

Enrolled
Senate Bill 296

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CHAPTER

AN ACT

Relating to controlled substances; amending ORS 475.900.

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

SECTION 1. ORS 475.900 is amended to read:

475.900. (1) A violation of ORS 475.840, [or] 475.846 to 475.894, **475.904 or 475.906** shall be classified as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

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

- (A) Five grams or more of a mixture or substance containing a detectable amount of heroin;
- (B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;
- (C) Ten grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;
- (D) One hundred grams or more of a mixture or substance containing a detectable amount of hashish;
- (E) One hundred and fifty grams or more of a mixture or substance containing a detectable amount of marijuana;
- (F) Two hundred or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
- (G) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or
- (H) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:
 - (i) 3,4-methylenedioxyamphetamine;
 - (ii) 3,4-methylenedioxymethamphetamine; or
 - (iii) 3,4-methylenedioxy-N-ethylamphetamine.

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

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

- (B) The offender was in possession of \$300 or more in cash;
- (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a controlled substance offense;
- (D) The offender was in possession of materials being used for the packaging of controlled substances such as scales, wrapping or foil, other than the material being used to contain the substance that is the subject of the offense;
- (E) The offender was in possession of drug transaction records or customer lists;
- (F) The offender was in possession of stolen property;
- (G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled substance offense;
- (H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment;
- (I) The offender was using public lands for the manufacture of controlled substances;
- (J) The offender had constructed fortifications or had taken security measures with the potential of injuring persons; or
- (K) The offender was in possession of controlled substances in an amount greater than:
 - (i) Three grams or more of a mixture or substance containing a detectable amount of heroin;
 - (ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;
 - (iii) Eight grams or more of a mixture or substance containing a detectable amount of methamphetamine;
 - (iv) Eight grams or more of a mixture or substance containing a detectable amount of hashish;
 - (v) One hundred ten grams or more of a mixture or substance containing a detectable amount of marijuana;
 - (vi) Twenty or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
 - (vii) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or
 - (viii) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:
 - (I) 3,4-methylenedioxyamphetamine;
 - (II) 3,4-methylenedioxymethamphetamine; or
 - (III) 3,4-methylenedioxy-N-ethylamphetamine.
- (c) The violation constitutes a violation of ORS 475.848, 475.852, 475.858, [475.860,] 475.862, 475.868, 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.
- (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists of:
 - (A) A chemical reaction involving one or more precursor substances for the purpose of manufacturing methamphetamine; or
 - (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of manufacturing methamphetamine.
- (e) The violation constitutes a violation of ORS 475.860 (4)(a) or 475.906 (1) or (2).**
- (2) A violation of ORS 475.840 or 475.846 to 475.894 shall be classified as crime category 6 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:
 - (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.
 - (b) The violation constitutes possession of:
 - (A) Five grams or more of a mixture or substance containing a detectable amount of heroin;
 - (B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

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

(D) One hundred grams or more of a mixture or substance containing a detectable amount of hashish;

(E) One hundred fifty grams or more of a mixture or substance containing a detectable amount of marijuana;

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

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

(H) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(i) 3,4-methylenedioxyamphetamine;

(ii) 3,4-methylenedioxymethamphetamine; or

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

(3) Any felony violation of ORS 475.840 or 475.846 to 475.894 not contained in subsection (1) or (2) of this section shall be classified as:

(a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation involves delivery or manufacture of a controlled substance; or

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

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

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

Passed by Senate May 9, 2007

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Secretary of Senate

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President of Senate

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Speaker of House

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Governor

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