

Support HB 4135 – Restore “Boyd” Overturn “Hubbell” Clear Accountability for Selling Drugs



*These 15,000 dangerous fentanyl pills packaged and ready for delivery to vulnerable drug addicts is now only a simple Possession or Attempted Delivery crime under current Oregon law

PROBLEM: In November 2021, the Oregon Court of Appeals changed 34 years of law defining what constitutes a delivery of drugs in Oregon. Previously, a person who was selling drugs could be held accountable and properly charged with delivery of a controlled substance. Often these offenders had huge quantities of drugs in their possession, lists of sale logs, and large quantities of cash from drug sales. Importantly, the law treated these circumstances as evidence that the person possessed the drugs with the intent to deliver them.

Now, the Court has held that those circumstances are not enough to charge someone with selling drugs. The state must show the sale was to a specific and identifiable person, which is uncommon. As a result, these offenders will now only be charged with possession of drugs or an attempted delivery, much less serious crimes which are sometimes only a misdemeanor.

EFFECT: We are already seeing the effects of rampant and unchecked drug sales in Oregon, as shown by an unprecedented increase in drug overdose deaths. In the first six months of 2021 alone, 607 Oregonians died of drug overdoses; as compared to 280 Oregonians in all of 2019. As a result of this change in Oregon law, large quantity drug traffickers who profit off of others’ addiction, and are responsible for many deaths, will be treated as users, not dealers, if charged with a crime.

SOLUTION: HB 4135 is a simple fix to return the law to its original form by repealing *Hubbell*¹ and returning to the law under *Boyd*², focusing on holding substantial quantity drug traffickers accountable. The change would explicitly add to the definition of delivery that *possession of drugs with the intent to deliver them* to another person constitutes the crime of delivery. With this basic change, we can help stop overdose deaths of Oregonians suffering from drug addiction and restore the State’s ability to prosecute obvious drug dealing.

Heroin – 2 Kilos Seized on Traffic Stop
Under current law - this is considered PCS



¹ *State v. Hubbell*, 314 Or App 844 (2021), where the Oregon Court of Appeals overturned *Boyd*, holding that evidence of possession with intent to deliver is, at most, sufficient to prove the *inchoate* crime of attempted delivery, absent some proof of an actual thwarted transfer of drugs.

² *State v. Boyd*, 92 Or App 51 (1988) - which established the rule that possession of drugs with the intent to sell them was sufficient to prove “attempted delivery” under ORS 475.005. The *Boyd* analysis typically applied in cases where a defendant possessed an obvious dealer quantity of a controlled substance and where there was other evidence, such as packaging materials, scales, customer lists, and the like to further establish the defendant’s intent to sell the drugs.