

Ballot Measure 110 Savings Calculation – 2019-21 Biennium

Introduction

Ballot Measure 110 was approved by Oregon voters in the November 2020 election. BM 110 reduced the penalties for most Possession of a Controlled Substance (PCS) offenses from a felony or misdemeanor to a new Class E violation, punishable with a \$100 maximum fine. This change went into effect on February 1, 2021. The Oregon Legislature enacted Senate Bill 755 (2021) to codify and amend BM 110. SB 755 directed the Department of Administrative Services (DAS) to calculate the savings to the State of Oregon from the sentence reductions in BM 110 and further directed the Department of Revenue to transfer those savings to the Drug Treatment and Recovery Services Fund. This document outlines the methodology for calculating the savings to the State of Oregon, specifically for the 2019-21 biennium.

Savings Calculation

Oregon Revised Statute 591 contains the language passed in Senate Bill 755. Section 7 subsection 1 (b) states: “The savings shall be calculated based on a comparison of the most recent biennium concluded at the time the calculation is made **and the biennium ending June 30, 2019.**” In other words, absent the passage of BM 110, felony and misdemeanor conviction rates are assumed to have continued at 2017-19 rates. The focus is on felonies and misdemeanors since these convictions resulted in probation and local control/post-prison supervision (PPPS) sentences that resulted in costs to the State of Oregon (specifically the Department of Corrections).

The Covid-19 pandemic complicates the calculation somewhat. The only felony and misdemeanor convictions occurring post BM 110 are for Commercial Drug Offenses (CDO) or sufficient quantities, what will be termed henceforth in this document as “major” convictions. Both the pandemic and BM 110 will have reduced the number of major convictions occurring in the window following the effective date of BM 110. Thus an adjustment needs to be made to the number of major convictions assumed during the last five months of the 2019-21 biennium to reflect what would have occurred absent the pandemic. For this, rates of major convictions were examined during the 2017-19 reference period, which averaged 53 convictions per month. The number of major convictions observed last five months of 2019-21 is five per month. Given that BM 110 would have some effect on major convictions, but that such convictions are still trending upward, it was decided that a reasonable proxy would be to average to two baselines.

Table 1 presents the average conviction and revocation rates for the 2017-19 reference biennium, as well as for the last five months of the 2019-21 biennium. Note that the average number of monthly felonies, misdemeanors and revocations assumed for the 2019-21 biennium totals 29 as derived above.

Table 1

PCS Convictions Per Month			
	Felonies	Misdemeanors	Revocations
2017-19	208.2	118.9	95.6
2019-21*	9.4	19.4	0
Difference	198.8	99.5	95.6

* BM 110 went into effect February 1, 2021; Currently, only commercial drug offenses or cases with sufficient quantities would qualify for a DOC sentence.

	Probation	Local Control/PPPS
Monthly Impact	198.9	195.0

The savings to the State of Oregon is simply the difference between what costs would have been without the passage of BM 110 and what they are under BM 110. Clearly, this is the cost of the implied misdemeanor and felony convictions not involving sufficient quantities. In the 2017-19 biennium, all simple misdemeanor PCS convictions resulted in a probation sentence averaging 17.9 months. In addition, felonies not associated with sufficient quantities were split nearly in half between probation sentences averaging 19.4 months and local control sentences of one month followed by a post-prison supervision sentence of twelve months. Finally, revocations also resulted in an average one-month local control stay followed by a post-prison supervision sentence of approximately twelve months.

Table 2

Calculation of Probation Savings from BM 110								
Month	Feb	Mar	Apr	May	Jun	Total	Days	Avoided
2/1/2021	-199					-199	28	-5,568
3/1/2021	-199	-199				-398	31	-12,329
4/1/2021	-199	-199	-199			-597	30	-17,897
5/1/2021	-199	-199	-199	-199		-795	31	-24,658
6/1/2021	-199	-199	-199	-199	-199	-994	30	-29,829
						-2,983		-90,282
						Day rate:	\$12.07	-\$1,089,429

Table 3

Calculation of Local Control Savings from BM 110								
Month	Feb	Mar	Apr	May	Jun	Total	Days	Avoided
2/1/2021	-195					-195	28	-5,460
3/1/2021		-195				-195	31	-6,045
4/1/2021			-195			-195	30	-5,850
5/1/2021				-195		-195	31	-6,045
6/1/2021					-195	-195	30	-5,850
						-975		-29,251
						Day rate:	\$12.07	-\$352,975

The daily capitated rate for Department of Corrections community corrections stays for the 2019-21 biennium was \$12.067. The three tables above illustrate the calculations for probation, local control (county jail) and post-prison supervision for the five months that BM 110 was in effect.

Table 4

Calculation of PPPS Savings from BM 110								
Month	Feb	Mar	Apr	May	Jun	Total	Days	Avoided
2/1/2021						0	28	0
3/1/2021	-195					-195	31	-6,045
4/1/2021	-195	-195				-390	30	-11,701
5/1/2021	-195	-195	-195			-585	31	-18,136
6/1/2021	-195	-195	-195	-195		-780	30	-23,401
						-1,950		-59,283
						Day rate:	\$12.07	-\$715,362

Summing up the savings estimates for probation, local control and post-prison supervision results in a total cost savings in community corrections of \$2,157,766.

Theoretically, BM 110 could potentially result in savings in other State of Oregon agencies. These include the Judicial Department, which runs the state’s circuit courts, the Oregon State Police and Public Defense Services Commission. ORS 591 Section 7 subsection (2) states “In making the calculations set

forth in this section, the department shall use actual data.” DAS queried the Chief Financial Office to determine whether explicit reductions were made to any of these departments’ 2019-21 Legislatively Adopted Budgets specifically in response to BM 110. With regards to the 2019-21 biennium, BM 110 did not result in tangible savings in any of the listed agencies.

Summary

For the 2019-21 biennium, DAS calculates the savings to the State of Oregon from the passage of Ballot Measure 110 to be \$2,157,766.

ORS 591 Section 6 subsection 1 states “The Department of Revenue shall credit and transfer or cause to be credited and transferred to the Drug Treatment and Recovery Services Fund the savings to the State of Oregon from the implementation of [this Act]”. Additionally, subsection 3 reads “The savings . . . shall be transferred on or before the end of the fiscal year in which the calculation is completed.”

ORS 591 Section 6 subsection 3 states “The savings as calculated in section 7, chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020)), shall be transferred on or before the end of the fiscal year in which the calculation is completed.” This would imply that the transfer referred to in the preceding paragraph would need to occur prior to June 30, 2023.