

B-Engrossed House Bill 2645

Ordered by the Senate March 29
Including House Amendments dated February 13 and Senate Amendments
dated March 29

Sponsored by Representatives MORGAN, HELFRICH, Senator PROZANSKI; Representatives BOSHART DAVIS, BREESE-IVERSON, CATE, CRAMER, DIEHL, ELMER, EVANS, HIEB, JAVADI, LEVY B, MCINTIRE, OSBORNE, RESCHKE, STOUT, WALLAN, WRIGHT, Senators HANSELL, MEEK, SMITH DB, THATCHER (Presession 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.

Increases penalties for possession of certain amounts of fentanyl. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both. Provides that delivery of fentanyl may be charged as commercial drug offense in specified circumstances. Increases sentencing guidelines crime category level for delivery of fentanyl for consideration. Adds alternative manner of measuring fentanyl for purposes of calculating crime category level for certain offenses involving possession, delivery or manufacture of fentanyl. **Provides that misdemeanor-level unlawful possession of fentanyl is designated drug-related misdemeanor for purposes of supervising entity and supervision funding, justice and municipal court jurisdiction and eligibility for earned reduction of supervision.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to controlled substances; amending ORS 423.478, 475.752 and 475.900; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 475.752 is amended to read:

6 475.752. (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful
7 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
8 section with respect to:

9 (a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise pro-
10 vided in ORS 475.886 and 475.890.

11 (b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise
12 provided in ORS 475.878, 475.880, 475.882, 475.904 and 475.906.

13 (c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise
14 provided in ORS 475.904 and 475.906.

15 (d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

16 (e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

17 (2) Except as authorized in ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful for any
18 person to create or deliver a counterfeit substance. Any person who violates this subsection with
19 respect to:

20 (a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

21 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

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 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

2 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

3 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

4 (3) It is unlawful for any person knowingly or intentionally to possess a controlled substance
5 unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a
6 practitioner while acting in the course of professional practice, or except as otherwise authorized
7 by ORS 475.005 to 475.285 and 475.752 to 475.980. Any person who violates this subsection with re-
8 spect to:

9 (a) A controlled substance in Schedule I, is guilty of a Class E violation, except as otherwise
10 provided in ORS 475.854, 475.874 and 475.894 and subsection (7) of this section.

11 (b) A controlled substance in Schedule II, is guilty of a Class E violation, except as otherwise
12 provided in ORS 475.814, 475.824, 475.834 or 475.884 or subsection (8) of this section.

13 (c) A controlled substance in Schedule III, is guilty of a Class E violation.

14 (d) A controlled substance in Schedule IV, is guilty of a Class E violation.

15 (e) A controlled substance in Schedule V, is guilty of a violation.

16 (4) It is an affirmative defense in any prosecution under this section for manufacture, possession
17 or delivery of the plant of the genus *Lophophora* commonly known as peyote that the peyote is being
18 used or is intended for use:

19 (a) In connection with the good faith practice of a religious belief;

20 (b) As directly associated with a religious practice; and

21 (c) In a manner that is not dangerous to the health of the user or others who are in the prox-
22 imity of the user.

23 (5) The affirmative defense created in subsection (4) of this section is not available to any person
24 who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.

25 (6)(a) Notwithstanding subsection (1) of this section, a person who unlawfully manufactures or
26 delivers a controlled substance in Schedule IV and who thereby causes death to another person is
27 guilty of a Class C felony.

28 (b) For purposes of this subsection, causation is established when the controlled substance plays
29 a substantial role in the death of the other person.

30 (7) Notwithstanding subsection (3)(a) of this section:

31 (a) Unlawful possession of a controlled substance in Schedule I is a Class A misdemeanor if the
32 person possesses:

33 (A) Forty or more user units of a mixture or substance containing a detectable amount of
34 lysergic acid diethylamide; or

35 (B) Twelve grams or more of a mixture or substance containing a detectable amount of
36 psilocybin or psilocin.

37 (b) Unlawful possession of a controlled substance in Schedule I is a Class B felony if:

38 (A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or

39 (B) The person possesses a substantial quantity under ORS 475.900 (2)(b).

40 (8) Notwithstanding subsection (3)(b) of this section[,]:

41 **(a) Unlawful possession of a controlled substance in Schedule II is a Class A**
42 **misdemeanor if the person possesses one gram or more or five or more user units of a**
43 **mixture or substance containing a detectable amount of fentanyl, or any substituted deriva-**
44 **tive of fentanyl as defined by the rules of the State Board of Pharmacy.**

45 **(b) Unlawful possession of a controlled substance in Schedule II is a Class C felony if:**

1 [(a)] (A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or

2 [(b)] (B) The person possesses a substantial quantity under ORS 475.900 (2)(b).

3 **SECTION 2.** ORS 475.900 is amended to read:

4 475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified
5 as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

6 (a) The violation constitutes delivery or manufacture of a controlled substance and involves
7 substantial quantities of a controlled substance. For purposes of this paragraph, the following
8 amounts constitute substantial quantities of the following controlled substances:

9 (A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

10 (B) Five grams or more **or 25 or more user units** of a mixture or substance containing a de-
11 tectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of the
12 [Oregon] State Board of Pharmacy;

13 (C) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

14 (D) Ten grams or more of a mixture or substance containing a detectable amount of metham-
15 phetamine, its salts, isomers or salts of its isomers;

16 (E) Two hundred or more user units of a mixture or substance containing a detectable amount
17 of lysergic acid diethylamide;

18 (F) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin
19 or psilocin; or

20 (G) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance con-
21 taining a detectable amount of:

22 (i) 3,4-methylenedioxyamphetamine;

23 (ii) 3,4-methylenedioxymethamphetamine; or

24 (iii) 3,4-methylenedioxy-N-ethylamphetamine.

25 (b) The violation constitutes possession, delivery or manufacture of a controlled substance and
26 the possession, delivery or manufacture is a commercial drug offense. A possession, delivery or
27 manufacture is a commercial drug offense for purposes of this subsection if it is accompanied by at
28 least three of the following factors:

29 (A) The delivery was of heroin, **fentanyl**, cocaine, methamphetamine, lysergic acid diethylamide,
30 psilocybin or psilocin and was for consideration;

31 (B) The offender was in possession of \$300 or more in cash;

32 (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS
33 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous
34 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly
35 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a
36 controlled substance offense;

37 (D) The offender was in possession of materials being used for the packaging of controlled sub-
38 stances such as scales, wrapping or foil, other than the material being used to contain the substance
39 that is the subject of the offense;

40 (E) The offender was in possession of drug transaction records or customer lists;

41 (F) The offender was in possession of stolen property;

42 (G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled
43 substance offense;

44 (H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor
45 chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

- 1 (I) The offender was using public lands for the manufacture of controlled substances;
- 2 (J) The offender had constructed fortifications or had taken security measures with the potential
3 of injuring persons; or
- 4 (K) The offender was in possession of controlled substances in an amount greater than:
- 5 (i) Three grams or more of a mixture or substance containing a detectable amount of heroin;
- 6 (ii) Three grams or more **or 15 or more user units** of a mixture or substance containing a de-
7 tectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of the
8 [Oregon] State Board of Pharmacy;
- 9 (iii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;
- 10 (iv) Eight grams or more of a mixture or substance containing a detectable amount of metham-
11 phetamine;
- 12 (v) Twenty or more user units of a mixture or substance containing a detectable amount of
13 lysergic acid diethylamide;
- 14 (vi) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin
15 or psilocin; or
- 16 (vii) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance
17 containing a detectable amount of:
- 18 (I) 3,4-methylenedioxyamphetamine;
- 19 (II) 3,4-methylenedioxymethamphetamine; or
- 20 (III) 3,4-methylenedioxy-N-ethylamphetamine.
- 21 (c) The violation constitutes a violation of ORS 475.848, 475.852, 475.868, 475.872, 475.878,
22 475.882, 475.888, 475.892 or 475.904.
- 23 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists
24 of:
- 25 (A) A chemical reaction involving one or more precursor substances for the purpose of manu-
26 facturing methamphetamine; or
- 27 (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of
28 manufacturing methamphetamine.
- 29 (e) The violation constitutes a violation of ORS 475.906 (1) or (2) that is not described in ORS
30 475.907.
- 31 (2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified as crime category 6 of
32 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:
- 33 (a) The violation constitutes delivery of heroin, cocaine, **fentanyl**, methamphetamine or
34 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or
35 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.
- 36 (b) The violation constitutes possession of substantial quantities of a controlled substance. For
37 purposes of this paragraph, the following amounts constitute substantial quantities of the following
38 controlled substances:
- 39 (A) Five grams or more of a mixture or substance containing a detectable amount of heroin;
- 40 (B) Five grams or more **or 25 or more user units** of a mixture or substance containing a de-
41 tectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of the
42 [Oregon] State Board of Pharmacy;
- 43 (C) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;
- 44 (D) Ten grams or more of a mixture or substance containing a detectable amount of metham-
45 phetamine;

1 (E) Two hundred or more user units of a mixture or substance containing a detectable amount
2 of lysergic acid diethylamide;

3 (F) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin
4 or psilocin; or

5 (G) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance con-
6 taining a detectable amount of:

7 (i) 3,4-methylenedioxyamphetamine;

8 (ii) 3,4-methylenedioxymethamphetamine; or

9 (iii) 3,4-methylenedioxy-N-ethylamphetamine.

10 (3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection (1) or
11 (2) of this section shall be classified as crime category 4 of the sentencing guidelines grid of the
12 Oregon Criminal Justice Commission if the violation involves delivery or manufacture of a con-
13 trolled substance.

14 (4) In order to prove a commercial drug offense, the state shall plead in the accusatory instru-
15 ment sufficient factors of a commercial drug offense under subsections (1) and (2) of this section.
16 The state has the burden of proving each factor beyond a reasonable doubt.

17 (5) As used in this section, "mixture or substance" means any mixture or substance, whether
18 or not the mixture or substance is in an ingestible or marketable form at the time of the offense.

19 **SECTION 3.** ORS 423.478 is amended to read:

20 423.478. (1) The Department of Corrections shall:

21 (a) Operate prisons for offenders sentenced to terms of incarceration for more than 12 months;

22 (b) Provide central information and data services sufficient to:

23 (A) Allow tracking of offenders; and

24 (B) Permit analysis of correlations between sanctions, supervision, services and programs, and
25 future criminal conduct; and

26 (c) Provide interstate compact administration and jail inspections.

27 (2) Subject to ORS 423.483, each county, in partnership with the department, shall assume re-
28 sponsibility for community-based supervision, sanctions and services for offenders convicted of felo-
29 nies, designated drug-related misdemeanors or designated person misdemeanors who are:

30 (a) On parole;

31 (b) On probation;

32 (c) On post-prison supervision;

33 (d) Sentenced, on or after January 1, 1997, to 12 months or less incarceration;

34 (e) Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-
35 Prison Supervision to 12 months or less incarceration for violation of a condition of parole, pro-
36 bation or post-prison supervision; or

37 (f) On conditional release under ORS 420A.206.

38 (3) Notwithstanding the fact that the court has sentenced a person to a term of incarceration,
39 when an offender is committed to the custody of the supervisory authority of a county under ORS
40 137.124 (2) or (4), the supervisory authority may execute the sentence by imposing sanctions other
41 than incarceration if deemed appropriate by the supervisory authority. If the supervisory authority
42 releases a person from custody under this subsection and the person is required to report as a sex
43 offender under ORS 163A.010, the supervisory authority, as a condition of release, shall order the
44 person to report to the Department of State Police, a city police department or a county sheriff's
45 office or to the supervising agency, if any:

- 1 (a) When the person is released;
- 2 (b) Within 10 days of a change of residence;
- 3 (c) Once each year within 10 days of the person's birth date;
- 4 (d) Within 10 days of the first day the person works at, carries on a vocation at or attends an
- 5 institution of higher education; and
- 6 (e) Within 10 days of a change in work, vocation or attendance status at an institution of higher
- 7 education.

8 (4) As used in this section:

9 (a) "Attends," "institution of higher education," "works" and "carries on a vocation" have the

10 meanings given those terms in ORS 163A.005.

11 (b) "Designated drug-related misdemeanor" means:

12 **(A) Unlawful possession of fentanyl under ORS 475.752 (8)(a);**

13 [(A)] **(B) Unlawful possession of methadone under ORS 475.824 (2)(b);**

14 [(B)] **(C) Unlawful possession of oxycodone under ORS 475.834 (2)(b);**

15 [(C)] **(D) Unlawful possession of heroin under ORS 475.854 (2)(b);**

16 [(D)] **(E) Unlawful possession of 3,4-methylenedioxymethamphetamine under ORS 475.874 (2)(b);**

17 [(E)] **(F) Unlawful possession of cocaine under ORS 475.884 (2)(b); or**

18 [(F)] **(G) Unlawful possession of methamphetamine under ORS 475.894 (2)(b).**

19 (c) "Designated person misdemeanor" means:

20 (A) Assault in the fourth degree constituting domestic violence if the judgment document is as

21 described in ORS 163.160 (4);

22 (B) Menacing constituting domestic violence if the judgment document is as described in ORS

23 163.190 (3); or

24 (C) Sexual abuse in the third degree under ORS 163.415.

25 **SECTION 4. This 2023 Act being necessary for the immediate preservation of the public**

26 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**

27 **on its passage.**

28