

**TESTIMONY ON SB 236
BEFORE THE JOINT COMMITTEE ON ADDICTION AND COMMUNITY SAFETY
RESPONSE
FEBRUARY 5, 2025**

**PRESENTED BY: AARON KNOTT
DIRECTOR OF GOVERNMENT RELATIONS AND COMMUNICATIONS
OREGON JUDICIAL DEPARTMENT**

In 2021, Senate Bill 755 specifically added the chemical compound commonly referred to as “fentanyl” to the criminal code. Subsequently, the legislature passed HB 2645 (2023) and HB 4002 (2024), which made further amendments to Oregon’s various drug statutes. Over the course of these successive iterations, statutory provisions have fallen out of alignment with each other in small ways. The Oregon Judicial Department (OJD) appreciates the opportunity to present what are intended to be small, technical changes meant to improve consistency across Oregon’s drug laws.

First, including fentanyl in the definition of “controlled substance” under ORS 475.924 (section 10 of the bill) does not need the future effective date currently found in Section 16 of the bill. ORS 475.924 defines the term “controlled substance” in another statute, ORS 475.925, which sets certain sentences for crimes involving delivery or manufacturing of large amounts of controlled substances. Punishments for large amounts of fentanyl have been included in ORS 475.935 since 2021, but the legislature did not update the corresponding definition for “controlled substances” in ORS 475.924 at the same time to include fentanyl. We believe that this was a technical oversight. Thus, a future effective date for this change under section 16 in the current draft of this bill is not necessary.

Second, sections 13(2)(a) and 25(3)(a) allow courts to find that a participant in a conditional discharge program is successful “upon violation of a term or condition of the probation agreement.” Allowing the court to find someone successful on a conditional discharge program after the court finds that the person violated a term or condition of probation is not appropriate. Instead, the bill should allow the court to find that someone is successful if, at a show-cause hearing, the court is able to make that finding after hearing from each party. We believe that this was likely a drafting error within HB 4002 (2024).

Finally, ORS 475.245(4)(b) (section 13 of the bill, amending HB 4002) and ORS 137.532(4)(b), state that a failure of a conditional discharge program results in an entry of an “adjudication of guilt.” While an “adjudication of guilt” is the likely outcome of a conditional discharge program failure, we believe it is more legally appropriate for the law to state that a failed conditional discharge program results in a criminal proceeding that is conducted pursuant to the terms of the conditional discharge agreement. It is important, as a matter of due process, that the court abide by the terms of the conditional discharge agreement prior to entering an adjudication of guilt.

OJD is currently working with stakeholders to develop additional implementing language for the provisions of HB 4002 relating to the automatic expungement of drug-related misdemeanors as contemplated by section 54 of that legislation. We look forward to returning to this committee with additional implementing language soon.