

Senate Bill 988

Sponsored by Senator KNOPP; Senator THATCHER

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**.

Separates possession, delivery and manufacture of fentanyl from general controlled substance offense statute into separate statutes. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both, if person possesses over specified amount. Increases penalty for unlawful delivery of fentanyl to maximum of 20 years' imprisonment, \$375,000 fine, or both, if delivery is to person under 18 years of age.

Creates crimes of unlawful delivery and manufacture of fentanyl within 1,000 feet of school. Punishes each by maximum of 20 years' imprisonment, \$375,000 fine, or both. Provides that offenses are crime category 8 of sentencing guidelines grid of Oregon Criminal Justice Commission.

Adds alternative manner of calculating amount of fentanyl for purposes of offense level and sentencing guidelines crime category level. Provides that delivery of fentanyl for consideration qualifies as one of three factors for purposes of commercial drug offense. Increases sentencing crime category level for delivery of fentanyl for consideration.

Establishes mandatory minimum sentence for delivery of fentanyl to person under 18 years of age. Prohibits optional probation or downward departure as sentence for manufacture or delivery of fentanyl if person has previous conviction.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fentanyl; creating new provisions; amending ORS 293.665, 423.478, 475.245, 475.752,
3 475.898, 475.900, 475.907 and 475.934; and declaring an emergency.

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

5 **SECTION 1. Sections 2, 3, 4, 5 and 6 of this 2023 Act are added to and made a part of**
6 **ORS 475.806 to 475.894.**

7 **SECTION 2. (1) It is unlawful for any person knowingly or intentionally to possess**
8 **fentanyl, or any substituted derivative of fentanyl as defined by the rules of the State Board**
9 **of Pharmacy, unless the fentanyl or derivative was obtained directly from, or pursuant to a**
10 **valid prescription or order of, a practitioner while acting in the course of professional prac-**
11 **tice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.752 to 475.980.**

12 **(2)(a) Unlawful possession of fentanyl is a Class E violation.**

13 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of fentanyl is**
14 **a Class A misdemeanor if the person possesses one gram or more or five or more user units**
15 **of a mixture or substance containing a detectable amount of fentanyl, or any substituted**
16 **derivative of fentanyl as defined by the rules of the State Board of Pharmacy.**

17 **(c) Notwithstanding paragraphs (a) and (b) of this subsection, unlawful possession of**
18 **fentanyl is a Class C felony if:**

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

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

21 **SECTION 3. (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it**
22 **is unlawful for any person to deliver fentanyl, or any substituted derivative of fentanyl as**
23 **defined by the rules of the State Board of Pharmacy.**

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 (2) Unlawful delivery of fentanyl is a Class B felony.

2 (3) Notwithstanding subsection (2) of this section, unlawful delivery of fentanyl is a Class
3 A felony if the delivery is to a person under 18 years of age.

4 **SECTION 4.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it
5 is unlawful for any person to deliver fentanyl, or any substituted derivative of fentanyl as
6 defined by the rules of the State Board of Pharmacy, within 1,000 feet of the real property
7 comprising a public or private elementary, secondary or career school attended primarily by
8 minors.

9 (2) Unlawful delivery of fentanyl within 1,000 feet of a school is a Class A felony.

10 **SECTION 5.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it
11 is unlawful for any person to manufacture fentanyl, or any substituted derivative of fentanyl
12 as defined by the rules of the State Board of Pharmacy.

13 (2) Unlawful manufacture of fentanyl is a Class B felony.

14 **SECTION 6.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it
15 is unlawful for any person to manufacture fentanyl, or any substituted derivative of fentanyl
16 as defined by the rules of the State Board of Pharmacy, within 1,000 feet of the real property
17 comprising a public or private elementary, secondary or career school attended primarily by
18 minors.

19 (2) Unlawful manufacture of fentanyl within 1,000 feet of a school is a Class A felony.

20 **SECTION 7.** ORS 475.752 is amended to read:

21 475.752. (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful
22 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
23 section with respect to:

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

26 (b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise
27 provided in ORS 475.878, 475.880, 475.882, 475.904 and 475.906 **and sections 3, 4 and 6 of this 2023**
28 **Act.**

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

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

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

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

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

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

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

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

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

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

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

3 (b) A controlled substance in Schedule II, is guilty of a Class E violation, except as otherwise
 4 provided in ORS 475.814, 475.824, 475.834 or 475.884 **or section 2 of this 2023 Act** or subsection (8)
 5 of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (8) Notwithstanding subsection (3)(b) of this section, unlawful possession of a controlled sub-
 34 stance in Schedule II is a Class C felony if:

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

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

37 **SECTION 8.** ORS 475.900 is amended to read:

38 475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified
 39 as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

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

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

44 (B) Five grams or more **or 25 or more user units** of a mixture or substance containing a de-
 45 tectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of the

1 [Oregon] **State** Board of Pharmacy;

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

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

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

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

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

11 (i) 3,4-methylenedioxyamphetamine;

12 (ii) 3,4-methylenedioxymethamphetamine; or

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

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

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

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

21 (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS
22 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous
23 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly
24 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a
25 controlled substance offense;

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

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

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

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

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

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

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

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

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

40 (ii) Three grams or more **or 15 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 (iii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

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

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

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

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

7 (I) 3,4-methylenedioxyamphetamine;

8 (II) 3,4-methylenedioxymethamphetamine; or

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

10 (c) The violation constitutes a violation of ORS 475.848, 475.852, 475.868, 475.872, 475.878,
11 475.882, 475.888, 475.892 or 475.904 **or section 4 or 6 of this 2023 Act.**

12 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists
13 of:

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

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

18 (e) The violation constitutes a violation of ORS 475.906 (1) or (2) that is not described in ORS
19 475.907.

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

22 (a) The violation constitutes delivery of heroin, **fantanyl**, cocaine, methamphetamine or
23 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or
24 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

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

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

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

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

33 (D) Ten grams or more of a mixture or substance containing a detectable amount of metham-
34 phetamine;

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

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

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

41 (i) 3,4-methylenedioxyamphetamine;

42 (ii) 3,4-methylenedioxymethamphetamine; or

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

44 (3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection (1) or
45 (2) of this section shall be classified as crime category 4 of the sentencing guidelines grid of the

1 Oregon Criminal Justice Commission if the violation involves delivery or manufacture of a con-
 2 trolled substance.

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

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

8 **SECTION 9.** ORS 475.907 is amended to read:

9 475.907. (1) When a person is convicted of the unlawful delivery of cocaine, methamphetamine,
 10 heroin, **fantanyl** or ecstasy to a person under 18 years of age, the court shall sentence the person
 11 to a term of incarceration ranging from 34 months to 72 months, depending on the person’s criminal
 12 history.

13 (2) The sentence described in subsection (1) of this section does not apply to a person who is less
 14 than three years older than the person under 18 years of age to whom the controlled substance was
 15 delivered, unless the person has a previous conviction for delivery of cocaine, methamphetamine,
 16 heroin, **fantanyl** or ecstasy to a person under 18 years of age.

17 **SECTION 10.** ORS 475.934 is amended to read:

18 475.934. (1) When a court sentences a person convicted of a crime listed in subsection (2) of this
 19 section, the court may not impose a sentence of optional probation or grant a downward disposi-
 20 tional departure or a downward durational departure under the rules of the Oregon Criminal Justice
 21 Commission if the person has a previous conviction for any of the crimes listed in subsection (2) of
 22 this section.

23 (2) The crimes to which subsection (1) of this section applies are:

24 (a) Manufacture or delivery of a controlled substance under ORS 475.752 (1);

25 (b) Creation or delivery of a counterfeit substance under ORS 475.752 (2);

26 (c) Manufacture or delivery of heroin under ORS 475.846, 475.848, 475.850 or 475.852;

27 **(d) Manufacture or delivery of fantanyl under section 3, 4, 5 or 6 of this 2023 Act;**

28 [(d)] (e) Manufacture or delivery of 3,4-methylenedioxyamphetamine under ORS 475.866,
 29 475.868, 475.870 or 475.872;

30 [(e)] (f) Manufacture or delivery of cocaine under ORS 475.876, 475.878, 475.880 or 475.882;

31 [(f)] (g) Manufacture or delivery of methamphetamine under ORS 475.886, 475.888, 475.890 or
 32 475.892;

33 [(g)] (h) Manufacture or delivery of a controlled substance within 1,000 feet of a school under
 34 ORS 475.904;

35 [(h)] (i) Delivery of a controlled substance to a person under 18 years of age under ORS 475.906;
 36 and

37 [(i)] (j) Possession of a precursor substance with intent to manufacture a controlled substance
 38 under ORS 475.967.

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

44 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
 45 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open

1 court of the suspended imposition of a sentence.

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

3 (5) As used in this section, “previous conviction” includes convictions entered in any other state
4 or federal court for comparable offenses.

5 **SECTION 11.** ORS 293.665 is amended to read:

6 293.665. (1)(a) Within 180 days of June 30, 2021, and every June 30 thereafter, the Oregon De-
7 partment of Administrative Services shall calculate the savings to the State of Oregon resulting
8 from the reductions to Class E violations for offenses described in ORS 475.752, 475.814, 475.824,
9 475.834, 475.854, 475.874, 475.884 and 475.894 **and section 2 of this 2023 Act**, including any savings
10 resulting from reductions in arrests, incarceration and supervision.

11 (b) The savings shall be calculated based on a comparison of the most recent biennium con-
12 cluded at the time the calculation is made and the biennium ending June 30, 2019.

13 (2) In making the calculations set forth in this section, the department shall use actual data.
14 The department may use best available estimates when actual data is unavailable.

15 **SECTION 12.** ORS 475.898 is amended to read:

16 475.898. (1) A person who contacts emergency medical services or a law enforcement agency to
17 obtain medical assistance for another person who needs medical assistance due to a drug-related
18 overdose is immune from arrest, [or] prosecution **or the imposition of a civil penalty** for an offense
19 listed in subsection (3) of this section if the evidence of the offense was obtained because the person
20 contacted emergency medical services or a law enforcement agency.

21 (2) A person who is in need of medical assistance due to a drug-related overdose is immune from
22 arrest, [or] prosecution **or the imposition of a civil penalty** for an offense listed in subsection (3)
23 of this section if the evidence of the offense was obtained because any person contacted emergency
24 medical services or a law enforcement agency to obtain medical assistance for the person.

25 (3) The immunity conferred under subsections (1) and (2) of this section applies to arrest, [and]
26 prosecution **or the imposition of a civil penalty** for:

27 (a) Frequenting a place where controlled substances are used as described in ORS 167.222;

28 (b) Possession of a controlled substance as described in ORS 475.752;

29 (c) Unlawful possession of hydrocodone as described in ORS 475.814;

30 (d) Unlawful possession of methadone as described in ORS 475.824;

31 (e) Unlawful possession of oxycodone as described in ORS 475.834;

32 (f) Unlawful possession of heroin as described in ORS 475.854;

33 **(g) Unlawful possession of fentanyl as described in section 2 of this 2023 Act;**

34 [(g)] **(h) Unlawful possession of 3,4-methylenedioxyamphetamine as described in ORS**
35 **475.874;**

36 [(h)] **(i) Unlawful possession of cocaine as described in ORS 475.884;**

37 [(i)] **(j) Unlawful possession of methamphetamine as described in ORS 475.894;**

38 [(j)] **(k) Unlawfully possessing a prescription drug as described in ORS 689.527 (6); and**

39 [(k)] **(L) Unlawful possession of drug paraphernalia with intent to sell or deliver as described**
40 **in ORS 475.525.**

41 (4)(a) A person may not be arrested for violating, or found to be in violation of, the conditions
42 of the person’s pretrial release, probation, post-prison supervision or parole if the violation involves:

43 (A) The possession or use of a controlled substance or frequenting a place where controlled
44 substances are used; and

45 (B) The evidence of the violation was obtained because the person contacted emergency medical

1 services or a law enforcement agency to obtain medical assistance for another person who needed
2 medical assistance due to a drug-related overdose.

3 (b) A person may not be arrested for violating, or found to be in violation of, the conditions of
4 the person's pretrial release, probation, post-prison supervision or parole if the violation involves:

5 (A) The possession or use of a controlled substance or frequenting a place where controlled
6 substances are used; and

7 (B) The evidence of the violation was obtained because the person was in need of medical as-
8 sistance due to a drug-related overdose and any person contacted emergency medical services or a
9 law enforcement agency to obtain medical assistance for the person.

10 (5)(a) A person may not be arrested on an outstanding warrant for any of the offenses listed in
11 subsection (3) of this section, or on an outstanding warrant for a violation, other than commission
12 of a new crime, of the conditions of the person's probation, post-prison supervision or parole for
13 conduct that would constitute an offense listed in subsection (3) of this section, if the location of the
14 person was obtained because the person contacted emergency medical services or a law enforcement
15 agency to obtain medical assistance for another person who needed medical assistance due to a
16 drug-related overdose.

17 (b) A person may not be arrested on an outstanding warrant for any of the offenses listed in
18 subsection (3) of this section, or on an outstanding warrant for a violation, other than commission
19 of a new crime, of the conditions of the person's probation, post-prison supervision or parole for
20 conduct that would constitute an offense listed in subsection (3) of this section, if the location of the
21 person was obtained because the person was in need of medical assistance due to a drug-related
22 overdose and any person contacted emergency medical services or a law enforcement agency to
23 obtain medical assistance for the person.

24 (c) This subsection does not apply to outstanding federal warrants or outstanding warrants is-
25 sued from other states.

26 (6) The immunity from arrest and prosecution described in this section is not grounds for the
27 suppression of evidence relating to a criminal offense other than the offenses listed in subsection (3)
28 of this section.

29 (7) As used in this section:

30 (a) "Controlled substance" has the meaning given that term in ORS 475.005.

31 (b) "Drug-related overdose" means an acute condition, including mania, hysteria, extreme phys-
32 ical illness, coma or death, resulting from the consumption or use of a controlled substance, or an-
33 other substance with which a controlled substance was combined, that a person would reasonably
34 believe to be a condition that requires medical attention.

35 **SECTION 13.** ORS 475.245 is amended to read:

36 475.245. (1)(a) Whenever a person is charged with an offense listed in subsection (5) of this sec-
37 tion, the court, with the consent of the district attorney and the person, may defer further pro-
38 ceedings and place the person on probation. The terms of the probation shall be defined by a
39 probation agreement.

40 (b) A probation agreement carries the understanding that if the defendant fulfills the terms of
41 the agreement, the criminal charges filed against the defendant will be dismissed with prejudice.

42 (c) The agreement must contain a waiver of the following rights of the defendant with respect
43 to each criminal charge:

44 (A) The right to a speedy trial and trial by jury;

45 (B) The right to present evidence on the defendant's behalf;

1 (C) The right to confront and cross-examine witnesses against the defendant;

2 (D) The right to contest evidence presented against the defendant, including the right to object
3 to hearsay evidence; and

4 (E) The right to appeal from a judgment of conviction resulting from an adjudication of guilt
5 entered under subsection (2) of this section, unless the appeal is based on an allegation that the
6 sentence exceeds the maximum allowed by law or constitutes cruel and unusual punishment.

7 (d) The agreement must include a requirement that the defendant pay any restitution owed to
8 the victim as determined by the court, and any fees for court-appointed counsel ordered by the court
9 under ORS 135.050.

10 (e) The agreement may not contain a requirement that the defendant enter a plea of guilty or
11 no contest on any charge in the accusatory instrument.

12 (f) Entering into a probation agreement does not constitute an admission of guilt and is not
13 sufficient to warrant a finding or adjudication of guilt by a court.

14 (g) Police reports or other documents associated with the criminal charges in a court file other
15 than the probation agreement may not be admitted into evidence, and do not establish a factual
16 basis for finding the defendant guilty, unless the court resumes criminal proceedings and enters an
17 adjudication of guilt under subsection (2) of this section.

18 (2) Upon violation of a term or condition of the probation agreement, the court may resume the
19 criminal proceedings and may find the defendant guilty of the offenses in the accusatory instrument
20 in accordance with the waiver of rights in the probation agreement. The defendant may not contest
21 the sufficiency of the evidence establishing the defendant's guilt of the offenses in the accusatory
22 instrument.

23 (3) Upon fulfillment of the terms and conditions of the probation agreement, the court shall
24 discharge the person and dismiss the proceedings against the person. Discharge and dismissal under
25 this section shall be without adjudication of guilt and is not a conviction for purposes of this section
26 or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There
27 may be only one discharge and dismissal under this section with respect to any person.

28 (4) In the event that the period of probation under this section expires, but the terms and con-
29 ditions of the probation agreement have not been fulfilled and no probation violation proceeding was
30 initiated prior to the expiration of the period of probation, the court may not discharge the person
31 and dismiss the proceedings against the person. The court shall instead issue an order requiring the
32 person to appear and to show cause why the court should not enter an adjudication of guilt as de-
33 scribed in subsection (2) of this section due to the failure of the person to fulfill the terms and
34 conditions of the probation agreement prior to expiration of the period of probation. At the hearing
35 on the order to show cause, after considering any evidence or argument from the district attorney
36 and the person, the court may:

37 (a) Order a new period of probation to allow the person to fulfill the terms and conditions of the
38 probation agreement; or

39 (b) Enter an adjudication of guilt as described in subsection (2) of this section.

40 (5) This section applies to the following offenses:

41 (a) Possession of a controlled substance under ORS 475.752 (3), 475.814, 475.824, 475.834, 475.854,
42 475.874, 475.884 or 475.894 **or section 2 of this 2023 Act;**

43 (b) Unlawfully possessing a prescription drug under ORS 689.527 (6);

44 (c) Unlawfully possessing marijuana plants, usable marijuana, cannabinoid products, cannabinoid
45 concentrates or cannabinoid extracts as described in ORS 475C.337 or 475C.341, if the offense is a

1 misdemeanor or felony;

2 (d) Endangering the welfare of a minor under ORS 163.575 (1)(b);

3 (e) Frequenting a place where controlled substances are used under ORS 167.222; and

4 (f) A property offense that is motivated by a dependence on a controlled substance or a
5 marijuana item as defined in ORS 475C.009.

6 **SECTION 14.** ORS 423.478 is amended to read:

7 423.478. (1) The Department of Corrections shall:

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

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

10 (A) Allow tracking of offenders; and

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

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

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

17 (a) On parole;

18 (b) On probation;

19 (c) On post-prison supervision;

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

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

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

25 (3) Notwithstanding the fact that the court has sentenced a person to a term of incarceration,
26 when an offender is committed to the custody of the supervisory authority of a county under ORS
27 137.124 (2) or (4), the supervisory authority may execute the sentence by imposing sanctions other
28 than incarceration if deemed appropriate by the supervisory authority. If the supervisory authority
29 releases a person from custody under this subsection and the person is required to report as a sex
30 offender under ORS 163A.010, the supervisory authority, as a condition of release, shall order the
31 person to report to the Department of State Police, a city police department or a county sheriff's
32 office or to the supervising agency, if any:

33 (a) When the person is released;

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

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

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

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

40 (4) As used in this section:

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

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

44 (A) Unlawful possession of methadone under ORS 475.824 (2)(b);

45 (B) Unlawful possession of oxycodone under ORS 475.834 (2)(b);

- 1 (C) Unlawful possession of heroin under ORS 475.854 (2)(b);
- 2 (D) Unlawful possession of 3,4-methylenedioxymethamphetamine under ORS 475.874 (2)(b);
- 3 (E) Unlawful possession of cocaine under ORS 475.884 (2)(b); [or]
- 4 (F) Unlawful possession of methamphetamine under ORS 475.894 (2)(b)[.]; **or**
- 5 **(G) Unlawful possession of fentanyl under section 2 (2)(b) of this 2023 Act.**
- 6 (c) “Designated person misdemeanor” means:
- 7 (A) Assault in the fourth degree constituting domestic violence if the judgment document is as
- 8 described in ORS 163.160 (4);
- 9 (B) Menacing constituting domestic violence if the judgment document is as described in ORS
- 10 163.190 (3); or
- 11 (C) Sexual abuse in the third degree under ORS 163.415.

12 **SECTION 15. This 2023 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
14 **on its passage.**