

**FIX AND IMPROVE MEASURE 110 - MEASURE D**

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

2  
3 **USE OF CONTROLLED SUBSTANCE IN A PUBLIC PLACE**

4 **SECTION 1. Section 2 of this 2024 Act is added to and made a part of ORS 475.752 to**  
5 **475.980.**

6 **SECTION 2. (1) It is unlawful for any person knowingly or intentionally to use a controlled**  
7 **substance in a public place unless the substance was obtained directly from, or pursuant to a valid**  
8 **prescription or order of, a practitioner while acting in the course of professional practice, or except**  
9 **as otherwise authorized by ORS 475.005 to 475.285 and 475.752 to 475.980. Any person who**  
10 **violates this section is guilty of a Class A misdemeanor.**

11 **(2) As used in this section, “public place” means a place to which the general public has**  
12 **access and includes, but is not limited to, highways, streets, schools, places of amusement, parks,**  
13 **playgrounds, premises and vehicles used in connection with public passenger transportation, and**  
14 **hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or**  
15 **apartments designed for actual residence.**

16  
17 **MANDATORY DRUG TREATMENT**

18 **SECTION 3. (1) For a person convicted of or charged with a designated drug-related**  
19 **misdemeanor or a designated property misdemeanor as defined in ORS 423.478 as amended by**  
20 **Section 11 of this 2024 Act, the following shall be included as conditions of probation or as part of a**  
21 **conditional discharge diversion agreement under Section 12 of this 2024 Act:**

22 **(a) A requirement that the person be evaluated to determine whether the person is a drug-**  
23 **dependent person, and that the person provide written consent for such evaluation; and**

24 **(b) A requirement that, if the evaluation indicates that the person is a drug-dependent**  
25 **person and that such person may benefit from treatment for drug dependence, the person must**  
26 **complete the course of treatment as directed by the evaluator.**

27 **(2) As to any evaluation and treatment required under subsection (1) of this section:**

28 **(a) The state shall fund the costs of such evaluation and treatment, including supervision**  
29 **related to the person’s compliance with evaluation and treatment requirements.**

30 **(b) The court may assess against the person a fee for the costs described in subsection (2)(a)**  
31 **of this section, based on the person’s ability to pay.**

1  
2 **RECRIMINALIZING DRUG POSESSION**

3 **SECTION 4.** ORS 475.752 is amended to read:

4 475.752. (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is  
5 unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this  
6 subsection with respect to:

7 (a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise  
8 provided in ORS 475.886 and 475.890.

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

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

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

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

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

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

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

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

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

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

23 (3) It is unlawful for any person knowingly or intentionally to possess a controlled substance  
24 unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a  
25 practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS  
26 475.005 to 475.285 and 475.752 to 475.980. Any person who violates this subsection with respect to:

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

29 (b) A controlled substance in Schedule II, is guilty of a Class [*E violation*] **A misdemeanor**,  
30 except as otherwise provided in ORS 475.814, 475.824, 475.834 or 475.884 or subsection (8) of this  
31 section.

32 (c) A controlled substance in Schedule III, is guilty of a Class [*E violation*] **A misdemeanor**.

33 (d) A controlled substance in Schedule IV, is guilty of a Class [*E violation*] **A misdemeanor**.

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

1 (4) It is an affirmative defense in any prosecution under this section for manufacture, possession  
2 or delivery of the plant of the genus *Lophophora* commonly known as peyote that the peyote is being used  
3 or is intended for use:

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

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

6 (c) In a manner that is not dangerous to the health of the user or others who are in the proximity  
7 of the user.

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

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

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

15 (7) Notwithstanding subsection (3)(a) of this section[:],

16 [*(a) Unlawful possession of a controlled substance in Schedule I is a Class A misdemeanor if the*  
17 *person possesses:*

18 (A) *Forty or more user units of a mixture or substance containing a detectable amount of lysergic*  
19 *acid diethylamide; or*

20 (B) *Twelve grams or more of a mixture or substance containing a detectable amount of psilocybin*  
21 *or psilocin.]*

22 [(b)] Unlawful possession of a controlled substance in Schedule I is a Class B felony if:

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

24 [(B)] (b) The person possesses a substantial quantity under ORS 475.900 (2)(b).

25 (8) Notwithstanding subsection (3)(b) of this section[:],

26 [*(a) Unlawful possession of a controlled substance in Schedule II is a Class A misdemeanor if the*  
27 *person possesses one gram or more or five or more user units of a mixture or substance containing a*  
28 *detectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of the State*  
29 *Board of Pharmacy.]*

30 [(b)] Unlawful possession of a controlled substance in Schedule II is a Class C felony if:

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

32 [(B)] (b) The person possesses a substantial quantity under ORS 475.900 (2)(b).

33 **SECTION 5.** ORS 475.824 is amended to read:

1           475.824. (1) It is unlawful for any person knowingly or intentionally to possess methadone unless  
2 the methadone was obtained directly from, or pursuant to a valid prescription or order of, a practitioner  
3 while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to  
4 475.285 and 475.752 to 475.980.

5           (2) (a) Unlawful possession of methadone is a Class [*E violation*] **A misdemeanor**.

6           (b) Notwithstanding paragraph (a) of this subsection, [*unlawful possession of methadone is a*  
7 *Class A misdemeanor if the person possesses 40 or more user units of a mixture or substance containing*  
8 *a detectable amount of methadone.*]

9           [*(c) Notwithstanding paragraphs (a) and (b) of this subsection,*] unlawful possession of  
10 methadone is a Class C felony if the possession is a commercial drug offense under ORS 475.900 (1)(b).

11           **SECTION 6.** ORS 475.834 is amended to read:

12           475.834. (1) It is unlawful for any person knowingly or intentionally to possess oxycodone unless  
13 the oxycodone was obtained directly from, or pursuant to a valid prescription or order of, a practitioner  
14 while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to  
15 475.285 and 475.752 to 475.980.

16           (2) (a) Unlawful possession of oxycodone is a Class [*E violation*] **A misdemeanor**.

17           (b) Notwithstanding paragraph (a) of this subsection, [*unlawful possession of oxycodone is a*  
18 *Class A misdemeanor if the person possesses 40 or more pills, tablets, capsules or user units of a mixture*  
19 *or substance containing a detectable amount of oxycodone.*]

20           [*(c) Notwithstanding paragraphs (a) and (b) of this subsection,*] unlawful possession of  
21 oxycodone is a Class C felony if the possession is a commercial drug offense under ORS 475.900 (1)(b).

22           **SECTION 7.** ORS 475.854 is amended to read:

23           475.854. (1) It is unlawful for any person knowingly or intentionally to possess heroin.

24           (2) (a) Unlawful possession of heroin is a Class [*E violation*] **A misdemeanor**.

25           (b) Notwithstanding paragraph (a) of this subsection, [*unlawful possession of heroin is a Class A*  
26 *misdemeanor if the person possesses one gram or more of a mixture or substance containing a detectable*  
27 *amount of heroin.*]

28           [*(c) Notwithstanding paragraphs (a) and (b) of this subsection,*] unlawful possession of heroin is  
29 a Class B felony if:

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

31           (B) The person possesses a substantial quantity under ORS 475.900 (2)(b).

32           **SECTION 8.** ORS 475.874 is amended to read:

33           475.874. (1) It is unlawful for any person knowingly or intentionally to possess 3,4-  
34 methylenedioxyamphetamine.

1 (2) (a) Unlawful possession of 3,4-methylenedioxymethamphetamine is a Class *[E violation]* **A**  
2 **misdemeanor.**

3 (b) Notwithstanding paragraph (a) of this subsection, *[unlawful possession of 3,4-*  
4 *methylenedioxymethamphetamine is a Class A misdemeanor if the person possesses one gram or more or*  
5 *five or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:]*

6 *[(A) 3,4-methylenedioxyamphetamine;]*

7 *[(B) 3,4-methylenedioxymethamphetamine; or]*

8 *[(C) 3,4-methylenedioxy-N-ethylamphetamine.]*

9 *[(c) Notwithstanding paragraphs (a) and (b) of this subsection,]* unlawful possession of 3,4-  
10 methylenedioxymethamphetamine is a 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 a substantial quantity under ORS 475.900 (2)(b).

13 **SECTION 9.** ORS 475.884 is amended to read:

14 475.884. (1) It is unlawful for any person knowingly or intentionally to possess cocaine unless the  
15 substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while  
16 acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to  
17 475.285 and 475.752 to 475.980.

18 (2) (a) Unlawful possession of cocaine is a Class *[E violation]* **A misdemeanor.**

19 (b) Notwithstanding paragraph (a) of this subsection, *[unlawful possession of cocaine is a Class A*  
20 *misdemeanor if the person possesses two grams or more of a mixture or substance containing a*  
21 *detectable amount of cocaine.]*

22 *[(c) Notwithstanding paragraphs (a) and (b) of this subsection,]* unlawful possession of cocaine is  
23 a Class C felony if:

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

25 (B) The person possesses a substantial quantity under ORS 475.900 (2)(b).

26 **SECTION 10.** ORS 475.894 is amended to read:

27 475.894. (1) It is unlawful for any person knowingly or intentionally to possess  
28 methamphetamine unless the substance was obtained directly from, or pursuant to, a valid prescription or  
29 order of a practitioner while acting in the course of professional practice, or except as otherwise  
30 authorized by ORS 475.005 to 475.285 and 475.752 to 475.980.

31 (2) (a) Unlawful possession of methamphetamine is a Class *[E violation]* **A misdemeanor.**

32 (b) Notwithstanding paragraph (a) of this subsection, *[unlawful possession of methamphetamine*  
33 *is a Class A misdemeanor if the person possesses two grams or more of a mixture or substance*  
34 *containing a detectable amount of methamphetamine.]*

1            [(c) *Notwithstanding paragraphs (a) and (b) of this subsection,*] unlawful possession of  
2 methamphetamine is a Class C felony if:

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

4            (B) The person possesses a substantial quantity under ORS 475.900 (2)(b).

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6            **DESIGNATED DRUG-RELATED AND PROPERTY MISDEMEANORS**

7            **SECTION 11.** ORS 423.478 is amended to read:

8            423.478. (1) The Department of Corrections shall:

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

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

11           (A) Allow tracking of offenders; and

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

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

15           (2) Subject to ORS 423.483, each county, in partnership with the department, shall assume  
16 responsibility for community-based supervision, sanctions and services for offenders convicted of  
17 felonies, designated drug-related misdemeanors, [*or*] designated person misdemeanors, **or designated**  
18 **property misdemeanors** who are:

19           (a) On parole;

20           (b) On probation;

21           (c) On post-prison supervision;

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

23           (e) Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-  
24 Prison Supervision to 12 months or less incarceration for violation of a condition of parole, probation or  
25 post-prison supervision; or

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

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

34           (a) When the person is released;

- 1 (b) Within 10 days of a change of residence;
- 2 (c) Once each year within 10 days of the person’s birth date;
- 3 (d) Within 10 days of the first day the person works at, carries on a vocation at or attends an
- 4 institution of higher education; and
- 5 (e) Within 10 days of a change in work, vocation or attendance status at an institution of higher
- 6 education.

7 (4) As used in this section:

8 (a) “Attends,” “institution of higher education,” “works” and “carries on a vocation” have the

9 meanings given those terms in ORS 163A.005.

10 (b) “Designated drug-related misdemeanor” means:

11 (A) Unlawful possession of fentanyl under ORS 475.752(8)(a);

12 (B) Unlawful possession of methadone under ORS 475.824 (2)[(b)](a);

13 (C) Unlawful possession of oxycodone under ORS 475.834 (2)[(b)](a);

14 (D) Unlawful possession of heroin under ORS 475.854 (2)[(b)](a);

15 (E) Unlawful possession of 3,4-methylenedioxymethamphetamine under ORS 475.874

16 (2)[(b)](a);

17 (F) Unlawful possession of cocaine under ORS 475.884 (2)[(b)](a); *or*

18 (G) Unlawful possession of methamphetamine under ORS 475.894 (2)[(b)](a); **or**

19 **(H) Use of a controlled substance in a public place under Section 2 of this 2024 Act.**

20 (c) “Designated person misdemeanor” means:

21 (A) Assault in the fourth degree constituting domestic violence if the judgment document is as

22 described in ORS 163.160 (4);

23 (B) Menacing constituting domestic violence if the judgment document is as described in ORS

24 163.190 (3); or

25 (C) Sexual abuse in the third degree under ORS 163.415.

26 **(d) “Designated property misdemeanor” means:**

27 **(A) Theft in the third degree under ORS 164.043;**

28 **(B) Theft in the second degree under ORS 164.045;**

29 **(C) Criminal trespass in the second degree under ORS 164.245;**

30 **(D) Criminal trespass in the first degree under ORS 164.255;**

31 **(E) Unlawful entry into a motor vehicle under ORS 164.272;**

32 **(F) Criminal mischief in the second degree under ORS 164.354;**

33 **(G) Any attempt to commit:**

34 **(i) Theft in the first degree under ORS 164.055;**

- 1 (ii) Unauthorized use of a vehicle under ORS 164.135;
- 2 (iii) Criminal mischief in the first degree under ORS 164.365; or
- 3 (iv) Identity theft under ORS 165.800; or
- 4 (H) Any other crime the court designates at the time of sentencing as a designated property
- 5 misdemeanor.

## 6 7 **CONDITIONAL DISCHARGE DIVERSION**

8 **SECTION 12. (1) Subject to subsection (5) of this section, the district attorney shall offer**

9 **any person charged with a designated drug-related misdemeanor as defined in ORS 423.478 as**

10 **amended by Section 11 of this 2024 Act the opportunity to enter into a conditional discharge**

11 **diversion agreement. If the defendant enters into the agreement within 30 days after arraignment,**

12 **or at a later date with consent of the district attorney, the court shall defer further proceedings and**

13 **place the person on probation. The terms of the probation shall be defined by a probation**

14 **agreement.**

15 (b) A probation agreement carries the understanding that if the defendant fulfills the terms

16 of the agreement, the criminal charges filed against the defendant will be dismissed with prejudice.

17 (c) The agreement must contain a waiver of the following rights of the defendant with

18 respect to each criminal charge:

19 (A) The right to a speedy trial and trial by jury;

20 (B) The right to present evidence on the defendant's behalf;

21 (C) The right to confront and cross-examine witnesses against the defendant;

22 (D) The right to contest evidence presented against the defendant, including the right to

23 object to hearsay evidence; and

24 (E) The right to appeal from a judgment of conviction resulting from an adjudication of

25 guilt entered under subsection (2) of this section, unless the appeal is based on an allegation that the

26 sentence exceeds the maximum allowed by law or constitutes cruel and unusual punishment.

27 (d) The agreement must include a requirement that the defendant pay any restitution owed

28 to the victim as determined by the court, and any fees for court-appointed counsel ordered by the

29 court under ORS 135.050.

30 (e) The agreement may not contain a requirement that the defendant enter a plea of guilty

31 or no contest on any charge in the accusatory instrument.

32 (f) Entering into a probation agreement does not constitute an admission of guilt and is not

33 sufficient to warrant a finding or adjudication of guilt by a court.



1           **(g) Police reports or other documents associated with the criminal charges in a court file**  
2 **other than the probation agreement may not be admitted into evidence, and do not establish a**  
3 **factual basis for finding the defendant guilty, unless the court resumes criminal proceedings and**  
4 **enters an adjudication of guilt under subsection (2) of this section.**

5           **(2) Upon violation of a term or condition of the probation agreement, the court may resume**  
6 **the criminal proceedings and may find the defendant guilty of the offenses in the accusatory**  
7 **instrument in accordance with the waiver of rights in the probation agreement. The defendant may**  
8 **not contest the sufficiency of the evidence establishing the defendant’s guilt of the offenses in the**  
9 **accusatory instrument.**

10           **(3) Upon a determination by the court that the terms and conditions of the probation**  
11 **agreement have been met, with input from the district attorney and the probation department, the**  
12 **court shall discharge the person and dismiss the proceedings against the person. Discharge and**  
13 **dismissal under this section shall be without adjudication of guilt and is not a conviction for**  
14 **purposes of this section or for purposes of disqualifications or disabilities imposed by law upon**  
15 **conviction of a crime.**

16           **(4) In the event that the period of probation under this section expires, but the terms and**  
17 **conditions of the probation agreement have not been fulfilled and no probation violation**  
18 **proceeding was initiated prior to the expiration of the period of probation, the court may not**  
19 **discharge the person and dismiss the proceedings against the person. The court shall instead issue**  
20 **an order requiring the person to appear and to show cause why the court should not enter an**  
21 **adjudication of guilt as described in subsection (2) of this section due to the failure of the person to**  
22 **fulfill the terms and conditions of the probation agreement prior to expiration of the period of**  
23 **probation. At the hearing on the order to show cause, after considering any evidence or argument**  
24 **from the district attorney and the person, the court may:**

25           **(a) Order a new period of probation to allow the person to fulfill the terms and conditions of**  
26 **the probation agreement; or**

27           **(b) Enter an adjudication of guilt as described in subsection (2) of this section.**

28           **(5) A defendant is eligible for a conditional discharge diversion agreement as described in**  
29 **this section if the defendant meets all of the following conditions:**

30           **(a) On the date the defendant filed the petition for a conditional discharge diversion**  
31 **agreement, the defendant had no charge, other than the charge for the present offense, pending.**

32           **(b) The defendant has not been convicted of manufacture or delivery of a controlled**  
33 **substance in violation of ORS chapter 475, or the statutory counterpart in another jurisdiction,**  
34 **within the previous 5 years.**

1 (c) The defendant has not, within the previous 1 year:

2 (A) Participated in a drug or driving while under the influence of intoxicants diversion  
3 program or in any similar alcohol or drug diversion program in this state or in another  
4 jurisdiction, or

5 (B) Participated in a previous conditional discharge diversion agreement or conditional  
6 postponement for a designated drug misdemeanor, or probation for a designated drug  
7 misdemeanor.

8 (d) The defendant does not have a criminal history score of B or higher.  
9

#### 10 EXCLUSION FOR CANNABIS AND PSILOCYBIN

11 **SECTION 13.** As used in this 2024 Act, “controlled substance” has the meaning given that  
12 term in ORS 475.005, and does not include:

13 (1) Any compound, manufacture, salt, derivative, mixture or preparation of a plant, part of a  
14 plant, resin or seed of the plant Cannabis family Cannabaceae; or

15 (2) Psilocybin or psilocin, but only if and to the extent that a person manufactures, delivers,  
16 or possesses psilocybin, psilocin, or psilocybin products in accordance with the provisions of ORS  
17 475A.210 to 475A.722 and rules adopted under ORS 475A.210 to 475A.722.  
18

#### 19 OPERATIVE DATES

20 **SECTION 14.** (1) This 2024 Act becomes operative on January 1, 2025.

21 (2) The amendments to ORS 475.752, 475.824, 475.834, 475.854, 475.874, 475.884, 475.894,  
22 and 423.478 by this 2024 Act apply to conduct occurring on and after January 1, 2025.  
23