

House Bill 2355

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen Rosenblum)

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**.

Directs Oregon Criminal Justice Commission to develop method for recording data concerning officer-initiated pedestrian and traffic stops. Directs Department of Public Safety Standards and Training to develop training and procedures for recording data.

Requires law enforcement agencies to begin recording required officer-involved pedestrian and traffic stop data beginning on date based on size of agency. Requires agencies to provide recorded data to commission beginning on date based on size of agency. Requires that data not individually identify law enforcement officers or persons who were subject of traffic stops.

Requires Oregon Criminal Justice Commission to review, using statistical analysis, officer-initiated pedestrian and traffic stop data received from law enforcement agencies, and report no later than July 1, 2020, and annually thereafter, to Department of Public Safety Standards and Training, Governor and committees or interim committees of Legislative Assembly related to judiciary. Directs department to review report received from commission. Authorizes department to provide advice and technical assistance to law enforcement agency named in report. Directs department to report assistance to local public safety coordinating council in public meeting.

Directs Superintendent of State Police to enter into, if possible, agreement or contract with Federal Bureau of Investigation to allow data pertaining to individuals of Hispanic or Middle Eastern ethnicity to be entered into Law Enforcement Data System.

Reduces crime classification of unlawful possession of controlled substance in Schedule I. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both, except in specified circumstances. Retains current crime classification if possession is commercial drug offense or if person possesses substantial quantity of controlled substance.

Reduces crime classification of unlawful possession of controlled substance in Schedule II. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both, except in specified circumstances. Retains current crime classification if possession is commercial drug offense or if person possesses substantial quantity of controlled substance.

Requires county to supervise offenders convicted of certain drug-related misdemeanors.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public safety; creating new provisions; amending ORS 131.915, 131.920, 161.570, 181A.410,
3 423.478, 475.752, 475.824, 475.834, 475.854, 475.874, 475.884 and 475.894; and declaring an emer-
4 gency.

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

6 **SECTION 1. As used in sections 1 to 5 of this 2017 Act:**

7 (1) **"Law enforcement agency"** means an agency employing law enforcement officers to
8 enforce criminal laws.

9 (2) **"Law enforcement officer"** means a member of the Oregon State Police, a sheriff or
10 a municipal police officer.

11 (3) **"Officer-initiated pedestrian stop"** means a detention of a pedestrian by a law
12 enforcement officer, not associated with a call for service, when the detention results in a
13 citation, an arrest or a consensual search of the pedestrian's body or property. The term
14 does not apply to detentions for routine searches performed at the point of entry to or exit
15 from a controlled area.

16 (4) **"Officer-initiated traffic stop"** means a detention of a driver of a motor vehicle by a

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 law enforcement officer, not associated with a call for service, for the purpose of investi-
 2 gating a suspected violation of the Oregon Vehicle Code.

3 (5) "Profiling" means the targeting of an individual by a law enforcement agency or a law
 4 enforcement officer, on suspicion of the individual's having violated a provision of law, based
 5 solely on the individual's real or perceived age, race, ethnicity, color, national origin, lan-
 6 guage, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or
 7 disability, unless the agency or officer is acting on a suspect description or information re-
 8 lated to an identified or suspected violation of a provision of law.

9 (6) "Sexual orientation" has the meaning given that term in ORS 174.100.

10 **SECTION 2.** (1) No later than July 1, 2018, the Oregon Criminal Justice Commission, in
 11 consultation with the Department of State Police and the Department of Justice, shall de-
 12 velop and implement a standardized method to be used by law enforcement officers to record
 13 officer-initiated pedestrian stop and officer-initiated traffic stop data. The standardized
 14 method must require, and any form developed and used pursuant to the standardized method
 15 must provide for, the following data to be recorded for each stop:

16 (a) The date and time of the stop;

17 (b) The location of the stop;

18 (c) The race, ethnicity, age and sex of the pedestrian or the operator of the motor vehicle
 19 stopped, based on the observations of the law enforcement officer responsible for reporting
 20 the stop;

21 (d) The nature of, and the statutory citation for, the alleged traffic violation, or other
 22 alleged violation, that caused the stop to be made; and

23 (e) The disposition of the stop, including whether a warning, citation or summons was
 24 issued, whether a search was conducted, the type of search conducted, whether anything was
 25 found as a result of the search and whether an arrest was made.

26 (2) No later than July 1, 2018, the Department of Public Safety Standards and Training,
 27 in consultation with law enforcement agencies, shall develop and implement training and
 28 procedures to facilitate the collection of officer-initiated pedestrian and traffic stop data
 29 pursuant to subsection (1) of this section.

30 (3) Beginning on the dates described in subsection (4) of this section, all law enforcement
 31 agencies that engage in officer-initiated pedestrian or traffic stops shall record and retain
 32 the following data for each stop:

33 (a) The date and time of the stop;

34 (b) The location of the stop;

35 (c) The race, ethnicity, age and sex of the pedestrian or the operator of the motor vehicle
 36 stopped, based on the observations of the law enforcement officer responsible for reporting
 37 the stop;

38 (d) The nature of, and the statutory citation for, the alleged traffic violation, or other
 39 alleged violation, that caused the stop to be made; and

40 (e) The disposition of the stop, including whether a warning, citation or summons was
 41 issued, whether a search was conducted, the type of search conducted, whether anything was
 42 found as a result of the search and whether an arrest was made.

43 (4) Each law enforcement agency shall begin recording the data described in subsection
 44 (3) of this section as follows:

45 (a) An agency that employs 100 or more law enforcement officers shall begin recording

1 no later than July 1, 2018.

2 (b) An agency that employs between 25 and 99 law enforcement officers shall begin re-
3 cording no later than July 1, 2019.

4 (c) An agency that employs between one and 24 law enforcement officers shall begin re-
5 cording no later than July 1, 2020.

6 (5) Each law enforcement agency that engages in officer-initiated traffic or pedestrian
7 stops shall report to the Oregon Criminal Justice Commission the data recorded pursuant
8 to subsection (3) of this section as follows:

9 (a) An agency that employs 100 or more law enforcement officers shall report no later
10 than July 1, 2019, and at least annually thereafter.

11 (b) An agency that employs between 25 and 99 law enforcement officers shall report no
12 later than July 1, 2020, and at least annually thereafter.

13 (c) An agency that employs between one and 24 law enforcement officers shall report no
14 later than July 1, 2021, and at least annually thereafter.

15 (6) Data acquired under this section shall be used only for statistical purposes and not
16 for any other purpose. The data may not contain information that reveals the identity of any
17 stopped individual or the identity of any law enforcement officer. Data collected by law
18 enforcement agencies or held by the Oregon Criminal Justice Commission under this section
19 that may reveal the identity of any stopped individual or the identity of any law enforcement
20 officer is exempt from public disclosure in any manner.

21 (7) The Department of Justice, the Department of Public Safety Standards and Training
22 and the Department of State Police may adopt rules to carry out the provisions of sections
23 1 to 5 of this 2017 Act.

24 **SECTION 3.** (1) The Oregon Criminal Justice Commission shall review all data, including
25 the prevalence and disposition of officer-initiated pedestrian and traffic stops, reported by
26 law enforcement agencies pursuant to section 2 of this 2017 Act in order to identify patterns
27 or practices of profiling.

28 (2) The commission shall select one or more statistical analysis methodologies, deter-
29 mined to be consistent with current best practices, with which to review the data as de-
30 scribed in subsection (1) of this section.

31 (3) No later than July 1, 2020, and annually thereafter, the commission shall report the
32 results of the review to the Governor, the Department of Public Safety Standards and
33 Training and, in the manner provided in ORS 192.245, to the committees or interim commit-
34 tees of the Legislative Assembly related to the judiciary.

35 **SECTION 4.** (1) The Department of Public Safety Standards and Training shall receive
36 and review reports provided to the department by the Oregon Criminal Justice Commission
37 pursuant to section 3 of this 2017 Act.

38 (2) Upon receipt of a report described in subsection (1) of this section, the department
39 may provide advice or technical assistance to any law enforcement agency mentioned within
40 the report. Any advice or technical assistance provided shall be based on best practices in
41 policing as determined by the Oregon Center for Policing Excellence established in ORS
42 181A.660.

43 (3) Upon providing advice or technical assistance under this section, the department
44 shall, within a reasonable amount of time, present a summary of the advice and assistance
45 given to the local public safety coordinating council in the county in which the assisted law

1 enforcement agency is located. If the assisted law enforcement agency is the Oregon State
 2 Police, the presentation shall occur in Marion County. The presentation shall be open to the
 3 public, feature live testimony by presenters and be held in accordance with ORS 192.610 to
 4 192.690.

5 **SECTION 5.** The Superintendent of State Police is authorized to, and shall, if possible,
 6 enter into an agreement or contract with the National Crime Information Center of the
 7 Federal Bureau of Investigation in order to modify the Law Enforcement Data System to
 8 allow for the entry of data pertaining to individuals of Hispanic and Middle Eastern ethnicity.

9 **SECTION 6.** ORS 131.915 is amended to read:

10 131.915. As used in ORS 131.915 to 131.925:

11 (1) "Law enforcement agency" means:

12 (a) The Department of State Police;

13 (b) The Department of Justice;

14 (c) A district attorney's office; and

15 (d) Any of the following that maintains a law enforcement unit as defined in ORS 181A.355:

16 (A) A political subdivision or an instrumentality of the State of Oregon.

17 (B) A municipal corporation of the State of Oregon.

18 (C) A tribal government.

19 (D) A university.

20 (2) "Law enforcement officer" means:

21 (a) A member of the Oregon State Police;

22 (b) A sheriff, constable, marshal, municipal police officer or reserve officer or a police officer
 23 commissioned by a university under ORS 352.121 or 353.125;

24 (c) An investigator of a district attorney's office if the investigator is or has been certified as
 25 a law enforcement officer in this or any other state;

26 (d) An investigator of the Criminal Justice Division of the Department of Justice;

27 (e) A humane special agent as defined in ORS 181A.345;

28 (f) A judicial marshal of the Security and Emergency Preparedness Office of the Judicial De-
 29 partment who is appointed under ORS 1.177 and trained pursuant to ORS 181A.540;

30 (g) A liquor enforcement inspector exercising authority described in ORS 471.775 (2); or

31 (h) An authorized tribal police officer as defined in ORS 181A.680.

32 (3) "Profiling" means *[that]* **the targeting of an individual by** a law enforcement agency or a
 33 law enforcement officer *[targets an individual for]*, **on** suspicion of *[violating]* **the individual's hav-**
 34 **ing violated** a provision of law, based solely on the **individual's** real or perceived *[factor of the*
 35 *individual's]* age, race, ethnicity, color, national origin, language, *[gender]* **sex**, gender identity, sex-
 36 ual orientation, political affiliation, religion, homelessness or disability, unless the agency or officer
 37 is acting on a suspect description or information related to an identified or suspected violation of
 38 a provision of law.

39 (4) "Sexual orientation" has the meaning given that term in ORS 174.100.

40 **SECTION 7.** ORS 131.920 is amended to read:

41 131.920. (1) All law enforcement agencies shall have written policies and procedures prohibiting
 42 profiling. The policies and procedures shall, at a minimum, include:

43 (a) A prohibition on profiling;

44 (b) Procedures allowing a complaint alleging profiling to be made to the agency:

45 (A) In person;

1 (B) In a writing signed by the complainant and delivered by hand, postal mail, facsimile or
2 electronic mail; or

3 (C) By telephone, anonymously or through a third party;

4 (c) The provision of appropriate forms to use for submitting complaints alleging profiling;

5 (d) Procedures for submitting a copy of each profiling complaint to the Law Enforcement Con-
6 tacts Policy and Data Review Committee and for receiving profiling complaints forwarded from the
7 committee; and

8 (e) Procedures for investigating all complaints alleging profiling.

9 (2) A law enforcement agency shall:

10 (a) Investigate all complaints alleging profiling that are received by the agency or forwarded
11 from the committee.

12 (b) *[Establish a time frame within which a complaint alleging profiling may be made to the agency.*
13 *The time frame may not be fewer than 90 days or more than 180 days after the alleged commission of*
14 *profiling.]* **Accept for investigation a complaint alleging profiling that is made to the agency**
15 **within 180 days of the alleged profiling incident.**

16 (c) **Respond to every complaint alleging profiling within a reasonable time after the con-**
17 **clusion of the investigation. The response must contain a statement of the final disposition**
18 **of the complaint.**

19 **SECTION 8.** ORS 181A.410, as amended by section 42, chapter 117, Oregon Laws 2016, is
20 amended to read:

21 181A.410. (1) In accordance with any applicable provision of ORS chapter 183, to promote
22 enforcement of law and fire services by improving the competence of public safety personnel and
23 their support staffs, and in consultation with the agencies for which the Board on Public Safety
24 Standards and Training and Department of Public Safety Standards and Training provide standards,
25 certification, accreditation and training:

26 (a) The department shall recommend, and the board shall establish by rule, reasonable minimum
27 standards of physical, emotional, intellectual and moral fitness for public safety personnel and in-
28 structors.

29 (b) The department shall recommend, and the board shall establish by rule, reasonable minimum
30 training for all levels of professional development, basic through executive, including but not limited
31 to courses or subjects for instruction and qualifications for public safety personnel and instructors.
32 Training requirements shall be consistent with the funding available in the department's
33 legislatively approved budget.

34 (c) The department, in consultation with the board, shall establish by rule a procedure or pro-
35 cedures to be used by law enforcement units, public or private safety agencies or the Oregon Youth
36 Authority to determine whether public safety personnel meet minimum standards or have minimum
37 training.

38 (d) Subject to such terms and conditions as the department may impose, the department shall
39 certify instructors and public safety personnel, except youth correction officers, as being qualified
40 under the rules established by the board.

41 (e) The department shall deny applications for training and deny, suspend and revoke certifica-
42 tion in the manner provided in ORS 181A.630, 181A.640 and 181A.650 (1).

43 (f) The department shall cause inspection of standards and training for instructors and public
44 safety personnel, except youth correction officers, to be made.

45 (g) The department may recommend, and the board may establish by rule, accreditation stan-

1 dards, levels and categories for mandated and nonmandated public safety personnel training or ed-
 2 ucational programs. The department and board, in consultation, may establish to what extent
 3 training or educational programs provided by an accredited university, college, community college
 4 or public safety agency may serve as equivalent to mandated training or as a prerequisite to man-
 5 dated training. Programs offered by accredited universities, colleges or community colleges may be
 6 considered equivalent to mandated training only in academic areas.

7 **(h) The department shall recommend, and the board shall establish by rule, an educa-**
 8 **tional program that the board determines will be most effective in reducing profiling, as de-**
 9 **defined in ORS 131.915, by police officers and reserve officers. The program must be required**
 10 **at all levels of training, including basic training and advanced, leadership and continuing**
 11 **training.**

12 (2) The department may:

13 (a) Contract or otherwise cooperate with any person or agency of government for the procure-
 14 ment of services or property;

15 (b) Accept gifts or grants of services or property;

16 (c) Establish fees for determining whether a training or educational program meets the accred-
 17 itation standards established under subsection (1)(g) of this section;

18 (d) Maintain and furnish to law enforcement units and public and private safety agencies infor-
 19 mation on applicants for appointment as instructors or public safety personnel, except youth cor-
 20 rection officers, in any part of the state; and

21 (e) Establish fees to allow recovery of the full costs incurred in providing services to private
 22 entities or in providing services as experts or expert witnesses.

23 (3) The department, in consultation with the board, may:

24 (a) Upon the request of a law enforcement unit or public safety agency, conduct surveys or aid
 25 cities and counties to conduct surveys through qualified public or private agencies and assist in the
 26 implementation of any recommendations resulting from such surveys.

27 (b) Upon the request of law enforcement units or public safety agencies, conduct studies and
 28 make recommendations concerning means by which requesting units can coordinate or combine their
 29 resources.

30 (c) Conduct and stimulate research to improve the police, fire service, corrections, adult parole
 31 and probation, emergency medical dispatch and telecommunicator professions.

32 (d) Provide grants from funds appropriated or available therefor, to law enforcement units,
 33 public safety agencies, special districts, cities, counties and private entities to carry out the pro-
 34 visions of this subsection.

35 (e) Provide optional training programs for persons who operate lockups. The term "lockup" has
 36 the meaning given it in ORS 169.005.

37 (f) Provide optional training programs for public safety personnel and their support staffs.

38 (g) Enter into agreements with federal, state or other governmental agencies to provide training
 39 or other services in exchange for receiving training, fees or services of generally equivalent value.

40 (h) Upon the request of a law enforcement unit or public safety agency employing public safety
 41 personnel, except youth correction officers, grant an officer, fire service professional, telecommu-
 42 nicator or emergency medical dispatcher a multidiscipline certification consistent with the minimum
 43 requirements adopted or approved by the board. Multidiscipline certification authorizes an officer,
 44 fire service professional, telecommunicator or emergency medical dispatcher to work in any of the
 45 disciplines for which the officer, fire service professional, telecommunicator or emergency medical

1 dispatcher is certified. The provisions of ORS 181A.500, 181A.520 and 181A.530 relating to lapse of
 2 certification do not apply to an officer or fire service professional certified under this paragraph as
 3 long as the officer or fire service professional maintains full-time employment in one of the certified
 4 disciplines and meets the training standards established by the board.

5 (i) Establish fees and guidelines for the use of the facilities of the training academy operated
 6 by the department and for nonmandated training provided to federal, state or other governmental
 7 agencies, private entities or individuals.

8 (4) Pursuant to ORS chapter 183, the board, in consultation with the department, shall adopt
 9 rules necessary to carry out the board's duties and powers.

10 (5) Pursuant to ORS chapter 183, the department, in consultation with the board, shall adopt
 11 rules necessary to carry out the department's duties and powers.

12 (6) For efficiency, board and department rules may be adopted jointly as a single set of combined
 13 rules with the approval of the board and the department.

14 (7) The department shall obtain approval of the board before submitting its legislative concepts,
 15 Emergency Board request or agency request budget to the Oregon Department of Administrative
 16 Services.

17 (8) The Department of Public Safety Standards and Training shall develop a training program
 18 for conducting investigations required under ORS 181A.790.

19 **SECTION 9.** ORS 475.752, as amended by section 59, chapter 24, Oregon Laws 2016, is amended
 20 to read:

21 475.752. (1) Except for licensees and licensee representatives, as those terms are defined in ORS
 22 475B.015, that are engaged in lawful activities, and except for a person acting within the scope of
 23 and in compliance with ORS 475B.245, and except as authorized by ORS 475.005 to 475.285 and
 24 475.752 to 475.980, it is unlawful for any person to manufacture or deliver a controlled substance.
 25 Any person who violates this subsection with respect to:

26 (a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise pro-
 27 vided in ORS 475.886 and 475.890.

28 (b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise
 29 provided in ORS 475.858, 475.860, 475.862, 475.878, 475.880, 475.882, 475.904 and 475.906.

30 (c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise
 31 provided in ORS 475.904 and 475.906.

32 (d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

33 (e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

34 (2) Except as authorized in ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful for any
 35 person to create or deliver a counterfeit substance. Any person who violates this subsection with
 36 respect to:

37 (a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

38 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

39 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

40 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

41 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

42 (3) It is unlawful for any person knowingly or intentionally to possess a controlled substance,
 43 other than marijuana, unless the substance was obtained directly from, or pursuant to a valid pre-
 44 scription or order of, a practitioner while acting in the course of professional practice, or except
 45 as otherwise authorized by ORS 475.005 to 475.285 and 475.752 to 475.980. Any person who violates

1 this subsection with respect to:

2 (a) A controlled substance in Schedule I, is guilty of a Class [*B felony*] **A misdemeanor**, except
 3 as otherwise provided in ORS **475.854, 475.874 and 475.894 and subsection (7)(a) of this section.**

4 (b) A controlled substance in Schedule II, is guilty of a Class [*C felony*] **A misdemeanor**, except
 5 as otherwise provided in ORS **475.824, 475.834, 475.864** or [*section 47, chapter 24, Oregon Laws*
 6 **2016**] **475.884 or subsection (7)(b) of this section.**

7 (c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

8 (d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

9 (e) A controlled substance in Schedule V, is guilty of a violation.

10 (4) In any prosecution under this section for manufacture, possession or delivery of that plant
 11 of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the peyote is
 12 being used or is intended for use:

13 (a) In connection with the good faith practice of a religious belief;

14 (b) As directly associated with a religious practice; and

15 (c) In a manner that is not dangerous to the health of the user or others who are in the prox-
 16 imity of the user.

17 (5) The affirmative defense created in subsection (4) of this section is not available to any person
 18 who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.

19 (6)(a) Notwithstanding subsection (1) of this section, a person who unlawfully manufactures or
 20 delivers a controlled substance in Schedule IV and who thereby causes death to another person is
 21 guilty of a Class C felony.

22 (b) For purposes of this subsection, causation is established when the controlled substance plays
 23 a substantial role in the death of the other person.

24 **(7)(a) Notwithstanding subsection (3)(a) of this section, unlawful possession of a con-**
 25 **trolled substance in Schedule I is a Class B felony if:**

26 **(A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or**

27 **(B) The person possesses:**

28 **(i) Two hundred or more user units of a mixture or substance containing a detectable**
 29 **amount of lysergic acid diethylamide; or**

30 **(ii) Sixty grams or more of a mixture or substance containing a detectable amount of**
 31 **psilocybin or psilocin.**

32 **(b) Notwithstanding subsection (3)(b) of this section, unlawful possession of a controlled**
 33 **substance in Schedule II is a Class C felony if the possession is a commercial drug offense**
 34 **under ORS 475.900 (1)(b).**

35 **SECTION 10.** ORS 475.824 is amended to read:

36 475.824. (1) It is unlawful for any person knowingly or intentionally to possess methadone unless
 37 the methadone was obtained directly from, or pursuant to, a valid prescription or order of a prac-
 38 titioner while acting in the course of professional practice, or except as otherwise authorized by
 39 ORS 475.005 to 475.285 and 475.752 to 475.980.

40 (2)(a) Unlawful possession of methadone is a Class [*C felony*] **A misdemeanor.**

41 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of methadone**
 42 **is a Class C felony if the possession is a commercial drug offense under ORS 475.900 (1)(b).**

43 **SECTION 11.** ORS 475.834 is amended to read:

44 475.834. (1) It is unlawful for any person knowingly or intentionally to possess oxycodone unless
 45 the oxycodone was obtained directly from, or pursuant to, a valid prescription or order of a practi-

1 tioner while acting in the course of professional practice, or except as otherwise authorized by ORS
2 475.005 to 475.285 and 475.752 to 475.980.

3 (2)(a) Unlawful possession of oxycodone is a Class [*C felony*] **A misdemeanor.**

4 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of oxycodone**
5 **is a Class C felony if the possession is a commercial drug offense under ORS 475.900 (1)(b).**

6 **SECTION 12.** ORS 475.854 is amended to read:

7 475.854. (1) It is unlawful for any person knowingly or intentionally to possess heroin.

8 (2)(a) Unlawful possession of heroin is a Class [*B felony*] **A misdemeanor.**

9 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of heroin is a**
10 **Class B felony if:**

11 **(A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or**

12 **(B) The person possesses five grams or more of a mixture or substance containing a de-**
13 **tectable amount of heroin.**

14 **SECTION 13.** ORS 475.874 is amended to read:

15 475.874. (1) It is unlawful for any person knowingly or intentionally to possess
16 3,4-methylenedioxyamphetamine.

17 (2)(a) Unlawful possession of 3,4-methylenedioxyamphetamine is a Class [*B felony*] **A**
18 **misdemeanor.**

19 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of**
20 **3,4-methylenedioxyamphetamine is a Class B felony if:**

21 **(A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or**

22 **(B) The person possesses five grams or more or 25 or more pills, tablets or capsules of**
23 **a mixture or substance containing a detectable amount of:**

24 **(i) 3,4-methylenedioxyamphetamine;**

25 **(ii) 3,4-methylenedioxyamphetamine; or**

26 **(iii) 3,4-methylenedioxy-N-ethylamphetamine.**

27 **SECTION 14.** ORS 475.884 is amended to read:

28 475.884. (1) It is unlawful for any person knowingly or intentionally to possess cocaine unless
29 the substance was obtained directly from, or pursuant to, a valid prescription or order of a practi-
30 tioner while acting in the course of professional practice, or except as otherwise authorized by ORS
31 475.005 to 475.285 and 475.752 to 475.980.

32 (2)(a) Unlawful possession of cocaine is a Class [*C felony*] **A misdemeanor.**

33 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of cocaine is a**
34 **Class C felony if:**

35 **(A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or**

36 **(B) The person possesses 10 grams or more of a mixture or substance containing a de-**
37 **tectable amount of cocaine.**

38 **SECTION 15.** ORS 475.894 is amended to read:

39 475.894. (1) It is unlawful for any person knowingly or intentionally to possess methamphetamine
40 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
41 practitioner while acting in the course of professional practice, or except as otherwise authorized
42 by ORS 475.005 to 475.285 and 475.752 to 475.980.

43 (2)(a) Unlawful possession of methamphetamine is a Class [*C felony*] **A misdemeanor.**

44 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of metham-**
45 **phetamine is a Class C felony if:**

1 (A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or

2 (B) The person possesses 10 grams or more of a mixture or substance containing a de-
 3 tectable amount of methamphetamine.

4 **SECTION 16.** ORS 423.478 is amended to read:

5 423.478. (1) The Department of Corrections shall:

6 (a) Operate prisons for offenders sentenced to terms of incarceration for more than 12 months;

7 (b) Provide central information and data services sufficient to:

8 (A) Allow tracking of offenders; and

9 (B) Permit analysis of correlations between sanctions, supervision, services and programs, and
 10 future criminal conduct; and

11 (c) Provide interstate compact administration and jail inspections.

12 (2) Subject to ORS 423.483, the county, in partnership with the department, shall assume re-
 13 sponsibility for community-based supervision, sanctions and services for offenders convicted of felo-
 14 nies **or designated drug-related misdemeanors** who are:

15 (a) On parole;

16 (b) On probation;

17 (c) On post-prison supervision;

18 (d) Sentenced, on or after January 1, 1997, to 12 months or less incarceration;

19 (e) Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-
 20 Prison Supervision to 12 months or less incarceration for violation of a condition of parole, pro-
 21 bation or post-prison supervision; *[and]* **or**

22 (f) On conditional release under ORS 420A.206.

23 (3) Notwithstanding the fact that the court has sentenced a person to a term of incarceration,
 24 when an offender is committed to the custody of the supervisory authority of a county under ORS
 25 137.124 (2) or (4), the supervisory authority may execute the sentence by imposing sanctions other
 26 than incarceration if deemed appropriate by the supervisory authority. If the supervisory authority
 27 releases a person from custody under this subsection and the person is required to report as a sex
 28 offender under ORS 163A.010, the supervisory authority, as a condition of release, shall order the
 29 person to report to the Department of State Police, a city police department or a county sheriff's
 30 office or to the supervising agency, if any:

31 (a) When the person is released;

32 (b) Within 10 days of a change of residence;

33 (c) Once each year within 10 days of the person's birth date;

34 (d) Within 10 days of the first day the person works at, carries on a vocation at or attends an
 35 institution of higher education; and

36 (e) Within 10 days of a change in work, vocation or attendance status at an institution of higher
 37 education.

38 (4) As used in this section[,]:

39 (a) "Attends," "institution of higher education," "works" and "carries on a vocation" have the
 40 meanings given those terms in ORS 163A.005.

41 (b) **"Designated drug-related misdemeanor" means:**

42 (A) **Unlawful possession of a Schedule I controlled substance under ORS 475.752 (3)(a);**

43 (B) **Unlawful possession of a Schedule II controlled substance under ORS 475.752 (3)(b);**

44 (C) **Unlawful possession of methadone under ORS 475.824 (2)(a);**

45 (D) **Unlawful possession of oxycodone under ORS 475.834 (2)(a);**

1 **(E) Unlawful possession of heroin under ORS 475.854 (2)(a);**

2 **(F) Unlawful possession of 3,4-methylenedioxymethamphetamine under ORS 475.874 (2)(a);**

3 **(G) Unlawful possession of cocaine under ORS 475.884 (2)(a); or**

4 **(H) Unlawful possession of methamphetamine under ORS 475.894 (2)(a).**

5 **SECTION 17.** ORS 161.570 is amended to read:

6 161.570. (1) As used in this section, “nonperson felony” has the meaning given that term in the
7 rules of the Oregon Criminal Justice Commission.

8 (2) A district attorney may elect to treat a Class C nonperson felony or a violation of ORS
9 475.752 [(3)(a)] **(7)(a)**, 475.854 **(2)(b)** or 475.874 **(2)(b)** as a Class A misdemeanor. The election must
10 be made by the district attorney orally or in writing at the time of the first appearance of the de-
11 fendant. If a district attorney elects to treat a Class C felony or a violation of ORS 475.752 [(3)(a)]
12 **(7)(a)**, 475.854 **(2)(b)** or 475.874 **(2)(b)** as a Class A misdemeanor under this subsection, the court
13 shall amend the accusatory instrument to reflect the charged offense as a Class A misdemeanor.

14 (3) If, at some time after the first appearance of a defendant charged with a Class C nonperson
15 felony or a violation of ORS 475.752 [(3)(a)] **(7)(a)**, 475.854 **(2)(b)** or 475.874 **(2)(b)**, the district at-
16 torney and the defendant agree to treat the charged offense as a Class A misdemeanor, the court
17 may allow the offense to be treated as a Class A misdemeanor by stipulation of the parties.

18 (4) If a Class C felony or a violation of ORS 475.752 [(3)(a)] **(7)(a)**, 475.854 **(2)(b)** or 475.874 **(2)(b)**
19 is treated as a Class A misdemeanor under this section, the court shall clearly denominate the of-
20 fense as a Class A misdemeanor in any judgment entered in the matter.

21 (5) If no election or stipulation is made under this section, the case proceeds as a felony.

22 (6) Before a district attorney may make an election under subsection (2) of this section, the
23 district attorney shall adopt written guidelines for determining when and under what circumstances
24 the election may be made. The district attorney shall apply the guidelines uniformly.

25 (7) Notwithstanding ORS 161.635, the fine that a court may impose upon conviction of a
26 misdemeanor under this section may not:

27 (a) Be less than the minimum fine established by ORS 137.286 for a felony; or

28 (b) Exceed the amount provided in ORS 161.625 for the class of felony receiving Class A
29 misdemeanor treatment.

30 **SECTION 18. This 2017 Act being necessary for the immediate preservation of the public**
31 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
32 **on its passage.**