

House Bill 2204

Sponsored by Representative GILLIAM, Senator JOHNSON (at the request of John S. Foote, Clackamas County District Attorney) (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**.

Requires crimes related to oxycodone, hydrocodone or methadone that involve substantial quantity or that constitute commercial drug offense to be classified as crime category 8 of sentencing guideline grid.

Specifies sentencing guidelines for unlawful manufacture, delivery or possession of varying amounts of marijuana.

Specifies sentencing guidelines for unlawful delivery or manufacture of oxycodone or heroin if person who uses heroin or oxycodone dies or sustains serious physical injury as result of that use.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to controlled substances; creating new provisions; amending ORS 475.900, 475.924 and
3 475.925; and 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) **Except as provided in subsections (3) and (4) of this section**, a violation of ORS
7 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified as crime category 8 of the sen-
8 tencing guidelines grid of the Oregon Criminal Justice Commission if:

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

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

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

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

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

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

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

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

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

26 (i) 3,4-methylenedioxyamphetamine;

27 (ii) 3,4-methylenedioxymethamphetamine; 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 (iii) 3,4-methylenedioxy-N-ethylamphetamine[.]; **or**

2 (G) _____ **grams or more or _____ or more pills, tablets or capsules of a mixture or**
 3 **substance containing a detectable amount of oxycodone, hydrocodone or methadone.**

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

8 (A) The delivery was of heroin, cocaine, hashish, marijuana, methamphetamine, lysergic acid
 9 diethylamide, psilocybin [*or*], psilocin, **oxycodone, hydrocodone or methadone** and was for con-
 10 sideration;

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

12 (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS
 13 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous
 14 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly
 15 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a
 16 controlled substance offense;

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

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

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

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

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

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

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

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

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

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

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

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

35 (v) One hundred ten grams or more of a mixture or substance containing a detectable amount
 36 of marijuana;

37 (vi) Twenty or more user units of a mixture or substance containing a detectable amount of
 38 lysergic acid diethylamide;

39 (vii) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin
 40 or psilocin; [*or*]

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

43 (I) 3,4-methylenedioxyamphetamine;

44 (II) 3,4-methylenedioxymethamphetamine; or

45 (III) 3,4-methylenedioxy-N-ethylamphetamine[.]; **or**

1 **(ix) _____ grams or more or _____ or more pills, tablets or capsules of a mixture or**
 2 **substance containing a detectable amount of oxycodone, hydrocodone or methadone.**

3 (c) The violation constitutes a violation of ORS 475.848, 475.852, 475.858, 475.862, 475.868,
 4 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.

5 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists
 6 of:

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

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

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

12 **(2) Except as provided in subsections (3) and (4) of this section,** a violation of ORS 475.752
 13 or 475.806 to 475.894 shall be classified as crime category 6 of the sentencing guidelines grid of the
 14 Oregon Criminal Justice Commission if:

15 (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or
 16 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or
 17 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

18 (b) The violation constitutes possession of:

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

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

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

23 [D] *One hundred grams or more of a mixture or substance containing a detectable amount of*
 24 *hashish;*]

25 [E] *One hundred fifty grams or more of a mixture or substance containing a detectable amount*
 26 *of marijuana;*]

27 [F] **(D)** Two hundred or more user units of a mixture or substance containing a detectable
 28 amount of lysergic acid diethylamide;

29 [G] **(E)** Sixty grams or more of a mixture or substance containing a detectable amount of
 30 psilocybin or psilocin; [*or*]

31 [H] **(F)** Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance
 32 containing a detectable amount of:

33 (i) 3,4-methylenedioxyamphetamine;

34 (ii) 3,4-methylenedioxymethamphetamine; or

35 (iii) 3,4-methylenedioxy-N-ethylamphetamine[.]; **or**

36 **(G) _____ grams or more or _____ or more pills, tablets or capsules of a mixture or**
 37 **substance containing a detectable amount of oxycodone, hydrocodone or methadone.**

38 **(3) Any felony violation of ORS 475.856, 475.860 or 475.864 shall be classified as:**

39 **(a) Crime category 10 of the sentencing guidelines grid if the violation involves:**

40 **(A) More than 50,000 grams of a substance or mixture containing a detectable amount**
 41 **of marijuana; or**

42 **(B) More than 500 mature marijuana plants, seedlings or starts;**

43 **(b) Crime category 9 of the sentencing guidelines grid if the violation involves:**

44 **(A) More than 20,000 grams, and not more than 50,000 grams, of a substance or mixture**
 45 **containing a detectable amount of marijuana; or**

1 (B) More than 200, but not more than 500, mature marijuana plants, seedlings or starts;

2 (c) Crime category 8 of the sentencing guidelines grid if the violation involves:

3 (A) More than 5,000 grams, and not more than 20,000 grams, of a substance or mixture
4 containing a detectable amount of marijuana; or

5 (B) More than 50, but not more than 200, mature marijuana plants, seedlings or starts;

6 (d) Crime category 6 of the sentencing guidelines grid if the violation involves:

7 (A) More than 1,000 grams, and not more than 5,000 grams, of a substance or mixture
8 containing a detectable amount of marijuana; or

9 (B) More than 10, but not more than 50, mature marijuana plants, seedlings or starts;
10 or

11 (e) Crime category 4 of the sentencing guidelines grid if the violation involves:

12 (A) One thousand grams or less of a substance or mixture containing a detectable
13 amount of marijuana; or

14 (B) Ten or fewer mature marijuana plants, seedlings or starts.

15 [(3)] (4) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection
16 (1) [or], (2) or (3) of this section shall be classified as:

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

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

21 [(4)] (5) In order to prove a commercial drug offense, the state shall plead in the accusatory
22 instrument sufficient factors of a commercial drug offense under subsections (1) and (2) of this sec-
23 tion. The state has the burden of proving each factor beyond a reasonable doubt.

24 [(5)] (6) As used in this section, "mixture or substance" means any mixture or substance,
25 whether or not the mixture or substance is in an ingestible or marketable form at the time of the
26 offense.

27 **SECTION 2.** ORS 475.924 is amended to read:

28 475.924. As used in ORS 164.061, 475.907, 475.924 and 475.925:

29 (1) "Controlled substance" means:

30 (a) Cocaine;

31 (b) Methamphetamine;

32 (c) Heroin; [or]

33 (d) Oxycodone; or

34 [(d)] (e) Ecstasy.

35 (2) "Ecstasy" means:

36 (a) 3,4-methylenedioxyamphetamine;

37 (b) 3,4-methylenedioxyamphetamine; or

38 (c) 3,4-methylenedioxy-N-ethylamphetamine.

39 (3) "Mixture or substance" means any mixture or substance, whether or not the mixture or
40 substance is in an ingestible or marketable form at the time of the offense.

41 (4) "Serious physical injury" has the meaning given that term in ORS 161.015.

42 **SECTION 3.** ORS 475.925 is amended to read:

43 475.925. When a person is convicted of the unlawful delivery or manufacture of a controlled
44 substance, the court shall sentence the person to a term of incarceration ranging from:

45 (1) 58 months to 130 months, depending on the person's criminal history, if:

- 1 **(a)** The delivery or manufacture involves:
- 2 [(a)] **(A)** 500 grams or more of a mixture or substance containing a detectable amount of cocaine;
- 3 [(b)] **(B)** 500 grams or more of a mixture or substance containing a detectable amount of meth-
- 4 amphetamine, its salts, isomers or salts of its isomers;
- 5 [(c)] **(C)** 100 grams or more of a mixture or substance containing a detectable amount of heroin;
- 6 or
- 7 [(d)] **(D)** 100 grams or more or 500 or more pills, tablets or capsules of a mixture or substance
- 8 containing a detectable amount of ecstasy[.]; **or**

9 **(b) The controlled substance delivered or manufactured is heroin or oxycodone and a**
10 **person who uses the heroin or oxycodone dies as a result of that use.**

11 (2) 34 months to 72 months, depending on the person’s criminal history, if:

- 12 **(a)** The delivery or manufacture involves:
- 13 [(a)] **(A)** 100 grams or more of a mixture or substance containing a detectable amount of cocaine;
- 14 [(b)] **(B)** 100 grams or more of a mixture or substance containing a detectable amount of meth-
- 15 amphetamine, its salts, isomers or salts of its isomers;
- 16 [(c)] **(C)** 50 grams or more of a mixture or substance containing a detectable amount of heroin;
- 17 or
- 18 [(d)] **(D)** 50 grams or more or 250 or more pills, tablets or capsules of a mixture or substance
- 19 containing a detectable amount of ecstasy[.]; **or**

20 **(b) The controlled substance delivered or manufactured is heroin or oxycodone and a**
21 **person who uses the heroin or oxycodone sustains a serious physical injury as a result of**
22 **that use.**

23 **SECTION 4.** The amendments to ORS 475.900, 475.924 and 475.925 by sections 1 to 3 of this
24 **2013 Act apply to conduct occurring on or after the effective date of this 2013 Act.**

25 **SECTION 5.** This 2013 Act being necessary for the immediate preservation of the public
26 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
27 **on its passage.**

28