

Marijuana item-related felonies in “CRIMES” portion of HB 3400:

1) Section 119—ORS 475.858 Unlawful Manufacture of Marijuana Within 1,000 Feet of a School (Class A Felony):

475.858. (1) It is unlawful for any person to manufacture marijuana within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of marijuana within 1,000 feet of a school is a Class A felony.

(3) This section does not apply to:

(a) A licensee or licensee representative, as those terms are defined in section 5, chapter 1, Oregon Laws 2015, that is engaged in lawful activities; or

(b) A person acting within the scope of and in compliance with section 6 (1), chapter 1, Oregon Laws 2015.

HB 3400 created exemptions from the crime of Unlawful Manufacture of Marijuana Within 1,000 Feet of a School for certain circumstances involving lawful marijuana items. Commission is required by statute to classify violations of ORS 475.858 in certain ways, pursuant to ORS 475.900. These categories are a CC 8 if the possession, delivery, or manufacture constitutes a commercial drug offense as that term is defined by ORS 475.900; CC 4 if violation involves delivery or manufacture of controlled substance. Does the Commission want to classify in accordance with the statutory requirements?

2) Section 120—ORS 475.862 Unlawful Delivery of Marijuana Within 1,000 Feet of a School (Class A Felony):

475.862. (1) It is unlawful for any person to deliver marijuana within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of marijuana within 1,000 feet of a school is a Class A felony.

(3) This section does not apply to:

(a) A licensee or licensee representative, as those terms are defined in section 5, chapter 1, Oregon Laws 2015, that is engaged in lawful activities; or

(b) A person acting within the scope of and in compliance with section 6 (1), chapter 1, Oregon Laws 2015.

HB 3400 created exemptions from the crime of Unlawful Delivery of Marijuana Within 1,000 Feet of a School for certain circumstances involving lawful marijuana items. Commission is required to classify violation of ORS 475.862 as CC 8, pursuant to ORS 475.900(1)(c). Does the Commission want to classify in accordance with the statutory requirement?

3) Section 121—ORS 475.856 Unlawful Manufacture of Marijuana (Class C Felony):

475.856. (1) As used in this section, “homegrown,” “household,” “license” and “licensee representative” have the meanings given those terms in section 5, chapter 1, Oregon Laws 2015.

[~~(1)~~] **(2)** Except for licensees and licensee **representatives that are engaged in lawful activities** [*as defined in subsections (10) and (11) of section 5 of this Act*], and except for a person acting within the scope of and in compliance with **section 6 (1), chapter 1, Oregon Laws 2015** [*subsection(1) of section 6 of this Act*], it is unlawful for any person to manufacture marijuana.

[~~(2)~~] **(3)** Unlawful manufacture of marijuana is a Class [~~B~~] **C** felony.

[~~(3)~~] **(4)** Notwithstanding subsection [~~(2)~~] **(3)** of this section, unlawful manufacture of marijuana is a Class B misdemeanor[,] if a person 21 years of age or older manufactures homegrown marijuana at a household and the total number of homegrown marijuana plants at the household exceeds four marijuana plants but does not exceed eight marijuana plants.

[~~(4)~~ *As used in subsection (3) of this section, the terms “homegrown” and “household” have the meanings given to them in section 5 of this Act.*]

HB 3400 created and modified exemptions from the crime of Unlawful Manufacture of Marijuana, and reduced the crime from a Class B Felony to a Class C Felony. Commission is required by statute to classify violations of ORS 475.856 in certain ways, pursuant to ORS 475.900. These categories are a CC 8 if the possession, delivery, or manufacture constitutes a commercial drug offense as that term is defined by ORS 475.900; CC 4 if violation involves delivery or manufacture of controlled substance. Does the Commission want to classify in accordance with the statutory requirements?

4) Section 122—ORS 475.860 Unlawful Delivery of Marijuana (Class C Felony):

475.860. (1) Except for licensees and licensee representatives, **as those terms are defined in section 5, chapter 1, Oregon Laws 2015, that are engaged in lawful activities** [*as defined in subsections (10) and (11) of section 5 of this Act*], and except for a person acting within the scope of and in compliance with **section 6 (1), chapter 1, Oregon Laws 2015** [*subsection (1) of section 6 of this Act*], it is unlawful for any person to deliver marijuana.

(2) Unlawful delivery of marijuana is a[:] **Class A misdemeanor.**

[*(a) Class B felony if the delivery is for consideration.*]

[*(b) Class C felony if the delivery is for no consideration.*]

(3) Notwithstanding subsection (2) of this section, unlawful delivery of marijuana is a:

(a) Class A [*misdemeanor*] **violation**, if the delivery is for no consideration and consists of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae; or

(b) Violation, if the delivery is for no consideration and consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this paragraph is a specific fine violation. The presumptive fine for a violation under this paragraph is \$650.

(4) Notwithstanding subsections (2) and (3) of this section, unlawful delivery of marijuana is a[:] **Class C felony, if the delivery is to a person under 18 years of age and the defendant is at least 21 years of age.**

[*(a) Class A felony, if the delivery is to a person under 18 years of age and the defendant is at least 18 years of age and is at least three years older than the person to whom the marijuana is delivered;or*]

[*(b) Class C misdemeanor, if the delivery:*]

[*(A) Is for no consideration;*]

[(B) Consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae;]

[(C) Takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; and]

[(D) Is to a person who is 18 years of age or older.]

Unlawful Delivery of Marijuana used to be a Class A felony (delivery to a person under 18 by a person 21 or over), Class B Felony (delivery for consideration) or a Class C Felony (delivery for no consideration). HB 3400 created and modified exemptions from the crime of unlawful delivery of marijuana, and reduced the crime from felony level to misdemeanors or violations with one exception: it is a Class C felony if the delivery is to a person under 18 years of age by a person at least 21 years of age (formerly a Class A felony). Commission is required by statute to classify violations of ORS 475.860 in certain ways, pursuant to ORS 475.900. These categories are a CC 8 if the possession, delivery, or manufacture constitutes a commercial drug offense as that term is defined by ORS 475.900; CC 4 if violation involves delivery or manufacture of controlled substance. ORS 475.900(1)(e) used to provide that a violation of ORS 475.860(4)(a)—the previous Class A felony for delivery to a person under 18 of age by a person at least 21 years of age—had to be classified as a CC 8. That requirement has been deleted from ORS 475.900(1)(e). So the reference to this crime in CC 8 of the Commission’s rules needs to be deleted. It will now be covered in CC 4 by the reference to ORS 475.900(3) as a regular delivery offense, and in CC 8 as a commercial drug offense if the necessary statutory prerequisites are there. Does the Commission want to classify in accordance with the statutory requirements?

5) Section 123—ORS 475.864 Unlawful Possession of Marijuana or Marijuana Product (Class C Felony):

475.864. (1) As used in subsections (2) to (4) of this section:

(a) “Marijuana” means the leaves, stems[,] and flowers of the plant Cannabis family Moraceae.

(b) “Marijuana product” has the meaning given the term “marijuana” in ORS 475.005 (16), but does not include the leaves, stems and flowers of the plant Cannabis family Moraceae.

(2) It is unlawful for any person under 21 years of age knowingly or intentionally to possess marijuana or marijuana product.

(3)(a) Unlawful possession of [*four*] **more than eight** avoirdupois ounces [*or more*] of marijuana by a person under 21 years of age is a Class [*C felony*] **A misdemeanor**.

(b) Unlawful possession of **more than** one avoirdupois ounce of marijuana [*or more*], but less than [*four*] **eight** avoirdupois ounces, by a person under 21 years of age is a Class B misdemeanor.

(c) Unlawful possession of [*less than*] one avoirdupois ounce **or less** of marijuana by a person under 21 years of age is a specific fine violation. The presumptive fine for a violation under this paragraph is \$650.

(4)(a) Unlawful possession of [*one-quarter avoirdupois ounce or more*] **more than 16 avoirdupois ounces** of marijuana product **in a solid form or more than 72 ounces of marijuana product in a liquid form** by a person under 21 years of age is a Class [*C felony*] **A misdemeanor**.

(b) Unlawful possession of [*less than one-quarter avoirdupois ounce*] **16 avoirdupois ounces or less** of marijuana product **in a solid form or 72 ounces or less of marijuana product in a liquid form** by a person under 21 years of age is a Class B misdemeanor.

(5) As used in subsections (6) to (8) of this section, [*the terms*] “**cannabinoid concentrate,**” “**cannabinoid extract,**” “**cannabinoid product,**” “licensee,” “licensee representative,” “marijuana,” [*“marijuana extracts,” “marijuana products,”*] “marijuana retailer,” “public place[.]” and “usable marijuana” have the meanings given [*to them*] **those terms** in section 5, **chapter 1, Oregon Laws 2015** [*of this Act*].

(6) Except for licensees and licensee representatives **acting in accordance with sections 3 to 70, chapter 1, Oregon Laws 2015, and any rule adopted under sections 3 to 70, chapter 1, Oregon Laws 2015,** it is unlawful for any person 21 years of age or older knowingly or intentionally to possess:

(a) More than one ounce of usable marijuana in a public place.

(b) More than eight ounces of usable marijuana.

(c) More than [*sixteen*] **16 ounces** of [*marijuana*] **cannabinoid** products in solid form **or cannabinoid concentrates.**

(d) More than [*seventy-two*] **72 ounces** of [*marijuana*] **cannabinoid** products in liquid form.

(e) More than one ounce of [*marijuana extracts*] **cannabinoid extracts.**

(f) [*Any marijuana extracts that were*] **A cannabinoid extract that was** not purchased from a [*licensed*] marijuana retailer **that holds a license under section 22, chapter 1, Oregon Laws 2015.**

(7) A violation of [*paragraphs (a) to (e) of*] subsection (6)(**a**) to (**e**) of this section is a:

(a) Class [*C felony*] **A misdemeanor**, if the amount possessed is more than four times the applicable maximum amount specified in subsection (6)(**a**) to (**e**) of this section;

(b) Class B misdemeanor, if the amount possessed is more than two times, but not more than four times, the applicable maximum amount specified in subsection (6)(**a**) to (**e**) of this section; or

(c) Class B violation, if the amount possessed is not more than two times the applicable maximum amount specified in subsection (6)(**a**) to (**e**) of this section.

(8) A violation of [*paragraph (f) of*] subsection (6)(**f**) of this section is a:

(a) Class C felony, if the amount possessed is more than one-quarter ounce of [*such marijuana extracts*] **the cannabinoid extract**; or

(b) Class B misdemeanor, if the amount possessed is not more than one-quarter ounce of [*such marijuana extracts*] **the cannabinoid extract.**

Prior to Measure 91, Unlawful Possession of Marijuana or Marijuana Product was a Class C Felony for unlawful possession of four avoirdupois ounces or more; and also for unlawful possession of one-quarter avoirdupois ounce or more of marijuana product. Now it is a Class C Felony to violate (6)(f) (possession of cannabinoid extract that was not purchased from a licensed retailer) if the amount possessed is more than one-quarter ounce of the cannabinoid extract; other offenses are misdemeanors or violations. Commission is required by statute to classify violations of ORS 475.864 in certain ways, pursuant to ORS 475.900. These categories are a CC 8 if the possession, delivery, or manufacture constitutes a commercial drug offense as that term is defined by ORS 475.900; CC 1 if violation is simply possession of a controlled substance. Does Commission want to classify in accordance with the statutory requirements?

6) Section 124—ORS 475.752 Prohibited Acts Generally (Various Felony Levels):

475.752. (1) Except for licensees and licensee representatives, **as those terms are defined in section 5, chapter 1, Oregon Laws 2015, that are engaged in lawful activities** [*as defined in subsections (10) and (11) of section 5 of this Act*], and except for a person acting within the scope of and in compliance with **section 6 (1), chapter 1, Oregon Laws 2015** [*subsection (1) of section 6 of this Act*], and except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to:

- (a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise provided in ORS 475.886 and 475.890.
- (b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise provided in ORS 475.858, 475.860, 475.862, 475.878, 475.880, 475.882, 475.904 and 475.906.
- (c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise provided in ORS 475.904 and 475.906.

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

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

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

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

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

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

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

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

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

(a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise provided in ORS 475.894.

(b) A controlled substance in Schedule II, is guilty of a Class C felony, except as otherwise provided in ORS 475.864.

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

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

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

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

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

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

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

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

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

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

HB 3400 creates various exceptions to the general rule set forth by this statute for certain circumstances involving lawful marijuana items. Commission is required by statute to classify violations of ORS 475.752 in certain ways, pursuant to ORS 475.900. These categories are a CC 8 if the possession, delivery, or manufacture constitutes a commercial drug offense as that term is defined by ORS 475.900; CC 4 if violation involves delivery or manufacture of controlled substance; CC 1 if violation is possession of a controlled substance. Does Commission want to classify in accordance with the statutory requirements?

7) Section 127—ORS 475.904 Unlawful Manufacture or Delivery of Controlled Substance Within 1,000 Feet of School (Class A Felony):

475.904. (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful for any person to manufacture or deliver a schedule I, II or III controlled substance within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture or delivery of a controlled substance within 1,000 feet of a school is a Class A felony[, *except as otherwise provided in ORS 475.860*].

(3) This section does not apply to:

(a) A licensee or licensee representative, as those terms are defined in section 5, chapter 1, Oregon Laws 2015, that is engaged in lawful activities; or

(b) A person acting within the scope of and in compliance with section 6 (1), chapter 1, Oregon Laws 2015.

HB 3400 created exemptions from the crime of Unlawful Manufacture or Delivery of Controlled Substance Within 1,000 Feet of a School for certain circumstances involving lawful marijuana items. Commission is required by to classify violation of ORS 475.904 as CC 8, pursuant to ORS 475.900(1)(c). Does the Commission want to classify in accordance with the statutory requirement?

Person crime classification?

Does the Commission wish to classify any of these felonies, or the misdemeanors found in HB 3400, as person crimes?

Current drug person crimes are unchanged in HB 3400 and are:

Person Felonies: ORS 475.908 Causing Another to Ingest a Controlled Substance as defined in Crime Categories 8 and 9 (OAR 213-019-0007 and 0008); ORS 475.910 Unlawful Administration of a Controlled Substance as defined in Crime Categories 5, 8, and 9 (OAR 213-019-0007, 0008, and 0011); ORS 475.840(6)(a) Manufacturing or Delivering a Schedule IV

Controlled Substance Thereby Causing Death to a Person; and attempts or solicitations to commit any Class A or Class B person felonies as defined herein.

Person Class A Misdemeanors: ORS 475.986(1)(d) Unlawful Administration of a Controlled Substance; and attempts or solicitations to commit any Class C person felonies as defined in section (14) of OAR 213-003-0001.

Crimes in HB 3400 not listed in “CRIMES” portion of bill, without mandatory crime category classifications/person crime designations:

Unlawful Importation or Exportation of Marijuana Items	Not codified yet <i>(Section 48 of HB 3400)</i>	C Felony if for consideration	Operative January 1, 2016	CC? Person crime?
		A Misd. if not for consideration		Person crime?
Aggravated Harassment	ORS 166.070 <i>(Section 151 of HB 3400)</i>	C Felony	Operative January 1, 2016	Maintain current CC and person crime classification? Currently a person felony and CC 6; definition of public safety officer now includes “regulatory specialist” rather than “liquor enforcement inspector.”
Unlawfully Disclosing Contents of Intercepted Oral Communication	ORS 133.726 <i>(Section 143 of HB 3400)</i>	A Misd.	Operative January 1, 2016	Person crime? Not currently person misdemeanor; definition of law enforcement officer now includes “regulatory specialist” rather than “liquor enforcement inspector.”
Aggravated Murder	ORS 163.095 <i>(Section 149 of HB 3400)</i>	A Felony	Operative January 1, 2016	Maintain classification as person crime? List of victims that makes murder aggravated now includes “regulatory specialist” rather than “liquor enforcement inspector.”