

# House Bill 2174

Sponsored by Representative COWAN (at the request of Rob Bovett and Oregon Narcotics Enforcement Association) (Pre-session filed.)

## 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**.

Adds oxycodone, hydrocodone, methadone and amphetamine to controlled substances subject to substantial quantity and commercial drug offense provisions.

Adds endangering welfare of minor by allowing minor to enter or remain in place where unlawful activity involving controlled substances is maintained or conducted to crimes for which person may be placed on probation.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to controlled substances; creating new provisions; amending ORS 475.245 and 475.900; and  
3 declaring an emergency.

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

5 **SECTION 1.** ORS 475.900 is amended to read:

6 475.900. (1) A violation of ORS 475.840, 475.846 to 475.894, 475.904 or 475.906 shall be classified  
7 as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

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

11 (A) Five grams or more of a mixture or substance containing a detectable amount of heroin[;].

12 (B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine[;].

13 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-  
14 phetamine, its salts, isomers or salts of its isomers[;].

15 (D) One hundred grams or more of a mixture or substance containing a detectable amount of  
16 hashish[;].

17 (E) One hundred and fifty grams or more of a mixture or substance containing a detectable  
18 amount of marijuana[;].

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

21 (G) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin  
22 or psilocin[; *or*].

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

25 (i) 3,4-methylenedioxyamphetamine;

26 (ii) 3,4-methylenedioxymethamphetamine; or

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

28 (I) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or

**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 **substance containing a detectable amount of oxycodone.**

2 (J) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or  
3 **substance containing a detectable amount of hydrocodone.**

4 (K) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or  
5 **substance containing a detectable amount of methadone.**

6 (L) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or  
7 **substance containing a detectable amount of amphetamine, its salts, isomers or salts of its**  
8 **isomers.**

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

13 (A) The delivery was of heroin, cocaine, hashish, marijuana, methamphetamine, lysergic acid  
14 diethylamide, psilocybin [*or*], psilocin, **oxycodone, hydrocodone, methadone or amphetamine** and  
15 was for consideration[;].

16 (B) The offender was in possession of \$300 or more in cash[;].

17 (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS  
18 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous  
19 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly  
20 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a  
21 controlled substance offense[;].

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

25 (E) The offender was in possession of drug transaction records or customer lists[;].

26 (F) The offender was in possession of stolen property[;].

27 (G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled  
28 substance offense[;].

29 (H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor  
30 chemicals, laboratory equipment, lighting, ventilating or power generating equipment[;].

31 (I) The offender was using public lands for the manufacture of controlled substances[;].

32 (J) The offender had constructed fortifications or had taken security measures with the potential  
33 of injuring persons[; *or*].

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

35 (i) Three grams or more of a mixture or substance containing a detectable amount of heroin[;].

36 (ii) Eight grams or more of a mixture or substance containing a detectable amount of  
37 cocaine[;].

38 (iii) Eight grams or more of a mixture or substance containing a detectable amount of  
39 methamphetamine[;].

40 (iv) Eight grams or more of a mixture or substance containing a detectable amount of  
41 hashish[;].

42 (v) One hundred ten grams or more of a mixture or substance containing a detectable amount  
43 of marijuana[;].

44 (vi) Twenty or more user units of a mixture or substance containing a detectable amount of  
45 lysergic acid diethylamide[;].

1 (vii) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin  
 2 or psilocin; *or*].

3 (viii) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance  
 4 containing a detectable amount of:

5 (I) 3,4-methylenedioxyamphetamine;

6 (II) 3,4-methylenedioxymethamphetamine; or

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

8 **(ix) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or**  
 9 **substance containing a detectable amount of oxycodone.**

10 **(x) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or**  
 11 **substance containing a detectable amount of hydrocodone.**

12 **(xi) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or**  
 13 **substance containing a detectable amount of methadone.**

14 **(xii) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture**  
 15 **or substance containing a detectable amount of amphetamine, its salts, isomers or salts of**  
 16 **its isomers.**

17 (c) The violation constitutes a violation of ORS 475.848, 475.852, 475.858, 475.862, 475.868,  
 18 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.

19 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists  
 20 of:

21 (A) A chemical reaction involving one or more precursor substances for the purpose of manu-  
 22 facturing methamphetamine; or

23 (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of  
 24 manufacturing methamphetamine.

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

26 (2) A violation of ORS 475.840 or 475.846 to 475.894 shall be classified as crime category 6 of  
 27 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

28 (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or  
 29 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or  
 30 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

31 (b) The violation constitutes possession of:

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

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

34 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-  
 35 phetamine;

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

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

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

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

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

- 1 (i) 3,4-methylenedioxyamphetamine;
- 2 (ii) 3,4-methylenedioxymethamphetamine; or
- 3 (iii) 3,4-methylenedioxy-N-ethylamphetamine[.];

4 (I) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or  
 5 substance containing a detectable amount of oxycodone;

6 (J) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or  
 7 substance containing a detectable amount of hydrocodone;

8 (K) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or  
 9 substance containing a detectable amount of methadone; or

10 (L) \_\_\_\_\_ grams or more or \_\_\_\_\_ or more pills, tablets or capsules of a mixture or  
 11 substance containing a detectable amount of amphetamine, its salts, isomers or salts of its  
 12 isomers.

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 2.** ORS 475.245 is amended to read:

25 475.245. Whenever any person pleads guilty to or is found guilty of possession of a controlled  
 26 substance under ORS 475.840 (3), 475.854, 475.864, 475.874, 475.884 or 475.894, **of endangering the**  
 27 **welfare of a minor under ORS 163.575 (1)(b)** or of a property offense that is motivated by a de-  
 28 pendence on a controlled substance, the court, without entering a judgment of guilt and with the  
 29 consent of the district attorney and the accused, may defer further proceedings and place the person  
 30 on probation. Upon violation of a term or condition of probation, the court may enter an adjudi-  
 31 cation of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the  
 32 court shall discharge the person and dismiss the proceedings against the person. Discharge and  
 33 dismissal under this section shall be without adjudication of guilt and is not a conviction for pur-  
 34 poses of this section or for purposes of disqualifications or disabilities imposed by law upon con-  
 35 viction of a crime. There may be only one discharge and dismissal under this section with respect  
 36 to any person.

37 **SECTION 3.** The amendments to ORS 475.245 and 475.900 by sections 1 and 2 of this 2011  
 38 Act apply to conduct occurring on or after the effective date of this 2011 Act.

39 **SECTION 4.** This 2011 Act being necessary for the immediate preservation of the public  
 40 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
 41 on its passage.