

# House Bill 2314

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## 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**.

Modifies certain crimes predicated on person's status as felon.

## A BILL FOR AN ACT

Relating to felons; creating new provisions; and amending ORS 166.250, 166.270 and 475.900.

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

**SECTION 1.** ORS 166.250 is amended to read:

166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274, 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm if the person knowingly:

(a) Carries any firearm concealed upon the person;

(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; or

(c) Possesses a firearm and:

(A) Is under 18 years of age;

(B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and

(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;

(C) Has been convicted of a felony or found guilty[,] except for insanity under ORS 161.295[,] of a felony **and the person knew of the conviction or finding at the time the person possessed the firearm;**

(D) Was committed to the Department of Human Services under ORS 426.130; or

(E) Was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness.

(2) This section does not prohibit:

(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from possessing a firearm:

(A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian; or

(B) Temporarily for hunting, target practice or any other lawful purpose; or

(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270

**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 and subsection (1) of this section, from owning, possessing or keeping within the person’s place of  
 2 residence or place of business any handgun, and no permit or license to purchase, own, possess or  
 3 keep any such firearm at the person’s place of residence or place of business is required of any such  
 4 citizen. As used in this subsection, “residence” includes a recreational vessel or recreational vehicle  
 5 while used, for whatever period of time, as residential quarters.

6 (3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

7 (4) Unlawful possession of a firearm is a Class A misdemeanor.

8 **SECTION 2.** ORS 166.270 is amended to read:

9 166.270. (1) **A person commits the crime of felon in possession of a firearm if the person:**

10 (a) **Has been convicted of a felony; and**

11 (b) **Possesses a firearm while knowing that the person has been convicted of a felony.**

12 *[Any person who has been convicted of a felony under the law of this state or any other state, or who*  
 13 *has been convicted of a felony under the laws of the Government of the United States, who owns or*  
 14 *has in the person’s possession or under the person’s custody or control any firearm commits the crime*  
 15 *of felon in possession of a firearm.]*

16 (2) **A person commits the crime of possession of a restricted weapon if the person:**

17 (a) **Has been convicted of a felony; and**

18 (b) **Carries a dirk, dagger or stiletto, or possesses a weapon described in subsection (3)**  
 19 **of this section, while knowing that the person has been convicted of a felony.** *[Any person who*  
 20 *has been convicted of a felony under the law of this state or any other state, or who has been convicted*  
 21 *of a felony under the laws of the Government of the United States, who owns or has in the person’s*  
 22 *possession or under the person’s custody or control]*

23 (3) **Subsection (2) of this section applies to:**

24 (a) *[Any]* **An** instrument or weapon having a blade that projects or swings into position by force  
 25 of a spring or by centrifugal force; or

26 (b) *[Any]* **A** blackjack, slungshot, sandclub, sandbag, sap glove or metal knuckles, *[or who carries*  
 27 *a dirk, dagger or stiletto, commits the crime of felon in possession of a restricted weapon].*

28 *[(3) For the purposes of this section, a person “has been convicted of a felony” if, at the time of*  
 29 *conviction for an offense, that offense was a felony under the law of the jurisdiction in which it was*  
 30 *committed. Such conviction shall not be deemed a conviction of a felony if:]*

31 *[(a) The court declared the conviction to be a misdemeanor at the time of judgment; or]*

32 *[(b) The offense was possession of marijuana and the conviction was prior to January 1, 1972.]*

33 (4) Subsection (1) of this section does not apply to any person who has been:

34 (a) Convicted of only one felony *[under the law of this state or any other state, or who has been*  
 35 *convicted of only one felony under the laws of the United States, which felony]* **that** did not involve  
 36 criminal homicide, as defined in ORS 163.005, or the possession or use of a firearm or a weapon  
 37 having a blade that projects or swings into position by force of a spring or by centrifugal force, and  
 38 who has been discharged from imprisonment, parole or probation for said offense for a period of 15  
 39 years prior to the date of alleged violation of subsection (1) of this section; or

40 (b) Granted relief from the disability under 18 U.S.C. 925(c) or has had the person’s record  
 41 expunged under the laws of this state or equivalent laws of another jurisdiction.

42 (5) Felon in possession of a firearm is a Class C felony. Felon in possession of a restricted  
 43 weapon is a Class A misdemeanor.

44 (6) **As used in this section:**

45 (a) **“Has been convicted of a felony” means that a person has been convicted of an offense**

1 **that, at the time of the conviction, was a felony under the law of the jurisdiction in which**  
 2 **it was committed. “Has been convicted of a felony” does not include a conviction:**

3 **(A) That the court declares to be a misdemeanor; or**

4 **(B) For possession of marijuana prior to January 1, 1972.**

5 **(b) “Possesses” means to have physical possession or otherwise to exercise dominion or**  
 6 **control over property.**

7 **SECTION 3.** ORS 475.900 is amended to read:

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

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

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

14 (B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

15 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-  
 16 phetamine, its salts, isomers or salts of its isomers;

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

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

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

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

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

27 (i) 3,4-methylenedioxyamphetamine;

28 (ii) 3,4-methylenedioxymethamphetamine; or

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

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

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

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

37 (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS  
 38 166.270 [(2)], or the offender used, attempted to use or threatened to use a deadly or dangerous  
 39 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly  
 40 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a  
 41 controlled substance offense;

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

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

- 1 (F) The offender was in possession of stolen property;
- 2 (G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled  
3 substance offense;
- 4 (H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor  
5 chemicals, laboratory equipment, lighting, ventilating or power generating equipment;
- 6 (I) The offender was using public lands for the manufacture of controlled substances;
- 7 (J) The offender had constructed fortifications or had taken security measures with the potential  
8 of injuring persons; or
- 9 (K) The offender was in possession of controlled substances in an amount greater than:
  - 10 (i) Three grams or more of a mixture or substance containing a detectable amount of heroin;
  - 11 (ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;
  - 12 (iii) Eight grams or more of a mixture or substance containing a detectable amount of metham-  
13 phetamine;
  - 14 (iv) Eight grams or more of a mixture or substance containing a detectable amount of hashish;
  - 15 (v) One hundred ten grams or more of a mixture or substance containing a detectable amount  
16 of marijuana;
  - 17 (vi) Twenty or more user units of a mixture or substance containing a detectable amount of  
18 lysergic acid diethylamide;
  - 19 (vii) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin  
20 or psilocin; or
  - 21 (viii) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance  
22 containing a detectable amount of:
    - 23 (I) 3,4-methylenedioxyamphetamine;
    - 24 (II) 3,4-methylenedioxymethamphetamine; or
    - 25 (III) 3,4-methylenedioxy-N-ethylamphetamine.
  - 26 (c) The violation constitutes a violation of ORS 475.848, 475.852, 475.858, 475.862, 475.868,  
27 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.
  - 28 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists  
29 of:
    - 30 (A) A chemical reaction involving one or more precursor substances for the purpose of manu-  
31 facturing methamphetamine; or
    - 32 (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of  
33 manufacturing methamphetamine.
    - 34 (e) The violation constitutes a violation of ORS 475.860 (4)(a) or 475.906 (1) or (2).
  - 35 (2) A violation of ORS 475.840 or 475.846 to 475.894 shall be classified as crime category 6 of  
36 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:
    - 37 (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or  
38 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or  
39 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.
    - 40 (b) The violation constitutes possession of:
      - 41 (A) Five grams or more of a mixture or substance containing a detectable amount of heroin;
      - 42 (B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;
      - 43 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-  
44 phetamine;
      - 45 (D) One hundred grams or more of a mixture or substance containing a detectable amount of

1 hashish;

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

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

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

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

10 (i) 3,4-methylenedioxyamphetamine;

11 (ii) 3,4-methylenedioxymethamphetamine; or

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

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

15 (a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-  
16 sion if the violation involves delivery or manufacture of a controlled substance; or

17 (b) Crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-  
18 sion if the violation involves possession of a controlled substance.

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

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

24 **SECTION 4. The amendments to ORS 166.250, 166.270 and 475.900 by sections 1 to 3 of this**  
25 **2009 Act apply to conduct occurring on or after the effective date of this 2009 Act.**

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