



**OREGON STATE SENATE**

**Adopt Senate Bill 243 with the -10 Amendment**

**Close the "Drug Decrim Loophole" and Protect Law Abiding Oregonians**

Colleagues,

For your consideration is the -10 amendment to Senate Bill 243 which replaces the entire bill with a new proposal to close the Drug Decrim Loophole the Oregon Legislature created in 2017 when it passed House Bill 2355.

The Drug Decrim Loophole was created when Governor Tina Kotek carried on the House floor a bill that would move Oregonians charged with a crime for drug possession from a felony level conviction to a misdemeanor conviction upon a finding of or pleading of guilt for drug possession. When Governor Kotek moved this bill, it significantly altered criminal justice policies in two very detrimental ways that negatively impacted public safety in Oregon:

1. It disconnected drug sentencing from drug treatment in that an estimated 2,500 Oregonians would not longer be sentenced to the Oregon Department of Corrections where they were almost always ensured to get state-funded drug treatment while incarcerated, and it shifted the misdemeanor Class A sentencing for drugs like cocaine and heroin to a 364-day maximum sentencing. This meant that a person convicted under HB 2355 would go to county jail, and the Legislature appropriated no new money to the county for comparable drug treatment programs like those offered by the Department of Corrections. This was also a likely cause of the explosion of the homeless crisis in Oregon at the same time.
2. By shifting downward from a felony charge conviction to a misdemeanor conviction, it allowed people who had historically been precluded from gun ownership by virtue of having a felony status to now legally purchase a firearm, even though their addiction status created a situation where misdemeanor convicted addict who was receiving no state-funded treatment would not have the mental capacity to safely own and operate a firearm.

House Bill 2355 in effect created a massive loophole by which tens of thousands of Oregonians who were committing drug crimes of possession were now empowered to purchase a firearm because the Oregon Legislature restored their gun rights through the Drug Decrim Loophole. Historically, and prior to Governor Kotek's efforts to decrim hard drugs, these convicted drug felons would have been flagged for up to 10 years in a background check system and precluded from lawful gun ownership.

The Drug Decrim Loophole was made worse by the passage of Measure 110. When Oregonians voted to move drug possession to a new Class E violation – like a traffic ticket with no teeth – the loophole for gun possession by drug addicted individuals got bigger. The Legislature in implementing Measure 110



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did nothing to close the loophole, even though it was known then that now even more people who did not have the mental capacity to safely own a firearm would be able to procure a firearm free from a background check flag.

Parallel to this drug policy, on the same day the Oregon Legislature created the Drug Decrim Loophole, the House majority also voted to reduce sentencing for property and ID theft crimes in House Bill 3078. These are the same crimes that are generally committed by drug seeking individuals, and many times, committed with firearm used in the commission of a crime. During this period after these two laws went into effect, we saw headline after headline about drug and gun crimes exploding in Oregon.

When the Oregon Legislature passed House Bill 4002 in 2024 to recriminalize hard drugs, we once again did nothing to close the Drug Decrim Loophole, and we have not made the necessary investments into drug treatment to adequately deal with the number of people who are going to receive a drug conviction. At the time House Bill 4002 was under consideration, it was reported that nearly 2,000 people a year would go back into the justice system with a drug conviction or go to county jail. Counties were given no real new money to address this, and the revised misdemeanor status upon prosecution still meant that those with a drug conviction would still be able to lawfully possess a firearm free from a flag in the background check system. The estimate of nearly 2,000 people annually adjudicated for House Bill 4002 tracks with the 2,500 person estimate the Oregon Department of Corrections calculated at the time the Legislature passed House Bill 2355 would be the average annual reduction in DOC incarcerations for these drug crimes. What was left unsaid in those estimated figures was that these reductions in convictions would no longer result in state sponsored drug treatments or a flag in the Oregon State Police database that would have precluded those individuals from gun ownership.

The -X amendment to Senate Bill 243 closes the Drug Decrim Loophole and ends the nearly decade-long bad policy of allowing people who are incapacitated through their own choice abusing controlled substances to legally purchase and possess firearms. We have seen the rise in crime that resulted from this policy, and now that we've done drug recriminalization, there has been a slight cooling off of drug and gun crimes. The relationship between drugs and gun crimes is undeniable.

The -X amendment does the following things:

- Closes the Drug Decrim Loophole by restoring the preclusion from gun ownership to the category of drug crimes that were recriminalized under House Bill 4002.
- Requires that as a condition of entering into a legal agreement for non-adjudicated diversion sanctioning, which keeps a drug crime off a criminal record, that during diversion treatment, the offender would need to voluntarily give up their right to gun ownership until they have successfully completed a program.



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- Removes the base bill which is aimed not at people who are committing crime like drug possession, but who are otherwise law-abiding gun owners. The -10 amendment better recognizes that much of our gun crime stems from drug related crimes, not the individual who is an otherwise law-abiding gun owner.

Colleagues, I urge you to adopt the -X amendment and close the Drug Decrim Loophole for good. All Oregonians deserve to be safe in their homes and communities, and law abiding gun owners deserve to have their Second Amendment rights protected.

Sincerely,

Senator Cedric Hayden