

House Bill 2602

Sponsored by Representative GOMBERG (at the request of Jerome Grant) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prescribes sentence of 58 to 130 months' imprisonment if person convicted of unlawful delivery of controlled substance that results in death of another person from use of controlled substance. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both. Requires court to grant downward departure to probation sentence when certain findings are made. Authorizes court to grant downward departure to probation sentence when other certain findings are made.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to controlled substances; creating new provisions; amending ORS 475.935; and declaring an
3 emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 3 of this 2021 Act shall be known and may be cited as Taylor's Law.**

6 **SECTION 2. Section 3 of this 2021 Act is added to and made a part of ORS 475.752 to**
7 **475.980.**

8 **SECTION 3. (1)(a) Notwithstanding ORS 475.752 to 475.980, unlawful delivery of a con-**
9 **trolled substance that results in the death of another person from the use of the controlled**
10 **substance is a Class A felony.**

11 **(b) Each person who unlawfully delivers a controlled substance that results in the death**
12 **of another person from the use of the controlled substance is criminally liable under this**
13 **subsection, regardless of whether the deceased person received the controlled substance di-**
14 **rectly from the person.**

15 **(c) An unlawful delivery of a controlled substance is considered to result in the death of**
16 **another person from the use of the controlled substance if the use of the controlled sub-**
17 **stance was a factor in causing the death of the other person.**

18 **(2)(a) When a person is convicted of the unlawful delivery of a controlled substance, and**
19 **the unlawful delivery resulted in the death of another person from the use of the controlled**
20 **substance, the court shall sentence the person to a term of incarceration ranging from 58**
21 **months to 130 months, depending on the person's criminal history.**

22 **(b) When the court sentences a person under this section, the court shall use crime**
23 **category 10 of the sentencing guidelines grid of the Oregon Criminal Justice Commission, and**
24 **shall determine the sentence by using the criminal history scale of the sentencing guidelines**
25 **grid.**

26 **(c) In determining the criminal history for a person to be sentenced under this section,**
27 **a prior conviction for unlawful delivery of a controlled substance is a person felony, as that**
28 **term is defined in the rules of the commission.**

29 **(d) Notwithstanding ORS 161.605, the court shall impose the sentence described in this**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 subsection, and may not grant a downward dispositional departure or a downward durational
 2 departure under the rules of the commission, except as provided in subsection (3) of this
 3 section.

4 (e) Notwithstanding paragraph (d) of this subsection, the court may impose a sentence
 5 other than the sentence described in this subsection if the court imposes a longer term of
 6 incarceration that is otherwise required or authorized by law.

7 (f) A person sentenced under this subsection may not receive a reduction in the term of
 8 incarceration for appropriate institutional behavior that exceeds 20 percent of the sentence
 9 imposed. The person is not eligible for transitional leave under ORS 421.168 or any other re-
 10 duction in the term of imprisonment.

11 (3)(a) The court shall grant a downward dispositional departure under the rules of the
 12 commission, and impose as a sentence a term of supervised probation, if the court finds by
 13 clear and convincing evidence that:

14 (A) The other person whose death resulted from the use of the controlled substance was
 15 a family or household member or friend of the person, and on at least one occasion prior to
 16 the use that resulted in the death of the other person, used a controlled substance with the
 17 person;

18 (B) There was no consideration;

19 (C) The person made good faith efforts to assist the state in identifying individuals from
 20 whom the person obtained the controlled substance and cooperate with the prosecution of
 21 those individuals; and

22 (D) The person has been diagnosed with a substance use disorder by a court-approved
 23 assessor.

24 (b) The court may grant a downward dispositional departure under the rules of the
 25 commission, and impose as a sentence a term of supervised probation, if the court finds by
 26 clear and convincing evidence that:

27 (A) The primary motivation of the delivery of the controlled substance was to support
 28 the person's use of the controlled substance;

29 (B) The person made good faith efforts to assist the state in identifying individuals from
 30 whom the person obtained the controlled substance and cooperate with the prosecution of
 31 those individuals;

32 (C) The person has been diagnosed with a substance use disorder by a court-approved
 33 assessor; and

34 (D) At the time of sentencing, the person has no prior convictions for delivery of a con-
 35 trolled substance or for a person felony, as that term is defined in the rules of the commis-
 36 sion.

37 (c) A person sentenced to probation under this subsection shall, in order to successfully
 38 complete the probationary sentence, complete a treatment program at the assessed level of
 39 care recommended by a treatment provider approved by the court.

40 (d) If the court revokes the probation of a person sentenced under this subsection, the
 41 court shall impose the term of incarceration indicated by the person's criminal history as
 42 described in subsection (2) of this section. The person may not receive a reduction in the
 43 term of incarceration for appropriate institutional behavior that exceeds 20 percent of the
 44 sentence imposed. The person is not eligible for transitional leave under ORS 421.168 or any
 45 other reduction in the term of imprisonment.

1 (4) **As used in this section:**

2 (a) **“Controlled substance” has the meaning given that term in ORS 475.924.**

3 (b) **“Family or household member” has the meaning given that term in ORS 135.230.**

4 **SECTION 4.** ORS 475.935 is amended to read:

5 475.935. (1) Except as provided in ORS 475.900, 475.907 or 475.925 **or section 3 of this 2021**
6 **Act**, when the court sentences a person convicted of delivery of methamphetamine under ORS
7 475.890 or 475.892, the presumptive sentence is 19 months of incarceration, unless the rules of the
8 Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has two
9 or more previous convictions for any combination of the following crimes:

10 (a) Delivery or manufacture of methamphetamine under ORS 475.752, 475.886 or 475.890;

11 (b) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS
12 475.888, 475.892 or 475.904; or

13 (c) Possession of a precursor substance with intent to manufacture a controlled substance under
14 ORS 475.967.

15 (2) The court may impose a sentence other than the sentence provided by subsection (1) of this
16 section if the court imposes:

17 (a) A longer term of incarceration that is otherwise required or authorized by law; or

18 (b) An upward durational departure sentence that is authorized by law or the rules of the
19 Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons.
20 Unless otherwise authorized by law or rule of the Oregon Criminal Justice Commission, the maxi-
21 mum departure allowed for a person sentenced under this subsection is double the presumptive
22 sentence provided in subsection (1) of this section.

23 (3) As used in this section, “previous conviction” means:

24 (a) Convictions occurring before, on or after August 16, 2005; and

25 (b) Convictions entered in any other state or federal court for comparable offenses.

26 (4)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have
27 occurred upon the pronouncement of sentence in open court. However, when sentences are imposed
28 for two or more convictions arising out of the same conduct or criminal episode, none of the con-
29 victions is considered to have occurred prior to any of the other convictions arising out of the same
30 conduct or criminal episode.

31 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
32 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open
33 court of the suspended imposition of a sentence.

34 (5) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

35 **SECTION 5. This 2021 Act being necessary for the immediate preservation of the public**
36 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
37 **on its passage.**

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