

HB 4135 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Whitney Perez, LPRO Analyst

Meeting Dates: 2/3

WHAT THE MEASURE DOES:

Expands definition of “deliver” or “delivery” to include the possession of a controlled substance with intent to transfer to another person. Applies to conduct occurring on or after the effective date.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

It is a criminal offense to attempt to commit a crime. “Attempt” is defined in ORS 161.405 as a person intentionally engaging “in conduct which constitutes a substantial step toward commission of the crime.” An attempt to commit a crime is classed as a less serious offense. For example, the attempt to commit a Class A felony crime constitutes a Class B felony.

ORS 475.752 sets forth the crime of delivery of a controlled substance. ORS 475.005(8) defines “deliver” and “delivery” for purposes of this offense, in part, as an “actual, constructive or attempted transfer.” Previously, this definition was interpreted as encompassing possession with intent to deliver. *State v. Boyd*, 92 Or. App. 51, 54-55 (1988).

This analysis was recently revisited and overturned by the Oregon Court of Appeals. The court held that an “attempted transfer,” in contrast to the “attempt” to commit a crime generally contained in ORS 161.405, “refers to a particular act of transferring, not possession with a more generalized intent to deal the drugs at some undetermined point in the future.” *State v. Hubbell*, 314 Or. App. 844, 870 (2021). However, this evidence could still be sufficient for a person to be found guilty of the lesser offense of attempted delivery of a controlled substance. *Id.* At 873.

House Bill 4135 defines “attempted transfer” for purposes of the Uniform Controlled Substances Act to include possession of a controlled substance with the intent to transfer the controlled substance to another person.