

Senate Bill 254

Sponsored by Senator ROBINSON (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**.

Repeals those provisions of Drug Addiction Treatment and Recovery Act of 2020 (Ballot Measure 110 (2020)) that pertain to decriminalization of possession of drugs.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to drugs; creating new provisions; amending ORS 51.050, 137.300, 153.012, 153.018, 153.019,
3 153.021, 153.064, 153.992, 161.570, 221.339, 419C.370, 423.478, 430.383, 430.384, 430.392, 475.235,
4 475.752, 475.814, 475.824, 475.834, 475.854, 475.874, 475.884, 475.894, 475.900 and 670.280; repealing
5 ORS 153.043, 153.062, 293.665, 305.231, 419C.460 and 475.237 and section 30, chapter 591, Oregon
6 Laws 2021; and prescribing an effective date.

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

SECTION 1. ORS 51.050 is amended to read:

7
8
9 51.050. (1) Except as otherwise provided in this section, in addition to the criminal jurisdiction
10 of justice courts already conferred upon and exercised by them, justice courts have jurisdiction of
11 all offenses committed or triable in their respective counties. The jurisdiction conveyed by this
12 section is concurrent with any jurisdiction that may be exercised by a circuit court or municipal
13 court.

14 (2) In any justice court that has not become a court of record under ORS 51.025, a defendant
15 charged with a misdemeanor shall be notified immediately after entering a plea of not guilty of the
16 right of the defendant to have the matter transferred to the circuit court for the county where the
17 justice court is located. The election shall be made within 10 days after the plea of not guilty is
18 entered, and the justice shall immediately transfer the case to the appropriate court.

19 (3) A justice court does not have jurisdiction over the trial of any felony or a designated drug-
20 related misdemeanor as defined in ORS 423.478. [*A justice court does not have jurisdiction over Class*
21 *E violations.*] Except as provided in ORS 51.037, a justice court does not have jurisdiction over of-
22 fenses created by the charter or ordinance of any city.

SECTION 2. ORS 137.300 is amended to read:

23
24 137.300. (1) The Criminal Fine Account is established in the General Fund. Except as otherwise
25 provided by law, all amounts collected in state courts as monetary obligations in criminal actions
26 shall be deposited by the courts in the account. All moneys in the account are continuously appro-
27 priated to the Department of Revenue to be distributed by the Department of Revenue as provided
28 in this section. The Department of Revenue shall keep a record of moneys transferred into and out
29 of the account.

30 (2) The Legislative Assembly shall first allocate moneys from the Criminal Fine Account for the
31 following purposes, in the following order of priority:

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 (a) Allocations for public safety standards, training and facilities.

2 (b) Allocations for criminal injuries compensation and assistance to victims of crime and chil-
3 dren reasonably suspected of being victims of crime.

4 (c) Allocations for the forensic services provided by the Oregon State Police, including, but not
5 limited to, services of the Chief Medical Examiner.

6 (d) Allocations for the maintenance and operation of the Law Enforcement Data System.

7 (3) After making allocations under subsection (2) of this section, the Legislative Assembly shall
8 allocate moneys from the Criminal Fine Account for the following purposes:

9 (a) Allocations to the Law Enforcement Medical Liability Account established under ORS
10 414.815.

11 (b) Allocations to the State Court Facilities and Security Account established under ORS 1.178.

12 (c) Allocations to the Department of Corrections for the purpose of planning, operating and
13 maintaining county juvenile and adult corrections programs and facilities and drug and alcohol
14 programs.

15 (d) Allocations to the Oregon Health Authority for the purpose of grants under ORS 430.345 for
16 the establishment, operation and maintenance of alcohol and drug abuse prevention, early inter-
17 vention and treatment services provided through a county.

18 (e) Allocations to the Oregon State Police for the purpose of the enforcement of the laws relat-
19 ing to driving under the influence of intoxicants.

20 (f) Allocations to the Arrest and Return Account established under ORS 133.865.

21 (g) Allocations to the Intoxicated Driver Program Fund established under ORS 813.270.

22 (h) Allocations to the State Court Technology Fund established under ORS 1.012.

23 *[(4) Notwithstanding subsections (2) and (3) of this section, the Legislative Assembly shall allocate*
24 *all moneys deposited into the Criminal Fine Account as payment of fines on Class E violations to the*
25 *Drug Treatment and Recovery Services Fund established under ORS 430.384.]*

26 *[(5)]* (4) It is the intent of the Legislative Assembly that allocations from the Criminal Fine
27 Account under subsection (3) of this section be consistent with historical funding of the entities,
28 programs and accounts listed in subsection (3) of this section from monetary obligations imposed in
29 criminal proceedings. Amounts that are allocated under subsection (3)(c) of this section shall be
30 distributed to counties based on the amounts that were transferred to counties by circuit courts
31 during the 2009-2011 biennium under the provisions of ORS 137.308, as in effect January 1, 2011.

32 *[(6)]* (5) Moneys in the Criminal Fine Account may not be allocated for the payment of debt
33 service obligations.

34 *[(7)]* (6) The Department of Revenue shall deposit in the General Fund all moneys remaining in
35 the Criminal Fine Account after the distributions listed in subsections (2)[,] **and** (3) [*and* (4)] of this
36 section have been made.

37 *[(8)]* (7) The Department of Revenue shall establish by rule a process for distributing moneys in
38 the Criminal Fine Account. The department may not distribute more than one-eighth of the total
39 biennial allocation to an entity during a calendar quarter.

40 **SECTION 3.** ORS 153.012 is amended to read:

41 153.012. Violations are classified for the purpose of sentencing into the following categories:

42 (1) Class A violations.

43 (2) Class B violations.

44 (3) Class C violations.

45 (4) Class D violations.

1 *[(5) Class E violations.]*

2 *[(6)] (5) Unclassified violations as described in ORS 153.015.*

3 *[(7)] (6) Specific fine violations as described in ORS 153.015.*

4 **SECTION 4.** ORS 153.018 is amended to read:

5 153.018. (1) The penalty for committing a violation is a fine. The law creating a violation may
6 impose other penalties in addition to a fine but may not impose a term of imprisonment.

7 (2) Except as otherwise provided by law, the maximum fine for a violation committed by an in-
8 dividual is:

9 (a) \$2,000 for a Class A violation.

10 (b) \$1,000 for a Class B violation.

11 (c) \$500 for a Class C violation.

12 (d) \$250 for a Class D violation.

13 *[(e) \$100 for a Class E violation.]*

14 *[(f)] (e)* \$2,000 for a specific fine violation, or the maximum amount otherwise established by law
15 for the specific fine violation.

16 (3) If a special corporate fine is specified in the law creating the violation, the sentence to pay
17 a fine shall be governed by the law creating the violation. Except as otherwise provided by law, if
18 a special corporate fine is not specified in the law creating the violation, the maximum fine for a
19 violation committed by a corporation is:

20 (a) \$4,000 for a Class A violation.

21 (b) \$2,000 for a Class B violation.

22 (c) \$1,000 for a Class C violation.

23 (d) \$500 for a Class D violation.

24 **SECTION 5.** ORS 153.019 is amended to read:

25 153.019. (1) Except as provided in ORS 153.020, *[153.062 and 430.391,]* the presumptive fines for
26 violations are:

27 (a) \$440 for a Class A violation.

28 (b) \$265 for a Class B violation.

29 (c) \$165 for a Class C violation.

30 (d) \$115 for a Class D violation.

31 *[(e) \$100 for a Class E violation.]*

32 (2) The presumptive fine for a specific fine violation is:

33 (a) The amount specified by statute as the presumptive fine for the violation; or

34 (b) An amount equal to the greater of 20 percent of the maximum fine prescribed for the vio-
35 lation, or the minimum fine prescribed by statute for the violation.

36 (3) Any surcharge imposed under ORS 1.188 shall be added to and made a part of the
37 presumptive fine.

38 **SECTION 6.** ORS 153.021, as amended by section 1, chapter 68, Oregon Laws 2022, is amended
39 to read:

40 153.021. (1) Unless a specific minimum fine is prescribed for a violation, and except as otherwise
41 provided by law, the minimum fine a court shall impose for a violation that is subject to the
42 presumptive fines established by ORS 153.019 (1) or 153.020 are as follows:

43 (a) \$225 for a Class A violation.

44 (b) \$135 for a Class B violation.

45 (c) \$85 for a Class C violation.

1 (d) \$65 for a Class D violation.

2 [(e) \$45 for a Class E violation.]

3 (2) Notwithstanding subsection (1) of this section, a court may waive payment of the minimum
4 fine described in this section, in whole or in part, if the court determines that requiring payment
5 of the minimum fine would be inconsistent with justice in the case. In making its determination
6 under this subsection, the court shall consider:

7 (a) The financial resources of the defendant and the burden that payment of the minimum fine
8 would impose, with due regard to the other obligations of the defendant; and

9 (b) The extent to which that burden could be alleviated by allowing the defendant to pay the
10 fine in installments or subject to other conditions set by the court.

11 (3) This section does not affect the manner in which a court imposes or reduces monetary obli-
12 gations other than fines.

13 (4) The Department of Revenue or Secretary of State may audit any court to determine whether
14 the court is complying with the requirements of this section. In addition, the Department of Revenue
15 or Secretary of State may audit any court to determine whether the court is complying with the
16 requirements of ORS 137.145 to 137.159 and 153.640 to 153.680. The Department of Revenue or Sec-
17 retary of State may file an action under ORS 34.105 to 34.240 to enforce the requirements of this
18 section and of ORS 137.145 to 137.159 and 153.640 to 153.680.

19 **SECTION 7.** ORS 153.064 is amended to read:

20 153.064. (1) Except as provided in subsection (2) of this section, a warrant for arrest may be is-
21 sued against a person who fails to make a first appearance on a citation for a violation, or fails to
22 appear at any other subsequent time set for trial or other appearance, only if the person is charged
23 with failure to appear in a violation proceeding under ORS 153.992.

24 (2) If a person fails to make a first appearance on a citation for a violation [*other than a Class*
25 *E violation*], or fails to appear at any other subsequent time set for trial or other appearance on a
26 violation [*other than a Class E violation*], the court may issue an order that requires the defendant
27 to appear and show cause why the defendant should not be held in contempt. The show cause order
28 may be mailed to the defendant by certified mail, return receipt requested. If service cannot be ac-
29 complished by mail, the defendant must be personally served. If the defendant is served and fails to
30 appear at the time specified in the show cause order, the court may issue an arrest warrant for the
31 defendant for the purpose of bringing the defendant before the court.

32 **SECTION 8.** ORS 153.992 is amended to read:

33 153.992. (1) A person commits the offense of failure to appear in a violation proceeding if the
34 person has been served with a citation issued under this chapter for a violation [*other than a Class*
35 *E violation*] and the person knowingly fails to do any of the following:

36 (a) Make a first appearance in the manner required by ORS 153.061 within the time allowed.

37 (b) Make appearance at the time set for trial in the violation proceeding.

38 (c) Appear at any other time required by the court or by law.

39 (2) Failure to appear on a violation citation is a Class A misdemeanor.

40 **SECTION 9.** ORS 161.570 is amended to read:

41 161.570. (1) As used in this section, "nonperson felony" has the meaning given that term in the
42 rules of the Oregon Criminal Justice Commission.

43 (2) A district attorney may elect to treat a Class C nonperson felony or a violation of ORS
44 475.752 [(7)(b)] (7), 475.854 [(2)(c)] (2)(b) or 475.874 [(2)(c)] (2)(b) as a Class A misdemeanor. The
45 election must be made by the district attorney orally or in writing at the time of the first appear-

1 ance of the defendant. If a district attorney elects to treat a Class C felony or a violation of ORS
 2 475.752 [(7)(b)] (7), 475.854 [(2)(c)] (2)(b) or 475.874 [(2)(c)] (2)(b) as a Class A misdemeanor under this
 3 subsection, the court shall amend the accusatory instrument to reflect the charged offense as a
 4 Class A misdemeanor.

5 (3) If, at some time after the first appearance of a defendant charged with a Class C nonperson
 6 felony or a violation of ORS 475.752 [(7)(b)] (7), 475.854 [(2)(c)] (2)(b) or 475.874 [(2)(c)] (2)(b), the
 7 district attorney and the defendant agree to treat the charged offense as a Class A misdemeanor,
 8 the court may allow the offense to be treated as a Class A misdemeanor by stipulation of the parties.

9 (4) If a Class C felony or a violation of ORS 475.752 [(7)(b)] (7), 475.854 [(2)(c)] (2)(b) or 475.874
 10 [(2)(c)] (2)(b) is treated as a Class A misdemeanor under this section, the court shall clearly de-
 11 nominate the offense as a Class A misdemeanor in any judgment entered in the matter.

12 (5) If no election or stipulation is made under this section, the case proceeds as a felony.

13 (6) Before a district attorney may make an election under subsection (2) of this section, the
 14 district attorney shall adopt written guidelines for determining when and under what circumstances
 15 the election may be made. The district attorney shall apply the guidelines uniformly.

16 (7) Notwithstanding ORS 161.635, the fine that a court may impose upon conviction of a
 17 misdemeanor under this section may not:

18 (a) Be less than the minimum fine established by ORS 137.286 for a felony; or

19 (b) Exceed the amount provided in ORS 161.625 for the class of felony receiving Class A
 20 misdemeanor treatment.

21 **SECTION 10.** ORS 221.339 is amended to read:

22 221.339. (1) A municipal court has concurrent jurisdiction with circuit courts and justice courts
 23 over all violations committed or triable in the city where the court is located.

24 (2) Except as provided in subsections (3) and (4) of this section, municipal courts have concu-
 25 rrent jurisdiction with circuit courts and justice courts over misdemeanors committed or triable in
 26 the city. Municipal courts may exercise the jurisdiction conveyed by this section without a charter
 27 provision or ordinance authorizing that exercise.

28 (3) Municipal courts have no jurisdiction over felonies[,] **or** designated drug-related
 29 misdemeanors as defined in ORS 423.478 [*or Class E violations*].

30 (4) A city may limit the exercise of jurisdiction over misdemeanors by a municipal court under
 31 this section by the adoption of a charter provision or ordinance, except that municipal courts must
 32 retain concurrent jurisdiction with circuit courts over:

33 (a) Misdemeanors created by the city's own charter or by ordinances adopted by the city, as
 34 provided in ORS 3.132; and

35 (b) Traffic crimes as defined by ORS 801.545.

36 (5) Subject to the powers and duties of the Attorney General under ORS 180.060, the city at-
 37 torney has authority to prosecute a violation of any offense created by statute that is subject to the
 38 jurisdiction of a municipal court, including any appeal, if the offense is committed or triable in the
 39 city. The prosecution shall be in the name of the state. The city attorney shall have all powers of
 40 a district attorney in prosecutions under this subsection.

41 **SECTION 11.** ORS 419C.370 is amended to read:

42 419C.370. (1) The juvenile court may enter an order directing that all cases involving:

43 (a) Violation of a law or ordinance relating to the use or operation of a motor vehicle, boating
 44 laws or game laws be waived to criminal or municipal court;

45 (b) An offense classified as a violation [*other than a Class E violation*] under the laws of this

1 state or a political subdivision of this state be waived to municipal court if the municipal court has
 2 agreed to accept jurisdiction; and

3 (c) A misdemeanor that entails theft, destruction, tampering with or vandalism of property be
 4 waived to municipal court if the municipal court has agreed to accept jurisdiction.

5 (2) Cases waived under subsection (1) of this section are subject to the following:

6 (a) That the criminal or municipal court prior to hearing a case, other than a case involving a
 7 parking violation, in which the defendant is or appears to be under 18 years of age notify the juve-
 8 nile court of that fact; and

9 (b) That the juvenile court may direct that any such case be waived to the juvenile court for
 10 further proceedings.

11 (3)(a) When a person who has been waived under subsection (1)(c) of this section is convicted
 12 of a property offense, the municipal court may impose any sanction authorized for the offense except
 13 for incarceration. The municipal court shall notify the juvenile court of the disposition of the case.

14 (b) When a person has been waived under subsection (1) of this section and fails to appear as
 15 summoned or is placed on probation and is alleged to have violated a condition of the probation, the
 16 juvenile court may recall the case to the juvenile court for further proceedings. When a person has
 17 been returned to juvenile court under this paragraph, the juvenile court may proceed as though the
 18 person had failed to appear as summoned to the juvenile court or had violated a juvenile court
 19 probation order under ORS 419C.446.

20 (4) Records of cases waived under subsection (1)(c) of this section are juvenile records for pur-
 21 poses of expunction under ORS 419A.260 to 419A.271.

22 **SECTION 12.** ORS 423.478 is amended to read:

23 423.478. (1) The Department of Corrections shall:

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

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

26 (A) Allow tracking of offenders; and

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

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

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

33 (a) On parole;

34 (b) On probation;

35 (c) On post-prison supervision;

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

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

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

41 (3) Notwithstanding the fact that the court has sentenced a person to a term of incarceration,
 42 when an offender is committed to the custody of the supervisory authority of a county under ORS
 43 137.124 (2) or (4), the supervisory authority may execute the sentence by imposing sanctions other
 44 than incarceration if deemed appropriate by the supervisory authority. If the supervisory authority
 45 releases a person from custody under this subsection and the person is required to report as a sex

1 offender under ORS 163A.010, the supervisory authority, as a condition of release, shall order the
 2 person to report to the Department of State Police, a city police department or a county sheriff's
 3 office or to the supervising agency, if any:

4 (a) When the person is released;

5 (b) Within 10 days of a change of residence;

6 (c) Once each year within 10 days of the person's birth date;

7 (d) Within 10 days of the first day the person works at, carries on a vocation at or attends an
 8 institution of higher education; and

9 (e) Within 10 days of a change in work, vocation or attendance status at an institution of higher
 10 education.

11 (4) As used in this section:

12 (a) "Attends," "institution of higher education," "works" and "carries on a vocation" have the
 13 meanings given those terms in ORS 163A.005.

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

15 **(A) Unlawful possession of a Schedule I controlled substance under ORS 475.752 (3)(a);**

16 **(B) Unlawful possession of a Schedule II controlled substance under ORS 475.752 (3)(b);**

17 ~~[(A)]~~ **(C) Unlawful possession of methadone under ORS 475.824 [(2)(b)] (2)(a);**

18 ~~[(B)]~~ **(D) Unlawful possession of oxycodone under ORS 475.834 [(2)(b)] (2)(a);**

19 ~~[(C)]~~ **(E) Unlawful possession of heroin under ORS 475.854 [(2)(b)] (2)(a);**

20 ~~[(D)]~~ **(F) Unlawful possession of 3,4-methylenedioxyamphetamine under ORS 475.874 [(2)(b)]**
 21 **(2)(a);**

22 ~~[(E)]~~ **(G) Unlawful possession of cocaine under ORS 475.884 [(2)(b)] (2)(a);** or

23 ~~[(F)]~~ **(H) Unlawful possession of methamphetamine under ORS 475.894 [(2)(b)] (2)(a).**

24 (c) "Designated person misdemeanor" means:

25 (A) Assault in the fourth degree constituting domestic violence if the judgment document is as
 26 described in ORS 163.160 (4);

27 (B) Menacing constituting domestic violence if the judgment document is as described in ORS
 28 163.190 (3); or

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

30 **SECTION 13.** ORS 430.383 is amended to read:

31 430.383. (1)(a) The people of Oregon find that drug addiction and overdoses are a serious prob-
 32 lem in Oregon and that Oregon needs to expand access to drug treatment.

33 (b) The people of Oregon further find that a health-based approach to addiction and overdose is
 34 *[more] effective, humane and cost-effective [than criminal punishments. Making people criminals be-*
 35 *cause they suffer from addiction is expensive, ruins lives and can make access to treatment and recov-*
 36 *ery more difficult].*

37 (2)(a) The purpose of the Drug Addiction Treatment and Recovery Act of 2020, **as further**
 38 **amended**, is to make screening, health assessment, treatment and recovery services for drug ad-
 39 diction available to all those who need and want access to those services and to *[adopt a health*
 40 *approach]* **enhance assessment, treatment and recovery services** to **address** drug addiction *[by*
 41 *removing criminal penalties for low-level drug possession].*

42 (b) It is the policy of the State of Oregon that screening, health assessment, treatment and re-
 43 covery services for drug addiction are available to all those who need and want access to those
 44 services.

45 (3) The provisions of chapter 2, Oregon Laws 2021, **as amended**, shall be interpreted consist-

1 ently with the findings, purposes and policy objectives stated in this section[*and shall not be limited*
 2 *by any policy set forth in Oregon law that could conflict with or be interpreted to conflict with the*
 3 *purposes and policy objectives stated in this section*].

4 **SECTION 14.** ORS 430.384 is amended to read:

5 430.384. (1) The Drug Treatment and Recovery Services Fund is established in the State Treas-
 6 ury, separate and distinct from the General Fund. Interest earned by the Drug Treatment and Re-
 7 covery Services Fund shall be credited to the fund.

8 (2) The Drug Treatment and Recovery Services Fund shall consist of:

9 [(a) Moneys deposited into the fund pursuant to ORS 305.231;]

10 [(b)] (a) Moneys appropriated or otherwise transferred to the fund by the Legislative Assembly;

11 [(c)] (b) Moneys allocated from the Oregon Marijuana Account, pursuant to ORS 475C.726 (3)(b);

12 [(d)] (c) Moneys allocated from the Criminal Fine Account pursuant to ORS 137.300 (4); and

13 [(e)] (d) All other moneys deposited into the fund from any source.

14 (3) Moneys in the fund shall be continuously appropriated to the Oregon Health Authority for
 15 the purposes set forth in ORS 430.389.

16 (4)(a) Pursuant to subsection [(2)(b)] (2)(a) of this section, the Legislative Assembly shall ap-
 17 propriate or transfer to the fund an amount sufficient to fully fund the grants program required by
 18 ORS 430.389.

19 (b) The total amount deposited and transferred into the fund shall not be less than \$57 million
 20 for the first year chapter 2, Oregon Laws 2021, is in effect.

21 (c) In each subsequent year, the minimum transfer amount set forth in paragraph (b) of this
 22 subsection shall be increased by not less than the sum of:

23 (A) \$57 million multiplied by the percentage, if any, by which the monthly averaged U.S. City
 24 Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar
 25 year exceeds the monthly index for the fourth quarter of the calendar year 2020; and

26 (B) The annual increase, if any, in moneys distributed pursuant to ORS 475C.726 (3)(b).

27 **SECTION 15.** ORS 430.392 is amended to read:

28 430.392. (1) The Division of Audits of the office of the Secretary of State shall conduct per-
 29 formance audits and financial reviews as provided in this section, regarding the uses of the Drug
 30 Treatment and Recovery Services Fund and the effectiveness of the fund in achieving the purposes
 31 of the fund and the policy objectives of ORS 430.383. Recipients of grants or funds under ORS
 32 430.389 shall keep accurate books, records and accounts that are subject to inspection and audit by
 33 the division.

34 (2) No later than two years after the completion of an audit or financial review, the division
 35 shall monitor and report on the progress in implementing any recommendations made in the audit
 36 or financial review. The division shall follow up on recommendations as part of recurring audit work
 37 or as an activity separate from other audit activity. When following up on recommendations, the
 38 division may request from the appropriate agency evidence of implementation.

39 (3) The audits set forth in this section shall be conducted pursuant to the provisions of ORS
 40 chapter 297, except to the extent any provision of ORS chapter 297 conflicts with any provision of
 41 ORS [293.665 and 305.231 and] 430.383 to 430.390, in which case the provisions of ORS [293.665 and
 42 305.231 and] 430.383 to 430.390 shall control.

43 (4) No later than December 31, 2023, the division shall perform a:

44 (a) Real-time audit, as prescribed by the division, which shall include an assessment of the re-
 45 lationship between the Oversight and Accountability Council and the Oregon Health Authority, the

1 relationship between the council and recipients of grants or funding and the structural integrity of
 2 ORS [293.665 and 305.231 and] 430.383 to 430.390, including but not limited to assessing:

3 (A) Whether the organizational structure of the council contains conflicts or problems.

4 (B) Whether the rules adopted by the council are clear and functioning properly.

5 (C) Whether the council has sufficient authority and independence to achieve the council's
 6 mission.

7 (D) Whether the authority is fulfilling the authority's duties under ORS 430.384, 430.387, 430.388,
 8 430.390 and 430.391.

9 (E) Whether there are conflicts of interest in the process of awarding grants or funding.

10 (F) Whether there are opportunities to expand collaboration between the council and state
 11 agencies.

12 (G) Whether barriers exist in data collection and evaluation mechanisms.

13 (H) Who is providing the data.

14 (I) Other areas identified by the division.

15 (b) Financial review, which shall include an assessment of the following:

16 (A) The functioning of the grants and funding systems between the council, the authority and
 17 recipients of grants or funding, including by gathering information on who is receiving what grants
 18 and funding, the process of applying for the grants and funding and whether that process is condu-
 19 cive to obtaining qualified applicants and applicants from communities of color.

20 (B) Whether grants and funding are going to organizations that are culturally responsive and
 21 linguistically specific, including an assessment of:

22 (i) The barriers that exist for grant and funding applicants who are Black, Indigenous or People
 23 of Color.

24 (ii) The applicants that were denied and why.

25 (iii) Whether grants and other funding are being disbursed based on the priorities specified in
 26 ORS 430.389.

27 (iv) For government entities receiving grants or funding under ORS 430.389, the government
 28 entities' subgrantees and whether the governmental entity supplanted or decreased any local funding
 29 dedicated to the same services after receiving grants or funds under ORS 430.389.

30 (v) Whether the authority has stayed within its administrative spending cap.

31 (vi) What proportion of grants or funds received by grantees and others under ORS 430.389, was
 32 devoted to administrative costs.

33 (C) The organizations and agencies receiving grants or funding under ORS 430.389 and:

34 (i) Which of the organizations and agencies are Behavioral Health Resource Network entities.

35 (ii) The amount each organization and agency received.

36 (iii) The total number of organizations and agencies that applied for grants or funding.

37 (iv) The amount of moneys from the fund that were used to administer the programs selected
 38 by the council.

39 (v) The moneys that remained in the Drug Treatment and Recovery Services Fund after grants
 40 and funding were disbursed.

41 (vi) A performance assessment of each grant or funding recipient.

42 (D) Other areas identified by the division.

43 (5) No later than December 31, 2024, the division shall conduct a performance audit, which must
 44 include an assessment of the following:

45 (a) All relevant data regarding the implementation of ORS [153.062 and] 430.391], *including de-*

1 *mographic information on individuals who receive citations subject to ORS 153.062 and 430.391 and*
 2 *whether the citations resulted in connecting the individuals with treatment].*

3 (b) The functioning of:

4 [(A) *Law enforcement and the courts in relation to Class E violation citations;*]

5 [(B)] (A) The telephone hotline operated by the authority; and

6 [(C)] (B) Entities providing verification of screenings under ORS 430.389.

7 (c) Disparities shown by demographic data and whether the citation data reveals a disproportional
 8 use of citations in communities most impacted by the war on drugs.

9 (d) Whether ORS [153.062,] 430.389 and 430.391 reduce the involvement in the criminal justice
 10 system of individuals with substance use disorder.

11 (e) Outcomes for individuals receiving treatment and other social services under ORS 430.389,
 12 including, but not limited to, the following:

13 (A) Whether access to care increased since December 3, 2020, and, if data is available, whether,
 14 since December 3, 2020:

15 (i) The number of drug and alcohol treatment service providers increased.

16 (ii) The number of culturally specific providers increased.

17 (iii) Overdose rates have decreased.

18 (iv) Access to harm reduction services has increased.

19 (v) More individuals are accessing treatment than they were before December 3, 2020.

20 (vi) Access to housing for individuals with substance use disorder has increased.

21 (B) Data on Behavioral Health Resource Networks and recipients of grants and funding under
 22 ORS 430.389, including:

23 (i) The outcomes of each network or recipient, including but not limited to the number of clients
 24 with substance use disorder receiving services from each network or recipient, the average duration
 25 of client participation and client outcomes.

26 (ii) The number of individuals seeking assistance from the network or recipients who are denied
 27 or not connected to substance use disorder treatment and other services, and the reasons for the
 28 denials.

29 (iii) The average time it takes for clients to access services and fulfill their individual inter-
 30 vention plan and the reason for any delays, such as waiting lists at referred services.

31 (iv) Whether average times to access services to which clients are referred, such as housing or
 32 medically assisted treatment, have decreased over time since December 3, 2020.

33 (v) Demographic data on clients served by Behavioral Health Resource Networks, including
 34 self-reported demographic data on race, ethnicity, gender and age.

35 (6) After the initial audit and financial review under subsection (4) of this section, the division
 36 shall conduct periodic performance audits and financial reviews pursuant to the division's annual
 37 audit plan and taking into consideration the risks of the program.

38 **SECTION 16.** ORS 475.235 is amended to read:

39 475.235. (1) It is not necessary for the state to negate any exemption or exception in ORS
 40 475.005 to 475.285 and 475.752 to 475.980 in any complaint, information, indictment or other pleading
 41 or in any trial, hearing or other proceeding under ORS 475.005 to 475.285 and 475.752 to 475.980.
 42 The burden of proof of any exemption or exception is upon the person claiming it.

43 (2) In the absence of proof that a person is the duly authorized holder of an appropriate regis-
 44 tration or order form issued under ORS 475.005 to 475.285 and 475.752 to 475.980, the person is
 45 presumed not to be the holder of the registration or form. The burden of proof is upon the person

1 to rebut the presumption.

2 (3)(a) When a controlled substance is at issue in a criminal proceeding before a grand jury, at
3 a preliminary hearing, in a proceeding on a district attorney's information[, *during a proceeding on*
4 *a Class E violation*] or for purposes of an early disposition program, it is prima facie evidence of the
5 identity of the controlled substance if:

6 (A) A sample of the controlled substance is tested using a presumptive test for controlled sub-
7 stances;

8 (B) The test is conducted by a law enforcement officer trained to use the test or by a forensic
9 scientist; and

10 (C) The test is positive for the particular controlled substance.

11 (b) When the identity of a controlled substance is established using a presumptive test for pur-
12 poses of a criminal proceeding before a grand jury, a preliminary hearing, a proceeding on a district
13 attorney's information or an early disposition program, the defendant, upon notice to the district
14 attorney, may request that the controlled substance be sent to a state police forensic laboratory for
15 analysis. [*The defendant may not make a request under this paragraph concerning a controlled sub-*
16 *stance at issue in a proceeding on a Class E violation.*]

17 (4) Notwithstanding any other provision of law, in all prosecutions in which an analysis of a
18 controlled substance or sample was conducted, a certified copy of the analytical report signed by
19 the director of a state police forensic laboratory or the analyst or forensic scientist conducting the
20 analysis shall be admitted as prima facie evidence of the results of the analytical findings unless the
21 defendant has provided notice of an objection in accordance with subsection (5) of this section.

22 (5) If the defendant intends to object at trial to the admission of a certified copy of an analytical
23 report as provided in subsection (4) of this section, not less than 15 days prior to trial the defendant
24 shall file written notice of the objection with the court and serve a copy on the district attorney.

25 (6) As used in this section:

26 (a) "Analyst" means a person employed by the Department of State Police to conduct analysis
27 in forensic laboratories established by the department under ORS 181A.150.

28 (b) "Presumptive test" includes, but is not limited to, chemical tests using Marquis reagent,
29 Duquenois-Levine reagent, Scott reagent system or modified Chen's reagent.

30 **SECTION 17.** ORS 475.752 is amended to read:

31 475.752. (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful
32 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
33 section with respect to:

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

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

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

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

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

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

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

- 1 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.
- 2 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.
- 3 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.
- 4 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

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

10 (a) A controlled substance in Schedule I, is guilty of a Class [E violation] **A misdemeanor**, ex-
 11 cept as otherwise provided in ORS 475.854, 475.874 [and] **or** 475.894 [and] **or** subsection (7) of this
 12 section.

13 (b) A controlled substance in Schedule II, is guilty of a Class [E violation] **A misdemeanor**,
 14 except as otherwise provided in ORS [475.814,] 475.824, 475.834 or 475.884 or subsection (8) of this
 15 section.

16 (c) A controlled substance in Schedule III, is guilty of a Class [E violation] **A misdemeanor**.

17 (d) A controlled substance in Schedule IV, is guilty of a Class [E violation] **C misdemeanor**.

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

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

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

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

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

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

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

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

33 (7) Notwithstanding subsection (3)(a) of this section,[:]

34 [(a)] unlawful possession of a controlled substance in Schedule I is a Class [A misdemeanor] **B**
 35 **felony** if:

36 (a) The person possesses a **usable quantity of the controlled substance and:**

37 **(A) At the time of the possession, the person has a prior felony conviction;**

38 **(B) At the time of the possession, the person has two or more prior convictions for un-**
 39 **lawful possession of a usable quantity of a controlled substance; or**

40 **(C) The possession is a commercial drug offense under ORS 475.900 (1)(b); or**

41 **(b) The person possesses:**

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

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

1 *[(b) Unlawful possession of a controlled substance in Schedule I is a Class B felony if:]*

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

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

4 (8) Notwithstanding subsection (3)(b) of this section, unlawful possession of a controlled sub-
 5 stance in Schedule II is a Class C felony if **the person possesses a usable quantity of the con-**
 6 **trolled substance and:**

7 **(a) At the time of the possession, the person has a prior felony conviction;**

8 **(b) At the time of the possession, the person has two or more prior convictions for un-**
 9 **lawful possession of a usable quantity of a controlled substance; or**

10 *[(a)] (c) The possession is a commercial drug offense under ORS 475.900 (1)(b).; or]*

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

12 **SECTION 18.** ORS 475.814 is amended to read:

13 475.814. (1) It is unlawful for any person knowingly or intentionally to possess hydrocodone un-
 14 less the hydrocodone was obtained directly from, or pursuant to a valid prescription or order of, a
 15 practitioner while acting in the course of professional practice, or except as otherwise authorized
 16 by ORS 475.005 to 475.285 and 475.752 to 475.980.

17 (2)(a) Unlawful possession of hydrocodone is a Class *[E violation]* **A misdemeanor.**

18 *[(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of hydrocodone is a*
 19 *Class A misdemeanor if:]*

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

21 *[(B) The person possesses 40 or more pills, tablets, capsules or user units of a mixture or substance*
 22 *containing a detectable amount of hydrocodone.]*

23 **SECTION 19.** ORS 475.824 is amended to read:

24 475.824. (1) It is unlawful for any person knowingly or intentionally to possess methadone unless
 25 the methadone was obtained directly from, or pursuant to a valid prescription or order of, a prac-
 26 titioner while acting in the course of professional practice, or except as otherwise authorized by
 27 ORS 475.005 to 475.285 and 475.752 to 475.980.

28 (2)(a) Unlawful possession of methadone is a Class *[E violation]* **A misdemeanor.**

29 *[(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of methadone is a Class*
 30 *A misdemeanor if the person possesses 40 or more user units of a mixture or substance containing a*
 31 *detectable amount of methadone.]*

32 *[(c) Notwithstanding paragraphs (a) and (b) of this subsection, unlawful possession of methadone*
 33 *is a Class C felony if the possession is a commercial drug offense under ORS 475.900 (1)(b).]*

34 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of methadone**
 35 **is a Class C felony if:**

36 **(A) The person possesses a usable quantity of methadone and:**

37 **(i) At the time of the possession, the person has a prior felony conviction;**

38 **(ii) At the time of the possession, the person has two or more prior convictions for un-**
 39 **lawful possession of a usable quantity of a controlled substance; or**

40 **(iii) The possession is a commercial drug offense under ORS 475.900 (1)(b); or**

41 **(B) The person possesses 40 or more user units of a mixture or substance containing a**
 42 **detectable amount of methadone.**

43 **SECTION 20.** ORS 475.834 is amended to read:

44 475.834. (1) It is unlawful for any person knowingly or intentionally to possess oxycodone unless
 45 the oxycodone was obtained directly from, or pursuant to a valid prescription or order of, a practi-

1 tioner while acting in the course of professional practice, or except as otherwise authorized by ORS
2 475.005 to 475.285 and 475.752 to 475.980.

3 (2)(a) Unlawful possession of oxycodone is a Class [*E violation*] **A misdemeanor**.

4 [(b) *Notwithstanding paragraph (a) of this subsection, unlawful possession of oxycodone is a Class*
5 *A misdemeanor if the person possesses 40 or more pills, tablets, capsules or user units of a mixture*
6 *or substance containing a detectable amount of oxycodone.*]

7 [(c) *Notwithstanding paragraphs (a) and (b) of this subsection, unlawful possession of oxycodone*
8 *is a Class C felony if the possession is a commercial drug offense under ORS 475.900 (1)(b).*]

9 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of oxycodone**
10 **is a Class C felony if:**

11 **(A) The person possesses a usable quantity of oxycodone and:**

12 **(i) At the time of the possession, the person has a prior felony conviction;**

13 **(ii) At the time of the possession, the person has two or more prior convictions for un-**
14 **lawful possession of a usable quantity of a controlled substance; or**

15 **(iii) The possession is a commercial drug offense under ORS 475.900 (1)(b); or**

16 **(B) The person possesses 40 or more pills, tablets or capsules of a mixture or substance**
17 **containing a detectable amount of oxycodone.**

18 **SECTION 21.** ORS 475.854 is amended to read:

19 475.854. (1) It is unlawful for any person knowingly or intentionally to possess heroin.

20 (2)(a) Unlawful possession of heroin is a Class [*E violation*] **A misdemeanor**.

21 [(b) *Notwithstanding paragraph (a) of this subsection, unlawful possession of heroin is a Class A*
22 *misdemeanor if the person possesses one gram or more of a mixture or substance containing a detect-*
23 *able amount of heroin.*]

24 [(c) *Notwithstanding paragraphs (a) and (b) of this subsection, unlawful possession of heroin is a*
25 *Class B felony if:*]

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

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

28 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of heroin is a**
29 **Class B felony if:**

30 **(A) The person possesses a usable quantity of heroin and:**

31 **(i) At the time of the possession, the person has a prior felony conviction;**

32 **(ii) At the time of the possession, the person has two or more prior convictions for un-**
33 **lawful possession of a usable quantity of a controlled substance; or**

34 **(iii) The possession is a commercial drug offense under ORS 475.900 (1)(b); or**

35 **(B) The person possesses one gram or more of a mixture or substance containing a de-**
36 **tectable amount of heroin.**

37 **SECTION 22.** ORS 475.874 is amended to read:

38 475.874. (1) It is unlawful for any person knowingly or intentionally to possess
39 3,4-methylenedioxymethamphetamine.

40 (2)(a) Unlawful possession of 3,4-methylenedioxymethamphetamine is a Class [*E violation*] **A**
41 **misdemeanor.**

42 (b) Notwithstanding paragraph (a) of this subsection, unlawful possession of
43 3,4-methylenedioxymethamphetamine is a Class [*A misdemeanor*] **B felony if:**

44 **(A) The person possesses a usable quantity of 3,4-methylenedioxymethamphetamine and:**

45 **(i) At the time of the possession, the person has a prior felony conviction;**

1 (ii) At the time of the possession, the person has two or more prior convictions for un-
2 lawful possession of a usable quantity of a controlled substance; or

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

4 (B) The person possesses one gram or more or five or more pills, tablets or capsules of a mix-
5 ture or substance containing a detectable amount of:

6 [(A)] (i) 3,4-methylenedioxyamphetamine;

7 [(B)] (ii) 3,4-methylenedioxymethamphetamine; or

8 [(C)] (iii) 3,4-methylenedioxy-N-ethylamphetamine.

9 [(c) Notwithstanding paragraphs (a) and (b) of this subsection, unlawful possession of
10 3,4-methylenedioxymethamphetamine is a Class B felony if:]

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

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

13 **SECTION 23.** ORS 475.884 is amended to read:

14 475.884. (1) It is unlawful for any person knowingly or intentionally to possess cocaine unless
15 the substance was obtained directly from, or pursuant to[,] a valid prescription or order of, a prac-
16 titioner while acting in the course of professional practice, or except as otherwise authorized by
17 ORS 475.005 to 475.285 and 475.752 to 475.980.

18 (2)(a) Unlawful possession of cocaine is a Class [E violation] **A misdemeanor**.

19 (b) Notwithstanding paragraph (a) of this subsection, unlawful possession of cocaine is a Class
20 [A misdemeanor] **C felony** if:

21 **(A) The person possesses a usable quantity of cocaine and:**

22 (i) At the time of the possession, the person has a prior felony conviction;

23 (ii) At the time of the possession, the person has two or more prior convictions for un-
24 lawful possession of a usable quantity of a controlled substance; or

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

26 (B) The person possesses two grams or more of a mixture or substance containing a detectable
27 amount of cocaine.

28 [(c) Notwithstanding paragraphs (a) and (b) of this subsection, unlawful possession of cocaine is
29 a Class C felony if:]

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

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

32 **SECTION 24.** ORS 475.894 is amended to read:

33 475.894. (1) It is unlawful for any person knowingly or intentionally to possess methamphetamine
34 unless the substance was obtained directly from, or pursuant to[,] a valid prescription or order of,
35 a practitioner while acting in the course of professional practice, or except as otherwise authorized
36 by ORS 475.005 to 475.285 and 475.752 to 475.980.

37 (2)(a) Unlawful possession of methamphetamine is a Class [E violation] **A misdemeanor**.

38 (b) Notwithstanding paragraph (a) of this subsection, unlawful possession of methamphetamine
39 is a Class [A misdemeanor] **C felony** if:

40 **(A) The person possesses a usable quantity of methamphetamine and:**

41 (i) At the time of the possession, the person has a prior felony conviction;

42 (ii) At the time of the possession, the person has two or more prior convictions for un-
43 lawful possession of a usable quantity of a controlled substance; or

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

45 (B) The person possesses two grams or more of a mixture or substance containing a detectable

1 amount of methamphetamine.

2 [(c) Notwithstanding paragraphs (a) and (b) of this subsection, unlawful possession of metham-
3 phetamine is a Class C felony if:]

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

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

6 **SECTION 25.** ORS 475.900 is amended to read:

7 475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified
8 as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

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

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

13 (B) Five grams or more of a mixture or substance containing a detectable amount of fentanyl,
14 or any substituted derivative of fentanyl as defined by the rules of the Oregon Board of Pharmacy;

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

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

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

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

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

24 (i) 3,4-methylenedioxyamphetamine;

25 (ii) 3,4-methylenedioxymethamphetamine; or

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

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

31 (A) The delivery was of heroin, cocaine, methamphetamine, lysergic acid diethylamide,
32 psilocybin or psilocin and was for consideration;

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

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

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

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

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

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

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

3 (I) The offender was using public lands for the manufacture of controlled substances;

4 (J) The offender had constructed fortifications or had taken security measures with the potential
 5 of injuring persons; or

6 (K) The offender was in possession of controlled substances in an amount greater than:

7 (i) Three grams or more of a mixture or substance containing a detectable amount of heroin;

8 (ii) Three grams or more of a mixture or substance containing a detectable amount of fentanyl,
 9 or any substituted derivative of fentanyl as defined by the rules of the Oregon Board of Pharmacy;

10 (iii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

11 (iv) Eight grams or more of a mixture or substance containing a detectable amount of metham-
 12 phetamine;

13 (v) Twenty or more user units of a mixture or substance containing a detectable amount of
 14 lysergic acid diethylamide;

15 (vi) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin
 16 or psilocin; or

17 (vii) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance
 18 containing a detectable amount of:

19 (I) 3,4-methylenedioxyamphetamine;

20 (II) 3,4-methylenedioxymethamphetamine; or

21 (III) 3,4-methylenedioxy-N-ethylamphetamine.

22 (c) The violation constitutes a violation of ORS 475.848, 475.852, 475.868, 475.872, 475.878,
 23 475.882, 475.888, 475.892 or 475.904.

24 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists
 25 of:

26 (A) A chemical reaction involving one or more precursor substances for the purpose of manu-
 27 facturing methamphetamine; or

28 (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of
 29 manufacturing methamphetamine.

30 (e) The violation constitutes a violation of ORS 475.906 (1) or (2) that is not described in ORS
 31 475.907.

32 (2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified as crime category 6 of
 33 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

34 (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or
 35 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or
 36 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

37 (b) The violation constitutes possession of substantial quantities of a controlled substance. For
 38 purposes of this paragraph, the following amounts constitute substantial quantities of the following
 39 controlled substances:

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

41 (B) Five grams or more of a mixture or substance containing a detectable amount of fentanyl,
 42 or any substituted derivative of fentanyl as defined by the rules of the Oregon 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:

12 (a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-
13 sion if the violation involves delivery or manufacture of a controlled substance; or

14 (b) **Crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice**
15 **Commission if the violation involves possession of a controlled substance.**

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

19 (5) As used in this section, “mixture or substance” means any mixture or substance, whether
20 or not the mixture or substance is in an ingestible or marketable form at the time of the offense.

21 **SECTION 26.** ORS 670.280 is amended to read:

22 670.280. (1) As used in this section:

23 (a) “License” includes a registration, certification or permit.

24 (b) “Licensee” includes a registrant or a holder of a certification or permit.

25 (2) Except as provided in ORS 342.143 (3) or 342.175 (3), a licensing board, commission or agency
26 may not deny, suspend or revoke an occupational or professional license solely for the reason that
27 the applicant or licensee has been convicted of a crime, but it may consider the relationship of the
28 facts which support the conviction and all intervening circumstances to the specific occupational
29 or professional standards in determining the fitness of the person to receive or hold the license.
30 *[There is a rebuttable presumption as to each individual applicant or licensee that an existing or prior*
31 *conviction for conduct that has been classified or reclassified as a Class E violation does not make an*
32 *applicant for an occupational or professional license or a licensee with an occupational or professional*
33 *license unfit to receive or hold the license.]*

34 (3) Except as provided in ORS 342.143 (3) and 342.175 (3), a licensing board, commission or
35 agency may deny an occupational or professional license or impose discipline on a licensee based
36 on conduct that is not undertaken directly in the course of the licensed activity, but that is sub-
37 stantially related to the fitness and ability of the applicant or licensee to engage in the activity for
38 which the license is required. In determining whether the conduct is substantially related to the
39 fitness and ability of the applicant or licensee to engage in the activity for which the license is re-
40 quired, the licensing board, commission or agency shall consider the relationship of the facts with
41 respect to the conduct and all intervening circumstances to the specific occupational or professional
42 standards. *[There is a rebuttable presumption as to each individual applicant or licensee that an ex-*
43 *isting or prior conviction for conduct that has been classified or reclassified as a Class E violation is*
44 *not related to the fitness and ability of the applicant or licensee to engage in the activity for which the*
45 *license is required.]*

1 **SECTION 27.** (1) Section 30, chapter 591, Oregon Laws 2021, is repealed.

2 (2) ORS 153.043, 153.062, 293.665, 305.231, 419C.460, and 475.237 are repealed.

3 **SECTION 28.** The amendments to statutes by sections 1 to 26 of this 2023 Act and the
4 repeal of statutes and session law by section 27 of this 2023 Act:

5 (1) Apply to conduct constituting, or alleged to constitute, an offense occurring on or
6 after the effective date of this 2023 Act.

7 (2) Do not affect proceedings based on conduct constituting, or alleged to constitute, an
8 offense occurring before the effective date of this 2023 Act.

9 (3) Do not release or extinguish any penalty, forfeiture or liability incurred under the
10 statutes amended by sections 1 to 26 of this 2023 Act and the statutes and session law re-
11 pealed by section 27 of this 2023 Act. The statutes amended by sections 1 to 26 of this 2023
12 Act and the statutes and session law repealed by section 27 of this 2023 Act remain in force
13 for the purpose of maintaining an action or prosecution for the enforcement of such a pen-
14 alty, forfeiture or liability.

15 (4) Do not relieve a person of any obligation with respect to a fine, penalty or other li-
16 ability, duty or obligation accruing under the statutes amended by sections 1 to 26 of this
17 2023 Act and the statutes and session law repealed by section 27 of this 2023 Act. After the
18 effective date of this 2023 Act, a court may undertake the collection or enforcement of such
19 fine, penalty or other liability, duty or obligation.

20 **SECTION 29.** This 2023 Act takes effect on the 91st day after the date on which the 2023
21 regular session of the Eighty-second Legislative Assembly adjourns sine die.

22