a mixture or substance containing a detectable amount of oxycodone.

SCHEDULE III

Class E violation

SCHEDULE IV

Class E violation

PROCEDURES:**TRAINING:**

1. The agency will establish a training protocol / procedure to ensure that all staff is trained on the legislative changes that relate to M110 that takes effect in Oregon on February 1, 2021.
2. The agency, working within its training component, will ensure that all officers have demonstrated proficiency / knowledge of this new law, including the governmental interest of enforcing historical crimes that are now classified as violations.
3. The agency will establish a protocol / procedure dictating what report writing and/or tracking is required of staff encountering user amounts of narcotics as defined in M110.
4. This work group recommends that all Law Enforcement Officers write a police report for all violation level seizures and track that data within their organizations, whether or not enforcement action is taken in the form of a violation citation; the data could be valuable at a later date.

CITATION RELEASES:

1. A suspected offender may be released on issuance of a criminal citation if the officer has probable cause to believe that the person has committed a misdemeanor or has committed any felony that is subject to misdemeanor treatment under ORS 161.705 (reduction of certain felonies to misdemeanors) (ORS 133.055).
2. A person may not be arrested for a violation except to the extent provided by ORS 153.039 (Stop and detention for violation) and 810.410 (Arrest and citation).
3. When issuing a suspected offender a citation for violating BM110, Officer(s) shall follow their respective agencies policies for violation appearances in court within their jurisdiction.

PROPERTY AND EVIDENCE:

1. Seizure of Contraband:
 - a. All narcotics and dangerous drugs (including paraphernalia as defined by ORS 475.525(2)) shall be seized and booked separately into evidence. Regardless of the weight, all narcotics and dangerous drugs will be seized and booked into evidence even when no violation citation has been issued.
 - b. The officer seizing the narcotics and dangerous drugs shall weigh them and document the weight on the package prior to placing it into evidence.
 - c. Paraphernalia and items with trace amounts of narcotics do not require weight and can be labeled as trace amounts.
2. Packaging Narcotics:
 - a. Officers seizing narcotics and dangerous drugs shall retain the drugs in their possession until they are properly weighed, packaged, tagged, and placed into evidence. If there is sufficient quantity such as an amount that constitutes a c misdemeanor or higher, a presumptive test should be made on all suspected narcotics prior to packaging. The results of this test shall be included in the officer's report.

- b. Narcotics and dangerous drugs shall be packaged in a package of appropriate size that is available in the lab. The entering officer shall initial and date the seized container and the initials shall cover the seal. Narcotics and dangerous drugs shall not be packaged with other property.

FIELD TESTING:

1. User amounts of narcotics, as defined in BM 110 need not be presumptive tested in the field.
2. Continue to follow established policies and protocols for field-testing for amounts or circumstances that amount to a C misdemeanor or higher.

CRIME LAB PROCESSING:

1. User amounts of narcotics, as defined in BM 110, will not be sent to the crime lab for testing.
2. Continue to follow established policies and protocols for crime lab submission for amounts or circumstances that amount to a C misdemeanor or higher.

GOVERNMENTAL INTEREST:

When considering the specific governmental and public interest in the enforcement of drug related offenses, law enforcement should defer in their judgment to the investigation and use of force employed in any other traffic law violation investigation. Law enforcement officers should continue to follow state statutes and agency policies outlining their authority to use reasonable force during these investigations. As with all investigations, it is incumbent upon the law enforcement officer to weigh the totality of the circumstances, severity of the crime, officer vs. threat factors, and risk to self and others when using any force.

SEARCH AND SEIZURE:

As of 2/1/2021, Measure 110 will limit officers' authority to investigate, search, and arrest for drug possession.

INITIAL STOP FOR DRUG POSSESSION:

- **A stop for a *violation* offense requires probable cause that the suspect committed the offense.**
- **A stop for a *crime* requires reasonable suspicion that the suspect has committed that crime.**
 - PCS in the following quantities or with additional factors are criminal:
 - Heroin—one gram or more
 - 3,4 methylenedioxymethamphetamine (MDMA)—at least: 1 gram, or 5 tablets, pills, capsules
 - Methamphetamine—2 grams or more
 - Methadone—40 or more user units
 - Oxycodone—40 or more pills, tablets, or capsules
 - Cocaine—two grams or more
 - LSD—40 or more user units
 - Psilocybin or psilocin—12 grams or more
 - PCS in Schedule I or II (including the above specific drugs) *and* three or more CDO factors

EXTENSION OF A STOP; ANY UNRELATED INQUIRY REQUIRES LEGAL JUSTIFICATION:

- **Officer can ask questions and investigate a drug *violation* during an unrelated stop when:**
 - Specific, articulable facts make it *probable* that the suspect possesses drugs; and
 - Investigation is limited to the violation for which there is PC
 - Questions must be reasonably related to investigating the possession violation
 - Officer can ask for consent to search, but only for the drugs for which there is PC
- **Expansion of a stop to investigate drug *crimes* requires reasonable suspicion of that crime.**
 - PCS in specified quantities or with CDO factors (see above).
 - DUII: Questions about the presence of alcohol or drugs are reasonably related to DUII.

ABILITY TO ARREST AND TO SEARCH BASED ON VIOLATION PCS:

- **M110 does not change authority to search for *crime* evidence. But some warrant exceptions depend on a lawful arrest (which is not permitted for a violation)**
 - Most inventories of a person apply only upon an arrest
 - *Search incident to arrest* requires PC to arrest for a *crime*.
- **Plain view: authorizes a seizure of contraband from a lawful vantage point**
 - An observation made in the course of a plain-view seizure *may* support a more expanded search
- **Automobile exception applies to violation drug possession**
 - Allows search of a vehicle that was **mobile** when it was stopped only when there is **PC** that *contraband* or evidence of a crime is inside.
 - Contraband means anything the law prohibits possessing.
 - This search is **limited** to an entry to seize the contraband to which the PC relates
 - PC for commission of a drug crime does not, by itself, provide PC that drugs are in the *car*.
 - Possession of *some* drugs does not, on its own, supply PC that *more* drugs are present.
 - Intoxication, in and of itself, does not supply PC that the suspect *currently* has drugs.
 - To search for *more* drugs, there must be other facts that establish PC that *more* drugs are present.
 - o If so, you may search any area or containers that might reasonably contain those drugs.
- **PC & Exigency**
 - If an officer has PC that a subject possesses contraband and reasonably believes an exigent circumstance exists (e.g. destruction of evidence) the officer may seize the contraband.

Note: Search and seizure information authored by Oregon DOJ.

OFFICER V. COURT RESPONSIBILITY:

It is the responsibility of the officer to issue a citation into the proper court for their jurisdiction. The responsibility will then be on the court to notify the offender of all options to settle the citation, including “treatment” options as defined in the ballot language.

JUVENILE CONSIDERATIONS:

Each jurisdiction should collaborate with their local Juvenile Department, or equivalent, to outline expectations and procedures when a user amount of narcotics is seized from juvenile offenders.

COMMUNITY CORRECTIONS:

Community Corrections has provided formal probation, treatment, supervision and local control incarceration for individuals convicted of possession of a controlled substance. This work has been funded by the State, through the Department of Corrections, in the financial package commonly known as Grant-In-Aid.

A recent study by the Criminal Justice Commission and the Department of Corrections shows a decrease of approximately \$24.5 million during the 21-23 biennium due to the loss of these cases in the criminal justice system. This reduction equates to nearly 9% of the overall Grant-In-Aid package to provide supervision, sanctions, and services.

Beyond the fiscal impact, Community Corrections is evaluating the additional impacts to treatment referrals and access, as well as appropriate responses to drug usage and possession.