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### M E M O R A N D U M

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**To:** Unit A/B Deputies and Staff  
**From:** Tom Cleary and J.R. Ujifusa  
**Date:** December 17, 2020  
**Subject:** Revised Guidelines for PCS Cases

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Multnomah County voters approved Ballot Measure 110 by an overwhelming 77% margin. This sends the clear message of a strong public preference that addiction should be treated as a public health rather than criminal justice matter. Because of the strong margin of passage and the need to conserve scarce law enforcement resources during a time of intensely competing demands, the Multnomah County District Attorney's Office will immediately implement the following changes relating to the handling of the cases containing a charge of Possession of a Controlled Substance (PCS), and the impact of those changes on Unit A/B issuing practices. While the effective date of the measure is February 1, 2021, there is no justification for using law enforcement resources to conduct arrests of individuals who are unlikely to receive treatment or who would not be able to resolve their case prior to the date of the measure. As such, the following changes will be made immediately:

#### CASES RECEIVED BY UNIT A/B BUT NOT YET CHARGED:

PCS cases received as a custody, citation or direct present – deputies should initiate felony criminal charges only if the admissible evidence is sufficient to substantiate beyond a reasonable doubt the PCS case as a commercial drug offense (ORS 475.900).

If the commercial drug offense elements cannot be proven and the amount of drugs possessed is greater than the cutoff for violation treatment under BM 110, the deputy should make an issuing determination consistent with existing COVID-19 policies.

In the event that the elements for a commercial drug offense cannot be proven and the amount of drugs is below the threshold amount for issuing as a misdemeanor the deputy should issue a no complaint citing “interest of justice” as the reason. The no complaint memo should explain the reasons for the deputy’s decision to include that our office is proactively implementing the provisions of the recently approved ballot measure. After the effective date of the ballot measure, the no complaint should instruct the police officer who submitted the case to re-contact the subject and issue a citation for a Class E violation and to provide the subject with the referral to a treatment assessment as contemplated by the measure.

#### CASES CURRENTLY INDICTED AND PENDING RESOLUTION:

Single count felony PCS cases that meet the measure’s threshold amount criteria for a misdemeanor, and are not a commercial drug offense, should receive a pretrial offer as a misdemeanor. Strong consideration should be given to recommending a period of probation with a condition of substance abuse disorder evaluation and treatment if indicated. Straight time offers should only be considered if for some articulable reason treatment is not an option. Deputies should immediately review their case load and make pre-trial offers consistent with this policy. If a felony pre-trial offer of resolution has been issued that offer should be revoked, and a new offer consistent with this policy should be issued.

In cases that have multiple counts including a PCS count that meets the threshold amount criteria for a misdemeanor, and is not a commercial drug offense the PCS count should be treated as a misdemeanor in all respects when formulating an appropriate pre-trial offer of resolution on the case.

#### CASES INDICTED AND SET FOR TRIAL

In the event that a case is set for trial and the indictment charges a felony PCS that under the measure is a misdemeanor and not a commercial drug offense, that charge should be reduced to a misdemeanor regardless of whether the felony PCS is a single count or part of a multicount indictment.

#### CASES THAT HAVE BEEN ADJUDICATED AND SENTENCED

A motion to reduce a Class C felony to a Class A misdemeanor pursuant to ORS 161.705 will be considered on a case by case basis. In contemplation of a response to such a motion consideration should be given, but not limited to, the facts of the underlying case, the defendant’s criminal activity since being convicted if any and

remedial or restorative treatment engaged in by the defendant since being convicted and the extent to which access to ongoing treatment services could be impacted.

#### TREATMENT FIRST

Because of the significant resource reductions surrounding this program, and because participants have already conducted a risk evaluation bearing some similarity to the requirements of BM 110, the Treatment First population is eligible for dismissal. STOP participants are detailed in the next section.

#### STOP COURT

STOP court will continue as long as there is a sufficient population of referable cases to sustain the docket. We will work collaboratively with systems partners to explore whether referral criterion can be modified to sustain the program. Existing STOP participants are expected to complete the obligations they assumed when they entered the program.

#### LEAD

The LEAD program will continue as much as possible consistent with BM 110 and the parameters outlined above. MCDA will not accept new arrest referrals into the program.

ADDENDUM – ORS 475 AS MODIFIED BY BM110

ORS 475.752 – Prohibited Acts Generally

- Possession of a Schedule I-IV substance is now a Class E violation.
- Possession is a Class A misdemeanor if:
  - LSD – 40 or more user units
  - Psilocybin/Psilocin – 12 grams or more
- Class C felony if CDO.

ORS 475.824 – Unlawful Possession of Methadone

- Class A misdemeanor if 40 or more user units
- Class C felony if CDO

ORS 475.834 – Unlawful Possession of Oxycodone

- Class A misdemeanor if 40 or more pills, tablets, or capsules
- Class C felony if CDO

ORS 475.854 – Unlawful Possession of Heroin

- Class A misdemeanor if 1 gram or more
- Class B felony if CDO

ORS 475.874 – Unlawful Possession of 3,4-methylenedioxyamphetamine (MDMA)

- Class A misdemeanor if 1 gram or more, or five or more pills, tablets, or capsules.
- Class B felony if CDO

ORS 475.884 – Unlawful Possession of Cocaine

- Class A misdemeanor if 2 grams or more
- Class C felony if CDO

ORS 475.894 – Unlawful Possession of Meth

- Class A misdemeanor if 2 grams or more
- Class C felony if CDO

Class E Violations have been added to the ORS with this ballot measure (ORS 153.012).

Maximum fine for a Class E Violation is \$100, or in lieu of fine, a completed health assessment as specified in Section 2(2)(b)(ii) or Section 23(2) of the text of the BM.