

REVENUE: No revenue impact  
FISCAL: Fiscal statement issued

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Action: Do Pass  
Vote: 9 - 0 - 0  
Yeas: Barker, Bonamici, Cameron, Flores, Komp, Krieger, Read, Whisnant, Macpherson  
Nays: 0  
Exc.: 0  
Prepared By: Darian Stanford, Counsel  
Meeting Dates: 1/26, 2/22

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**WHAT THE MEASURE DOES:** Allows district attorney to treat felony of unlawful possession of heroin or unlawful possession of 3, 4-methylenedioxymethamphetamine (ecstasy) as Class A misdemeanor.

**ISSUES DISCUSSED:**

- Circumstances in which district attorney would treat felony as misdemeanor and reasons this assists in prosecution of drug offenses
- Function of diversionary programs such as drug court and community court
- Discretion is entirely with district attorney
- Discretion already exists for district attorney to reduce possession of methamphetamine, cocaine and marijuana from felony to misdemeanor
- Not treating offenses lightly; effective prosecutorial tool

**EFFECT OF COMMITTEE AMENDMENT:** No amendment.

**BACKGROUND:** Until last session, Oregon separated controlled substances by schedule classification. Thus, whether a defendant possessed heroin, ecstasy or marijuana, the charge was the same—possession of a controlled substance, Schedule I (“PCS I”). Cocaine and methamphetamine possession would be charged as possession of a controlled substance, Schedule II (“PCS II”). PCS I was a Class B felony, but PCS II was a Class C felony.

This classification system made it difficult for Oregon to track prosecutions of specific drugs. Due, in part, to this concern, in 2005, Oregon carved out specific statutes for each of the major controlled substances: cocaine, heroin, methamphetamine, marijuana and ecstasy.

HB 2379 fixes an unintended consequence of this reclassification. ORS 161.570 provides the district attorney with the authority to treat any Class C “nonperson felony” or certain Class B nonperson felonies (possession of over an ounce of marijuana and PCS I) as a Class A misdemeanor. Technically, after the reclassification, the district attorney no longer has the authority to treat possession of heroin or possession of ecstasy as a misdemeanor. This is because these crimes used to be classified as “PCS I,” but now have their own specific statutes (ORS 475.854 for heroin and 475.874 for ecstasy). HB 2379 adds ORS 475.854 and 475.874 to the list of crimes that the district attorney may treat as a Class A misdemeanor.