



Public Safety Provisions

-1 Amendments to House Bill 4002

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Delivery: Definition



Change to ORS 475.005 (8) in the proposed amendment:

“Deliver” or “delivery” means the actual, constructive or attempted transfer **of, or possession with the intent to transfer**, other than by administering or dispensing, from one person to another, [*of*] a controlled substance.



Delivery: Sentencing



Amendment: **enhanced crime category** for delivery of heroin, cocaine, fentanyl, methamphetamine or MDMA when:

- The defendant knows, or reasonably should have known, the delivery is occurring within 500 feet of a treatment facility
- The defendant knows, or reasonably should have known, the delivery is occurring within 500 feet of a temporary residence shelter
- The delivery occurs within a public park

“Treatment facility,” “temporary residence shelter” and “public park” are defined terms



Delivery: Sentencing



Current crime category:

- **Crime category 6:** delivery of heroin, cocaine, fentanyl, methamphetamine or MDMA for consideration
- **Crime category 4** otherwise

New crime category:

- **Crime category 7:** delivery of heroin, cocaine, fentanyl, methamphetamine or MDMA for consideration
- **Crime category 5** otherwise



Delivery: Sentencing



The Oregon Sentencing Guidelines Grid

(for comparison of presumptive sentences for different crime category levels)

Crime Seriousness	A	B	C	D	E	F	G	H	I	Prob Term	Max Depart	PPS
11	225-269	196-224	178-194	164-177	149-163	135-148	129-134	122-128	120-121	5 Years		3 Years
10	121-130	116-120	111-115	91-110	81-90	71-80	66-70	61-65	58-60			
9	66-72	61-65	56-60	51-55	46-50	41-45	39-40	37-38	34-36			
8	41-45	35-40	29-34	27-28	25-26	23-24	21-22	19-20	16-18	3 Years	18 Mos.	2 Years
7	31-36	25-30	21-24	19-20	16-18	180-90	180-90	180-90	180-90			
6	25-30	19-24	15-18	13-14	10-12	180-90	180-90	180-90	180-90	2 Years	12 Mos.	1 Year
5	15-16	13-14	11-12	9-10	6-8	180-90	120-60	120-60	120-60			
4	10-11	8-9	120-60	120-60	120-60	120-60	120-60	120-60	120-60	2 Years	6 Mos.	1 Year
3	120-60	120-60	120-60	120-60	120-60	120-60	90-30	90-30	90-30			
2	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	1 ½ Years	6 Mos.	1 Year
1	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30			



Delivery: Pre-Trial Release



Reevaluation of release guidelines:

- Under ORS 135.233, the Chief Justice establishes pretrial release guidelines, and the presiding judge of each judicial district enters a standing pretrial release order based on those guidelines
- The amendment directs the Chief Justice to reevaluate and update the release guidelines for delivery and manufacture of a controlled substance charges
- Must be done by no later than June 1, 2024



Possession: Offense Level



Currently the following are **Class E violations** and, under the amendment, would become **Class C misdemeanors**:

- Possession of less than 40 pills, tablets, capsules or user units of hydrocodone, methadone or oxycodone
- Possession of less than 1 gram of heroin
- Possession of less than 1 gram, or less than 5 user units, of fentanyl
- Possession of less than 1 gram, or less than 5 pills, tablets or capsules, of MDMA
- Possession of less than 2 grams of cocaine or methamphetamine
- Possession of any amount of another controlled substance in Schedule I, II, III or IV (other than a commercial drug offense)



Possession: New Defense



- New affirmative defense to possession of a controlled substance constituting a Class C misdemeanor:
 - The person completed a qualified deflection program to which the person was referred when contacted by a police officer concerning the alleged possession **or**
 - The person was not referred to a qualified deflection program when contacted by a police officer concerning the alleged possession
- Only can assert non-referral defense if no other possible charges when contacted
- Notice requirement: 21 days before trial
- “Completion” and “qualified deflection program” are defined terms



Possession: New Defense



Oregon Criminal Justice Commission will certify deflection programs that qualify for the defense (“qualified deflection program”); list will be published on commission website. Requirements include:

- Coordination by a Community Mental Health Program or local mental health authority
- Contact within the referred person within 30 days
- Provide, at no cost, at least a screening and one additional contact
- Partnerships with Behavioral Health Resource Networks and law enforcement agencies



Possession: New Defense



- “Deflection program” defined broadly as a collaborative program between law enforcement agencies and behavioral health entities
- Under ORS 161.055, for affirmative defenses, the defendant has the burden of proving the defense by a preponderance of the evidence
- Self-authentication of completion document for purposes of the Oregon Evidence Code



Possession: Sentencing



Maximum penalties for **misdemeanors**:

Class A: 364 days (jail), \$6,250 fine

Class B: 6 months, \$2,500 fine

Class C: 30 days, \$1,250 fine

New to the amendment: upon conviction of Class C misdemeanor possession, the court cannot include in the judgment a requirement that the person pay a fine, cost, assessment or attorney fee

Purpose: facilitate the sealing of records (expungement)



Possession: Probation



- Class C misdemeanor possession included in the definition of “designated drug-related misdemeanor”
- Supervision duty: county community corrections agencies (except the two counties in which DOC operates community corrections)
- Probation supervision for Class C misdemeanor possession will be similar to that for felonies and some Class A misdemeanors
- Class C misdemeanor probationers will be included in current service level calculation for funding



Possession: Probation



New type of pre-plea probation (conditional discharge) for people charged with Class C misdemeanor possession:

- Eligibility is automatic, no approval from court or DA required
- Pre-plea probation agreement: 12 months with general conditions, plus evaluation and any recommended treatment
- Upon successful completion of probation, the court dismisses the charge



Possession: Expungement



Sealing of records at various stages of Class C misdemeanor possession proceedings:

- Completed deflection program: within 60 days of verification
- Two years after cite/conduct with no further action: within 60 days
- Pre-plea probation/conditional discharge: upon dismissal of charge
- Any other Class C misdemeanor possession conviction: 3 years after conviction



Possession: Expungement



Other new provisions related to expungement:

- Class C misdemeanor convictions won't prevent expungement of other charges
- Prohibition on ordering a defendant charged only with Class C misdemeanor possession to pay for financial eligibility assessment or court-appointed attorney costs
- Probation term for Class C misdemeanor possession limited to 3 years



Data Tracking



- The amendment directs the Oregon Criminal Justice Commission to annually report to the interim House and Senate Judiciary Committees concerning deflections, arrests and prosecutions for possession and delivery of a controlled substance
- Purpose: to track racial or other demographic disparities
- Reports begin no later than August 31, 2025



New Grant Program



Oregon Behavioral Health Deflection Program

- Funding deflection programs only
- Requirements for grant mirror requirements for defense certification
- Applicants: Community Mental Health Programs, local mental health authorities and tribal governments



Welfare Hold Expansion



ORS 430.399 allows a police officer to take a person to a treatment facility if the person is intoxicated or under the influence of controlled substances.

When the person is taken to the treatment facility, the director of the facility must determine whether the person should be admitted.



Welfare Hold Expansion



A person must be admitted if:

- The person is incapacitated;
- The health of the person appears to be in imminent danger; or
- The director of the facility has reasonable cause to believe the person is dangerous to self or to any other person.

Amends ORS 430.399 (2) to provide that once admitted:

“The person shall be discharged within [48] **72** hours unless the person has applied for voluntary admission to the treatment facility.”



Questions?



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