

**PROPOSED AMENDMENTS TO
HOUSE BILL 4098**

1 On page 1 of the printed bill, line 2, delete “and 419C.276” and insert “,
2 419C.276 and 475.900”.

3 On page 6, after line 19, insert:

4 **“SECTION 6.** ORS 475.900 is amended to read:

5 “475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or
6 475.906 shall be classified as crime category 8 of the sentencing guidelines
7 grid of the Oregon Criminal Justice Commission if:

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

12 “(A) Five grams or more of a mixture or substance containing a detect-
13 able amount of heroin;

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

16 “(C) Ten grams or more of a mixture or substance containing a detectable
17 amount of methamphetamine, its salts, isomers or salts of its isomers;

18 “(D) Two hundred or more user units of a mixture or substance contain-
19 ing a detectable amount of lysergic acid diethylamide;

20 “(E) Sixty grams or more of a mixture or substance containing a detect-
21 able amount of psilocybin or psilocin; or

22 “(F) Five grams or more or 25 or more pills, tablets or capsules of a

1 mixture or substance containing a detectable amount of:

2 “(i) 3,4-methylenedioxyamphetamine;

3 “(ii) 3,4-methylenedioxymethamphetamine; or

4 “(iii) 3,4-methylenedioxy-N-ethylamphet- amine.

5 “(b) The violation constitutes possession, delivery or manufacture of a
6 controlled substance **other than marijuana or marijuana product** and the
7 possession, delivery or manufacture is a commercial drug offense. A pos-
8 session, delivery or manufacture **of a controlled substance other than**
9 **marijuana or marijuana product** is a commercial drug offense for purposes
10 of this subsection if it is accompanied by at least three of the following
11 factors:

12 “(A) The delivery was of heroin, cocaine, methamphetamine, lysergic acid
13 diethylamide, psilocybin or psilocin and was for consideration;

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

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

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

25 “(E) The offender was in possession of drug transaction records or cus-
26 tomer lists;

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

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

30 “(H) The offender was in possession of manufacturing paraphernalia, in-

1 cluding recipes, precursor chemicals, laboratory equipment, lighting, venti-
2 lating or power generating equipment;

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

5 “(J) The offender had constructed fortifications or had taken security
6 measures with the potential of injuring persons; or

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

9 “(i) Three grams or more of a mixture or substance containing a detect-
10 able amount of heroin;

11 “(ii) Eight grams or more of a mixture or substance containing a detect-
12 able amount of cocaine;

13 “(iii) Eight grams or more of a mixture or substance containing a de-
14 tectable amount of methamphetamine;

15 “(iv) Twenty or more user units of a mixture or substance containing a
16 detectable amount of lysergic acid diethylamide;

17 “(v) Ten grams or more of a mixture or substance containing a detectable
18 amount of psilocybin or psilocin; or

19 “(vi) Four grams or more or 20 or more pills, tablets or capsules of a
20 mixture or substance containing a detectable amount of:

21 “(I) 3,4-methylenedioxyamphetamine;

22 “(II) 3,4-methylenedioxymethamphetamine; or

23 “(III) 3,4-methylenedioxy-N-ethylamphet- amine.

24 “(c) The violation constitutes a violation of ORS 475.848, 475.852, 475.862,
25 475.868, 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.

26 “(d) The violation constitutes manufacturing methamphetamine and the
27 manufacturing consists of:

28 “(A) A chemical reaction involving one or more precursor substances for
29 the purpose of manufacturing methamphetamine; or

30 “(B) Grinding, soaking or otherwise breaking down a precursor substance

1 for the purpose of manufacturing methamphetamine.

2 “(e) The violation constitutes a violation of ORS 475.860 (4)(a) or a vio-
3 lation of ORS 475.906 (1) or (2) that is not described in ORS 475.907.

4 “(2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified
5 as crime category 6 of the sentencing guidelines grid of the Oregon Criminal
6 Justice Commission if:

7 “(a) The violation constitutes delivery of heroin, cocaine, methamphet-
8 amine or 3,4-methylenedioxyamphetamine,
9 3,4-methylenedioxymethamphetamine or
10 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

11 “(b) The violation constitutes possession of:

12 “(A) Five grams or more of a mixture or substance containing a detect-
13 able amount of heroin;

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

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

18 “(D) Two hundred or more user units of a mixture or substance contain-
19 ing a detectable amount of lysergic acid diethylamide;

20 “(E) Sixty grams or more of a mixture or substance containing a detect-
21 able amount of psilocybin or psilocin; or

22 “(F) Five grams or more or 25 or more pills, tablets or capsules of a
23 mixture or substance containing a detectable amount of:

24 “(i) 3,4-methylenedioxyamphetamine;

25 “(ii) 3,4-methylenedioxymethamphetamine; or

26 “(iii) 3,4-methylenedioxy-N-ethylamphet- amine.

27 “(3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not con-
28 tained in subsection (1) or (2) of this section shall be classified as:

29 “(a) Crime category 4 of the sentencing guidelines grid of the Oregon
30 Criminal Justice Commission if the violation involves delivery or manufac-

1 ture of a controlled substance; or

2 “(b) Crime category 1 of the sentencing guidelines grid of the Oregon
3 Criminal Justice Commission if the violation involves possession of a con-
4 trolled substance.

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

9 “(5) As used in this section, ‘mixture or substance’ means any mixture or
10 substance, whether or not the mixture or substance is in an ingestible or
11 marketable form at the time of the offense.”.

12 In line 20, delete “6” and insert “7”.

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