

Senate Bill 249

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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**.

Authorizes court to enter judgment of conviction for Class A misdemeanor when person convicted of manufacturing certain amounts of marijuana.

Modifies presumptive sentence for certain marijuana offenses.

A BILL FOR AN ACT

Relating to marijuana; creating new provisions; and amending ORS 161.705, 475.320 and 475.900.

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

SECTION 1. ORS 161.705 is amended to read:

161.705. Notwithstanding ORS 161.525, the court may enter judgment of conviction for a Class A misdemeanor and make disposition accordingly when:

(1)(a) A person is convicted of any Class C felony;

(b) A person is convicted of *[a]* **the Class B felony of unlawful delivery of marijuana** pursuant to ORS 475.860 (2);

(c) A person is convicted of the Class B felony of **unlawful** possession of marijuana pursuant to ORS 475.864 (2);

(d) A person is convicted of the Class A felony of unlawful manufacture of marijuana pursuant to ORS 475.856 and the quantity involved is no more than that described in ORS 475.320 (1)(a)(A) or (4)(a); or

[(d)] **(e) A person** *[convicted of any of the felonies]* **whose conviction is** described in paragraphs (a) to *[(c)]* **(d)** of this subsection, or **a person convicted** of a Class A felony pursuant to ORS 166.720, has successfully completed a sentence of probation; and

(2) The court, considering the nature and circumstances of the crime and the history and character of the defendant, believes that it would be unduly harsh to sentence the defendant for a felony.

SECTION 2. ORS 475.900 is amended to read:

475.900. (1) A violation of ORS 475.840, 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 **other than marijuana** and involves substantial quantities of *[a]* **the** 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;

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

3 [(E) *One hundred and fifty grams or more of a mixture or substance containing a detectable*
4 *amount of marijuana;*]

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

7 [(G)] (F) Sixty grams or more of a mixture or substance containing a detectable amount of
8 psilocybin or psilocin; or

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

11 (i) 3,4-methylenedioxyamphetamine;

12 (ii) 3,4-methylenedioxymethamphetamine; or

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

14 (b) The violation constitutes possession, delivery or manufacture of a controlled substance **other**
15 **than marijuana** and the possession, delivery or manufacture is a commercial drug offense. [A] **The**
16 **possession, delivery or manufacture of a controlled substance other than marijuana** is a com-
17 **mercial drug offense** for purposes of this subsection if it is accompanied by at least three of the
18 following factors:

19 (A) The delivery was of heroin, cocaine, hashish, [*marijuana,*] methamphetamine, lysergic acid
20 diethylamide, psilocybin or psilocin and was for consideration;

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

22 (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS
23 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous
24 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly
25 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a
26 controlled substance offense;

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

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

31 (F) The offender was in possession of stolen property;

32 (G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled
33 substance offense;

34 (H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor
35 chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

36 (I) The offender was using public lands for the manufacture of controlled substances;

37 (J) The offender had constructed fortifications or had taken security measures with the potential
38 of injuring persons; or

39 (K) The offender was in possession of controlled substances in an amount greater than:

40 (i) Three grams or more of a mixture or substance containing a detectable amount of heroin;

41 (ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

42 (iii) Eight grams or more of a mixture or substance containing a detectable amount of metham-
43 phetamine;

44 (iv) Eight grams or more of a mixture or substance containing a detectable amount of hashish;

45 (v) One hundred ten grams or more of a mixture or substance containing a detectable amount

1 of marijuana;

2 (vi) Twenty or more user units of a mixture or substance containing a detectable amount of

3 lysergic acid diethylamide;

4 (vii) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin

5 or psilocin; or

6 (viii) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance

7 containing a detectable amount of:

8 (I) 3,4-methylenedioxyamphetamine;

9 (II) 3,4-methylenedioxymethamphetamine; or

10 (III) 3,4-methylenedioxy-N-ethylamphetamine.

11 (c) The violation constitutes a violation of ORS 475.848, 475.852, [475.858, 475.862,] 475.868,

12 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.

13 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists

14 of:

15 (A) A chemical reaction involving one or more precursor substances for the purpose of manu-

16 facturing methamphetamine; or

17 (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of

18 manufacturing methamphetamine.

19 (e) The violation constitutes a violation of ORS [475.860 (4)(a) or] 475.906 (1) or (2).

20 (2) A violation of ORS 475.840 or 475.846 to 475.894 shall be classified as crime category 6 of

21 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

22 (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or

23 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or

24 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

25 (b) The violation constitutes possession of:

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

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

28 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-

29 phetamine;

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

31 hashish;

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

33 of marijuana;

34 (F) Two hundred or more user units of a mixture or substance containing a detectable amount

35 of lysergic acid diethylamide;

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

37 or psilocin; or

38 (H) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance con-

39 taining a detectable amount of:

40 (i) 3,4-methylenedioxyamphetamine;

41 (ii) 3,4-methylenedioxymethamphetamine; or

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

43 **(c)(A) The violation constitutes a violation of ORS 475.858, 475.860 (4)(a) or 475.862.**

44 **(B) The violation constitutes delivery or manufacture of marijuana and involves sub-**

45 **stantial quantities of marijuana. For purposes of this subparagraph, 150 grams or more of a**

1 **mixture or substance containing a detectable amount of marijuana constitutes substantial**
 2 **quantities of marijuana.**

3 **(C) The violation constitutes possession, delivery or manufacture of marijuana and the**
 4 **possession, delivery or manufacture is a commercial drug offense. The possession, delivery**
 5 **or manufacture of marijuana is a commercial drug offense if:**

6 **(i) The violation involves the delivery of marijuana for consideration and is accompanied**
 7 **by at least two of the factors described in subsection (1)(b)(B) to (K) of this section; or**

8 **(ii) The violation is accompanied by at least three of the factors described in subsection**
 9 **(1)(b)(B) to (K) of this section.**

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

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

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

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

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

21 **SECTION 3.** ORS 475.320 is amended to read:

22 475.320. (1)(a) A registry identification cardholder or the designated primary caregiver of the
 23 cardholder may possess up to:

24 **(A)** Six mature marijuana plants; and

25 **(B)** 24 ounces of usable marijuana.

26 (b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has
 27 been convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or
 28 delivery of a controlled substance in Schedule I or Schedule II, the registry identification cardholder
 29 or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana
 30 at any given time for a period of five years from the date of the conviction.

31 (2) A person authorized under ORS 475.304 to produce marijuana at a marijuana grow site:

32 (a) May produce marijuana for and provide marijuana to a registry identification cardholder or
 33 that person's designated primary caregiver as authorized under this section.

34 (b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each
 35 cardholder or caregiver for whom marijuana is being produced.

36 (c) May produce marijuana for no more than four registry identification cardholders or desig-
 37 nated primary caregivers concurrently.

38 (d) Must obtain and display a marijuana grow site registration card issued under ORS 475.304
 39 for each registry identification cardholder or designated primary caregiver for whom marijuana is
 40 being produced.

41 (e) Must provide all marijuana produced for a registry identification cardholder or designated
 42 primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana
 43 grow site ceases producing marijuana for the cardholder or caregiver.

44 (f) Must return the marijuana grow site registration card to the registry identification
 45 cardholder to whom the card was issued when requested to do so by the cardholder or when the

1 person responsible for a marijuana grow site ceases producing marijuana for the cardholder or
2 caregiver.

3 (3) Except as provided in subsections (1) and (2) of this section, a registry identification
4 cardholder, the designated primary caregiver of the cardholder and the person responsible for a
5 marijuana grow site producing marijuana for the registry identification cardholder may possess a
6 combined total of up to six mature plants and 24 ounces of usable marijuana for that registry iden-
7 tification cardholder.

8 (4)(a) A registry identification cardholder and the designated primary caregiver of the
9 cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule
10 of the Department of Human Services.

11 (b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or
12 starts as defined by rule of the department for each registry identification cardholder for whom the
13 person responsible for the marijuana grow site is producing marijuana.

14 **SECTION 4. The amendments to ORS 161.705, 475.320 and 475.900 by sections 1 to 3 of this**
15 **2009 Act apply to conduct occurring on or after the effective date of this 2009 Act.**

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