

FAQ: HB 2797

Multnomah County District Attorney's Office¹ Claims . . .	However, Data and Analysis of Proposed and Current Law Shows...
<p>Q: What is “Taylor’s Law”?</p> <ul style="list-style-type: none"> A: “Taylor’s Law” requires a prison sentence in homicide cases that result from a drug overdose. 	<p>Q: What is HB 2797?</p> <ul style="list-style-type: none"> A: HB 2797 is a newly created mandatory minimum sentencing scheme that creates a new strict liability homicide crime for any person involved in the delivery or manufacture of a controlled substance, even if that substance was only one of many factors in causing another’s death, regardless of the mitigating circumstances, regardless of how many drugs another may have ingested, and even if the deceased person did not receive the controlled substance directly from the person. This bill also seeks to make all Manufacturing/Delivery charges a “person felony” which will impact someone’s criminal history forever, even if their crime is decades old, resulting in increased prison time for any new charges. In its current form, the law will disproportionately capture low-level drug dealers and drug addicts while higher-level drug manufacturers and distributors escape culpability.²

¹ <http://mcda.us/index.php/news/frequently-asked-questions-about-taylors-law/>

² DRUG POLICY ALLIANCE, AN OVERDOSE DEATH IS NOT MURDER: WHY DRUG-INDUCED HOMICIDE LAWS ARE COUNTERPRODUCTIVE AND INHUMANE 2–3 (2017)

<p>Q: Why was “Taylor’s Law” proposed?</p> <ul style="list-style-type: none"> • A: Because Oregon currently has a hole that allows convicted drug dealers to skirt prison sentences even after someone dies. There is often little to no accountability. 	<p>Q: Why was HB 2797 proposed?</p> <ul style="list-style-type: none"> • A: HB 2797 creates yet another mandatory minimum hammer for use as a negotiation tool. • Probation, jail time, and prison time are all forms of accountability, and people who are convicted of Delivery/Manufacture of Controlled Substances are held accountable under current law which can provide significant prison time already.
<p>Q: Right now, what type of punishment could a person get if it’s found their drugs caused someone’s death?</p> <ul style="list-style-type: none"> • A: Probation. Oregon doesn’t have a law to enhance the punishment for someone who delivers a controlled substance that results in someone’s death. 	<p>Q: Right now, what type of punishment could a person get if it’s found their drugs caused someone’s death?</p> <ul style="list-style-type: none"> • A: A person “could” get probation, but they could also get significant prison time under current law. • Under current law, depending on the charge (Unlawful Delivery/Manufacture), the crime seriousness level (1-10), the type of controlled substance, the quantity of controlled substance (user amount versus substantial quantity), the person’s criminal history (I-A), and the aggravating factors plead, they could be facing probation all the way up to 260 months in prison, on just one count. • Oregon does have laws that can enhance punishment, and they are used frequently in courts every day. They are called “aggravating factors” that are plead as “enhancement facts.” • Under current law, enumerated and unenumerated aggravating factors including but not limited to “resulted in death of another,” “harm or loss significantly greater than typical,” and “vulnerable victim” can be plead as enhancement facts. If proven, these can double (called an “upward dispositional departure”) or quadruple (called a “double barrel upward dispositional departure”) a person’s presumed grid block sentence which could result in incarceration time from 12 months all the way up to 260 months. This is the law now.

<p>Q: Are drug overdose deaths going up in Oregon?</p> <ul style="list-style-type: none"> A: Oregon saw a 4.2% increase [1] in the number of overdose deaths from 2016-2017. The Centers for Disease Control and Prevention[2] reported more than 500 drug overdose deaths statewide. 	<p>Q: Are drug overdose deaths going up in Oregon?</p> <ul style="list-style-type: none"> A: There is data suggesting that some drug related deaths are actually going down, but there is “not a shred of evidence” that suggests that laws like HB 2797 have <i>any</i> effect on reducing drug use, sales, or overdose deaths.³ Despite laws like the one proposed, overdose death tolls continue to rise in the states and counties with the most aggressive prosecution rate of death-induced homicide cases.⁴ Proven overdose prevention strategies include overdose education, wider distribution of, and access to, naloxone, implementation of safe consumption sites, drug checking, and access to therapy and treatment.⁵
<p>Q: So, “Taylor’s Law” is going to charge drug offenders with murder?</p> <ul style="list-style-type: none"> A: No. “Taylor’s Law” has nothing to do with murder, which is defined under ORS 163.115[3]. A murder conviction carries a sentence of life in prison with a mandatory 25 years before a person is eligible to apply for parole. 	<p>Q: So, HB 2797 is going to charge drug offenders with murder?</p> <ul style="list-style-type: none"> A: Essentially, yes. HB 2797 seeks to impose mandatory minimum sentences on what equates to a manslaughter or murder sentence, but without the traditional foreseeability or same mental state requirements. This is particularly troubling, as the low-level street dealers and drug addicts who will be disproportionately prosecuted under HB 2797, have no knowledge as to the purity or contamination of the drugs in their possession.⁶

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.* at 52–54.

⁶ Jon Schuppe, *30 Years After Basketball Star Len Bias’ Death, Its Drug War Impact Endures*, NBC NEWS (June 19, 2016), <https://www.nbcnews.com/news/us-news/30-years-after-basketball-star-len-bias-death-its-drug-n593731> (last visited March 5, 2019); *see also* DRUG POLICY ALLIANCE, AN OVERDOSE DEATH IS NOT MURDER: WHY DRUG-INDUCED HOMICIDE LAWS ARE COUNTERPRODUCTIVE AND INHUMANE 17 (2017) (“In reality, the vast majority of street-level heroin sellers, as well as the family, friends, and acquaintances who share their heroine supplies, likely do not know when the heroin has fentanyl added to it.”).

<p>Q: What type of prison time could someone face if “Taylor’s Law” is passed?</p> <ul style="list-style-type: none"> • A: A mandatory of 58 to 130 months in prison. 	<p>Q: What type of prison time could someone face if HB 2797 is passed?</p> <ul style="list-style-type: none"> • A: HB 2797 institutes a mandatory minimum sentence of 58 to 130 months in prison. • This bill, by establishing a mandatory minimum sentence, creates the floor of at least 58 to 130 months. The court could then upward dispositionally depart that sentence based on enumerated or unenumerated aggravating factors to 116 to 260 months.
<p>Q: How many other states have something similar to “Taylor’s Law?”</p> <ul style="list-style-type: none"> • A: “Taylor’s Law” shouldn’t be compared to laws in other states because each state writes its own laws that are customized for that state’s needs. “Taylors’ Law” has been written narrowly to specifically meet the needs of Oregon. Some states have much more aggressive overdose death laws than what “Taylor’s Law” proposes. In general, however, according to media reports[4], at least 20 states have already passed overdose death laws. 	<p>Q: How many other states have something similar to HB 2797?</p> <ul style="list-style-type: none"> • A: While there are many states with drug-induced homicide laws written in various forms, almost all claim to target only “high-level drug manufacturers and distributors,” but data shows that the vast majority of charges sought under these law are against low-level drug dealers, users, and addicts.⁷ • HB 2797 is currently written broadly, and will largely affect low-level drug dealers, users, and addicts. Again, despite laws like this, drug overdose death tolls continue to rise in the states and counties with the most aggressive prosecution rate of death-induced homicide cases.⁸
<p>Q: How many other states are considering something similar to “Taylor’s Law” this year?</p> <ul style="list-style-type: none"> • A: Media reports[5] suggest lawmakers in four other states, not including Oregon, are currently reviewing similar laws. 	<p>Q: How many other states are considering something similar to HB 2797 this year?</p> <ul style="list-style-type: none"> • A: Despite similar laws across the country, drug overdose death tolls continue to rise in the states and counties with the most aggressive prosecution rate of death-induced homicide cases.⁹

⁷ DRUG POLICY ALLIANCE, *supra* note 1, at 2.

⁸ *Id.*

⁹ *Id.*

<p>Q: Without “Taylor’s Law,” what message is being sent to criminals and the crime victims?</p> <ul style="list-style-type: none"> • A: Right now, Oregon law allows drug dealers to continue without any significant consequences, and it fails the families of those killed in a drug overdose 	<p>Q: Without HB 2797 what message is being sent to criminals and the crime victims?</p> <ul style="list-style-type: none"> • A: As HB 2797 is currently written, it would largely affect drug users and addicts while high-level drug manufacturers and distributors escape culpability.¹⁰ By criminalizing the people who are in the best position to seek medical assistance for overdose victims, thus discouraging them from calling 911 or seeking medical assistance,¹¹ HB 2797 further endangers the very people it was written to protect.¹² • Thus, the only message it sends to the “criminals” is that it’s safer to let someone overdose than it is to call 911, and the only message it sends “victims” is that the punishment of low-level drug dealers, users, and addicts is more important than preventing their deaths by ensuring that those around them are able to seek medical help.
<p>Q: Won’t this law just give the state power to prosecute people with a drug addiction?</p> <ul style="list-style-type: none"> • A: No one who supports “Taylor’s Law” wants to target people who are drug affected and in the throes of addiction. This proposal is for the people who are making a living off people with addiction and making a living off people who die using drugs. 	<p>Q: Won’t this law just give the state power to prosecute people with a drug addiction?</p> <ul style="list-style-type: none"> • A: Yes. As it is currently written, HB 2797 does not differentiate between “people who are drug affected and in the throes of addiction” and those “who are making a living off people with addiction and making a living off of people who die using drugs.” • The language of HB 2797 is overly broad and affects any person “who unlawfully delivers or manufactures a controlled substance” that “was a factor in causing the death of the other person.” • This language includes someone “in the throes of addiction” as long as that person unlawfully distributed a controlled substances that could be

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.*

	<p>shown to be a mere factor among other reasons for the death of the other person.</p> <ul style="list-style-type: none"> • Again, the majority of charges sought under similar laws are against the overdose victim’s family, friends, acquaintances, and folks selling small amounts of drugs to support their own drug dependence.¹³
<p>Q: How is this law different than what was happening to people caught in the “war on drugs” in the past?</p> <ul style="list-style-type: none"> • A: “Taylor’s Law” is not intended to be a ‘get tough’ on addicts law. Its purpose to hold top-tier drug dealers accountable for knowingly selling and distributing drugs that result in death. 	<p>Q: How is this law different than what was happening to people caught in the “war on drugs” in the past?</p> <ul style="list-style-type: none"> • A: It’s not different—this law is absolutely a throwback to the “war on drugs” time as it is modeled after federal “Len Bias” laws. • As it is currently written, HB 2797 will disproportionately affect low-level drug dealers, users, and addicts. • There is <i>nothing</i> in the language of HB 2797 that specifically targets “top-tier drug dealers.” • Again, the majority of charges sought under similar laws are against the overdose victim’s family, friends, acquaintances, and folks selling small amounts of drugs to support their own drug dependence.¹⁴
<p>Q: How can a drug offender “profit” off someone’s death?</p> <ul style="list-style-type: none"> • A: When word gets out that someone has died because of using drugs, law enforcement has found that the demand for that specific product swells and it’s known on the street as “the good stuff.” 	<p>Q: How can a drug offender “profit” off someone’s death?</p> <ul style="list-style-type: none"> • A: There is no evidence to support their claim that after someone has overdosed there is an increase for demand of that specific product.

¹³ *Id.*

¹⁴ *Id.*

<p>Q: What type of resources are available to low-level drug users?</p> <ul style="list-style-type: none"> • A: Each county will have different resources. In Multnomah County, District Attorney Rod Underhill was the first prosecutor in Oregon to bring in the Law Enforcement Assisted Diversion (LEAD®) Program, which aims to divert low-level drug users from the criminal justice system. DA Underhill then created the Treatment First Program that allows successful participants to exit the criminal justice system with their drug case dismissed after participating and completing treatment. Multnomah County has robust addiction treatment services available through the County Health Department. 	<p>Q: What type of resources are available to low-level drug users?</p> <ul style="list-style-type: none"> • A: There are many evidence-based prevention strategies for low-level drug users, though many have not been implemented equally in Oregon counties due to resource issues.
<p>Q: Will this actually serve as a deterrent?</p> <ul style="list-style-type: none"> • A: Yes. That is the expectation with “Taylor’s Law.” If passed, our system-based partners like the courts and treatment providers could warn people that if they continue down this path of selling drugs, they could be exposing themselves to significant prison time. 	<p>Q: Will this actually serve as a deterrent?</p> <ul style="list-style-type: none"> • A: No. There is “not a shred of evidence” to suggest that laws like HB 2797 have <i>any</i> effect on reducing drug use, sales, or overdose deaths.¹⁵ • Despite similar laws across the country, drug overdose death tolls continue to rise in the states and counties with the most aggressive prosecution rate of death-induced homicide cases.¹⁶ • Furthermore, decades of research has shown that punitive sentences for drug offenses have no deterrent effect.¹⁷
<p>Q: What happens if two drug-affected individuals are together and one of them overdoses?</p> <ul style="list-style-type: none"> • A: Oregon law recognizes this scenario and provides immunity from certain drug-related offenses when a person calls for emergency medical assistance. While “delivery of a controlled substance” does not fall under the immunity statute, law enforcement would attempt to work with the person who called 9-1-1 	<p>Q: What happens if two drug-affected individuals are together and one of them overdoses?</p> <ul style="list-style-type: none"> • A: As HB 2797 is currently written, if two drug-affected individuals are together and one of them overdoses, the person not experiencing an overdose can be held liable under HB 2797 if that person gave the overdose victim the substance.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.*

<p>to identify the upper tier drug suppliers in an effort to hold the highest level drug supplier responsible for the overdose death. The burden on the state remains proof beyond a reasonable doubt.</p>	<ul style="list-style-type: none"> • The language “delivery of a controlled substance” would include a friend, family member, or other drug-affected individual who shared their drugs with the overdose victim. This explains why the majority of charges sought under similar laws are against the overdose victim’s family, friends, acquaintances, and folks selling small amounts of drugs to support their own drug dependence.¹⁸ • Again, nothing in the language of HB 2797 specifically targets “the highest level drug supplier responsible for the overdose death.”
<p>Q: Won’t “Taylor’s Law” cause our prisons to become overcrowded with drug offenders?</p> <ul style="list-style-type: none"> • A: No. “Taylor’s Law” was written narrowly so it can only be used once the state has proven that the person convicted provided the drug that resulted in the death. 	<p>Q: Won’t HB 2797 cause our prisons to become overcrowded with drug offenders?</p> <ul style="list-style-type: none"> • A: As repeated above, this proposal is written incredibly broadly. It is unfair to claim that it will have no impact on who is prosecuted and what kind of custody time they will experience.
<p>Q: What happens if person passes someone else some heroin and that person dies, will that person be on the hook for 58 to 130 months in prison?</p> <ul style="list-style-type: none"> • A: Potentially. But, law enforcement and district attorneys recognize how complex drug operations are. In many cases, the person doing the actual hand-to-hand exchange, isn’t the leader of a drug trafficking organization. “Taylor’s Law” targets the leaders of these organizations. 	<p>Q: What happens if person passes someone else some heroin and that person dies, will that person be on the hook for 58 to 130 months in prison?</p> <ul style="list-style-type: none"> • A: Yes. The way HB 2797 is currently written, “delivery of a controlled substance” would include a person passing someone else heroin and the person dies. • Again, there is <i>nothing</i> in the language of HB 2797 that specifically targets “the leaders of [drug trafficking] organizations.” • As it currently reads, it is simply a “person who unlawfully delivers,” which would include a person passing someone else heroin.

¹⁸ *Id.*

Q: Won't this law just be used to 'make an example' out of low-level drug dealers, the people who are struggling with addiction?

- A: No. District attorneys have an ethical duty to make sure that criminal cases are appropriately charged. All district attorneys will review aggravating and mitigating factors when considering charges and when discussing potential pretrial resolutions.

Q: Won't this law just be used to 'make an example' out of low-level drug dealers, the people who are struggling with addiction?

- A: **Yes.** It's well established that similar laws are enforced disproportionately against low-level drug dealers, users, and addicts.¹⁹
- A simple promise that "district attorneys will review aggravating and mitigating factors when considering charges and when discussing potential pretrial resolutions" is neither appropriate or sufficient.
- Again, the majority of charges sought under similar laws are against low-level drug dealer, users, and addicts, despite "prosecutor promises to go after upper echelon drug manufacturers and distributors."²⁰
- Further, prosecutors already have an unparalleled amount of discretion that lacks accountability as "[p]rosecutors are not required to justify their charging and plea-bargaining decisions to anyone beyond their immediate supervisors."²¹

Q: Aren't drug deaths preventable? Why should the criminal justice system even be involved?

- A: Yes, they are. Ensuring community members have access to treatment services that address the underlying medical conditions of addiction and then providing that person with proper support in order to reduce recidivism is best way to prevent a drug overdose death. However, in situations where a person continuously makes money off addicts and then contributes to their death, there must be accountability for that person.

Q: Aren't drug deaths preventable? Why should the criminal justice system even be involved?

- A: Yes, they are. Ensuring community members have access to treatment services that address the underlying medical conditions of addiction and then providing that person with proper support in order to reduce recidivism is best way to prevent a drug overdose death. Evidence-based overdose prevention strategies include overdose education, wider distribution of, and access to, naloxone, implementation of safe consumption sites, drug checking, and access to therapy and treatment.²²
- As HB 2797 is currently written, it does not target people who "continuously make[] money

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 52–54.

off addicts and then contribute[] to their death” and thus does not hold those people accountable.

- As it is currently written, HB 2797 will be used disproportionately against low-level drug dealers, users and addicts,²³ forcing criminal justice system involvement when the aforementioned evidence-based solutions are appropriate.

²³ *Id.* at 3.