

RESTRUCTURING CRIMINAL PENALTIES FOR PERSONAL POSSESSION

Measure 110 ended arrests for personal possession of controlled substances and implemented a new ticketing system of Class E violations. Law enforcement agencies adopted these ticket procedures differently, and many criticized the tickets and shortcomings of the waiver process.

Oregon Decriminalized Personal Possession and Instituted a New Ticket

When Measure 110 went into effect on February 1, 2021, the penalty for personal possession of controlled substances became a new, noncriminal **Class E violation**, associated with a **maximum fine of \$100**. Fines can be determined locally and are as low as \$45.

A circuit court can waive Class E violations if the defendant receives a screening to assess acute needs within 45 days of being cited. The screening can be completed by either a state-established telephone line or through a new Behavioral Health Resource Network (BHRN).

Taking no action results in a failure to appear charge. A person can receive multiple Class E violations and FTAs with no escalation, increase in penalties, or further consequences other than the outstanding fine(s).

New Tickets Presented Implementation Challenges

Developing the process for administering citations for Class E violations and waiving them through a screening phone line were some of the most immediate implementation needs. Class E violations went into effect **before local waiver and screening services were set up**. The following processes have been challenging to put in place:

- **Creating a standardized paper violation** with information on how to dismiss the ticket.
- **Communicating best practices for Class E violations to law enforcement** and encouraging buy-in.
- **Communicating the Class E violation process to the community**, including whether screening information is confidential and whether the services offered are mandatory.
- **Integrating court data systems** (circuit, municipal, and justice courts).
- **Creating a low-barrier system to waive Class E violations** (e.g., an e-file system).

Comagine Health researchers surveyed key decisionmakers in Oregon about implementing Measure 110.

Most survey participants felt that Oregon was **implementing key aspects of the restructured penalties for personal possession poorly**

Connecting people who use drugs to services 77%

Information distribution 74%

Hotline for screening 72%

Screening to clear fines 69%

Giving Class E citations 66%

Waiving Class E citations 60%

Implementation rating of **POORLY** or **VERY POORLY**



From February 2021 through November 2022 Oregon documented **3,735 Class E violations**, of which **81% resulted in conviction**. Most convictions resulted from failure to appears.

Through September 2022, Lines for Life, the crisis phone line provider, reported only **137 screenings**:

71 callers only wanted to complete the health assessment and **did not want to connect to resources**

30 were already involved in some services and **did not need additional resources**

36 were not involved in services and **requested resources**

Law Enforcement Adopted an Uneven Approach to the New Tickets

Statewide law enforcement leadership reported that **willingness to issue Class E tickets differed by agency**.

Some agencies do not issue Class E tickets

Some agencies are saying they **aren't going to issue them**. They're like, **'What's the point?'** . . . There are really no consequences—it's just another thing that . . . they can't go to jail for, that they can't go to collections for. I think someone called it [a] 'Monopoly money' citation."

“” LAW ENFORCEMENT LEADERSHIP

Some agencies issue them frequently

Some agencies are like, **'We are going to write [up] everyone we come across . . . because they either want it to succeed or don't want it to succeed.** . . . [Either] 'We're going to write a thousand of these to show that only 12 people called that number' . . . [or] "We're going to write a thousand and we're going to try to connect 1,000 people to this because it's the only thing we have now."

“” LAW ENFORCEMENT LEADERSHIP

Oregon **counties had very different rates of violations**—from **722** tickets in Josephine County (**82 in 10,000 people**) to only **341** tickets in heavily populated Multnomah County (**4 in 10,000**).

Law enforcement suggested that a **universal citation with relevant information** on Class E ticketing would improve the process for officers.

Class E violations are a **low priority** when patrolling officers are facing **more pressing challenges**

It's not that [officers] don't care. It's just that . . . **we only have limited resources** so this is not where we're going to focus. If you're already **feeling overworked and you're already feeling like this isn't going to do anything, you're not going to write that Class E violation** and then come back and do all the paperwork for it. You're just not.

“” LAW ENFORCEMENT INTERVIEWEE

The most common feedback was that **law enforcement would be more likely to give out Class E violations if they felt it would connect people to services.**

The public health side [is] . . . saying "How do we get law enforcement to buy in?" . . . I think the treatment piece has to be pulled together so you can go back to law enforcement and say, "Look, now we have something for you." Right now, there's nothing there. I think **there will be more buy-in once there is the infrastructure and treatment availability to meet the need.**"

“” PUBLIC HEALTH INTERVIEWEE

The Phone Line for Screening Had Limitations

Lines for Life was a key part of early implementation, publicizing the Class E violation process for law enforcement and people who use drugs and connecting people who were ticketed to services.

As an existing crisis phone line provider, Lines for Life had the infrastructure to set up the screening phone line right away and prioritized hiring operators with lived experience of drug use.

Due to the lack of a uniform citation for the new Class E ticket, Lines for Life created informational flyers for law enforcement and palm cards with a brief description of the screening process to be distributed with the tickets.

Lines for Life relied on an internal database of services. Interviewees outside the organization highlighted the database's **regional and service type limitations**.

Decriminalizing drugs—that's the positive. People say, 'Well, people aren't getting the ticket.' I'm like . . . That's fine. Good. **Don't criminalize [drug use], but there needs to be a way for people to access some help.** I think the big plus to me is it's been decriminalized.



POLICY/GOVERNANCE INTERVIEWEE

Nobody has bothered reaching out to people who use drugs to explain what the screening is. The mechanism of law enforcement giving out the hotline is flawed on many levels; many didn't get the number at all. Those that did don't understand that the screening is confidential and that there are no wrong answers.



SERVICE PROVIDER

Lines for Life distributed information cards to accompany Class E violations. The effort had limited reach.

CARD FRONT TEXT

Received a citation for drug possession?

Call 503-575-3769 or 541-575-3679 24/7 to schedule a free, confidential screening.

You can avoid paying the \$100 fine by completing a free health screening with Lines for Life.

BACK TEXT

What to Expect

1. We'll ask you some questions about your drug use and your health.
2. We will send you proof of your completed screening with instructions for waiving the fine.
3. We're here to support your goals, including paths to recovery.

Call # 24/7 to schedule a free, confidential screening.
More information at linesforlife.org/recoverycenter

The Process for Waiving Tickets Remains Difficult

Lines for Life had **limited ability to expedite the citation waiver process**. Staff could mail a letter to people who completed a screening to bring to court, but they could not arrange a Release of Information (ROI) to electronically file the proof of screening due to limitations around protected personal information and around communication between Oregon Health Authority (OHA) and Oregon Judicial Department (OJD).

We have two of the biggest bureaucracies in the state [OHA and OJD]. It's **legal questions** [such as] **What does the ROI look like?** . . . The biggest thing is: **How do we protect everybody?** The biggest part of this is making sure that there are no HIPAA violations... we're telling people **this is essentially a 2-part release**. You're releasing it to [the phone operator], and you're allowing them to release it to the court, and the court is going to have your information. **It's something we're working towards, but we're not there yet.**

The major barrier for dismissing citations has been **lack of participation in screening and relying on persons screened to provide verification of screening to the court**. We are working on improving those processes.

“” JUDICIAL SYSTEM SURVEY RESPONDENT

LINES FOR LIFE INTERVIEWEE



Current Process Is Difficult and Confusing for the Person Ticketed

A person who uses drugs . . .



Receives a Class E ticket from law enforcement with or without a screening information card



Calls Lines for Life and completes screening



Receives screening verification by mail



Files letter with courts and violation is waived

Recommended Improved System



Class E ticket includes screening information



Lines for Life provides screening verification directly to courts



Violation is waived

Conclusions

Many study participants criticized flaws in the Class E violation implementation process. Policy and governance participants pointed out that the violation was not an intended core focus of Measure 110, which by design decreased law enforcement interactions with people who use drugs and increased opportunities for direct outreach from service providers to people who need help.

Law enforcement participants echoed a negative view by explaining that issuing citations for Class E violations was a low priority and expressed concern that doing so would not effectively connect people to treatment or other needed services. A simplified waiver process for Class E violations is not currently in place.

The number of citations for Class E violation is currently not an adequate metric for assessing Measure 110's impacts. **Essential systems are not yet in place to inform people of violation processes, allow people to waive their violations, and help connect people to services through the Class E violation process.**

The Class E violation and fines for personal possession were unpopular with interviewees and survey participants.

Recommendations

If policymakers and advocates consider a new violation necessary, we recommend:

- Implementing a broad information campaign about the new violation, privacy protections for people who call the screening line, and process to waive the violation.
- Prioritizing an electronic filing or easy waiver system to streamline the process for people ticketed.
- Working alongside law enforcement to establish their role in connecting people to services after decriminalization.

