

See: Minutes of Subcommittee No. 3  
10/31/69, p. 11, Vol. XI, Tape #85

Minutes of Commission  
11/7/69, p. 2, Vol. IX, Tape #38

Minutes of Subcommittee No. 3  
12/11/69, p. 1, Vol. XI, Tapes #90 & 87

CRIMINAL LAW REVISION COMMISSION  
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Salem, Oregon

ARTICLE 31 .

OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

Preliminary Draft No. 1; October 1969

Reporter: Roger D. Wallingford

Subcommittee No. 3

ARTICLE 31 .

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Introduction

Existing criminal law regulating the use and sale of narcotic and dangerous drugs is found in ORS chapters 474 and 475.

ORS chapter 474, the Uniform Narcotic Drug Act, was adopted in 1935 and has been subject to many amendments since that time. ORS chapter 474 provides statutory guidelines for the lawful use, sale and administration of narcotic drugs. It also provides criminal penalties for violation of its regulatory provisions. (See ORS 474.020, 474.030, 474.130, 474.170, 474.210 and 474.990.)

ORS chapter 475, Narcotic and Habit-forming Drugs, has been enacted piecemeal since 1931. It includes provisions relating to "dangerous drugs" as well as "narcotic drugs". "Dangerous drugs" are defined to mean those designated as such by the Drug Advisory Council. There are currently 23 stimulant-depressant drugs and six hallucinogenic drugs classified as dangerous. ORS chapter 475 also provides criminal penalties for misuse of narcotic and dangerous drugs. (See ORS 475.070, 475.090, 475.100, 475.625, 475.635 and 475.990.)

ORS 475.645 - 475.705 is a statutory procedure for hospitalization in lieu of imprisonment for persons convicted of the use of narcotic or dangerous drugs.

It is clear that the statutory scheme regulating the sale and possession of drugs is unnecessarily complex and confusing. It does seem, though, that the criminal penalty provisions are relatively progressive in relation to comparable legislation enacted by other states. A number of amendments were passed by the 1969 legislature in the form of House Bill 1838:

ORS 475.625, prohibiting a person from using or being under the influence of drugs while in this state, was amended to include dangerous drugs. It had formerly only applied to narcotic drugs.

ORS 475.635, the penalty provision for ORS 475.625, was amended by deleting the mandatory 90 day jail sentence. Violation of ORS 475.625 remains a misdemeanor.

ORS 475.990 (2) is the penalty provision for ORS 475.100, which prohibits the sale or possession of dangerous drugs. Subsection (2)

was amended by increasing the penalty. The maximum fine was increased from \$200 to \$5,000 while the maximum jail sentence was increased from six months to either one year or ten years.

ORS 474.990 (2), the penalty section for ORS 474.020 (1), which prohibits the sale or possession of narcotics, was amended to reduce the penalty for possession or sale of marihuana from a felony to an indictable misdemeanor.

The criminal law governing the unlawful sale and possession of drugs has not been a static force in Oregon as indicated by the 1969 legislature's close examination of the social, medical and legal problems inherent in the increasing use of narcotic and dangerous drugs. A particular focus of concern has been the sale and use of marihuana, as reflected by the 1969 amendments to ORS 474.020 (1) liberalizing sentencing alternatives for the sale or possession of marihuana.

While progressive advances may be foreseen in our response to drug use, the main thrust of deterrent activity today is vested in the criminal law. It may therefore be appropriate to incorporate into the criminal code those penal provisions governing the illegal use and sale of drugs. While recognizing that little demand exists for substantial change in existing drug laws, four alternative approaches have been considered:

- (1) Revise all criminal law applicable to the sale and possession of drugs for incorporation into the proposed criminal code revision. No substantive change would be made in the statement of the crimes. The regulatory provisions relating to narcotic and dangerous drugs, with required amendments, would remain as ORS chapters 474 and 475.
- (2) Incorporate ORS chapters 474 and 475 directly into the revised criminal code, making only required structural changes.
- (3) Revise ORS chapters 474 and 475, conforming the penalty provisions to the form and structure of the revised criminal code.
- (4) Do nothing in regard to drug offenses. Leave ORS chapters 474 and 475 intact and continue to leave control of the problem of drug abuse outside the criminal code.

OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

Preliminary Draft No. 1

A revision of the penal provisions governing the unlawful use, sale and possession of narcotic and dangerous drugs has been drafted. The Commentary upon the proposed 12 sections discusses their significance. Reference material includes New York Revised Penal Law Article 220, Michigan Revised Criminal Code chapter 60, ORS chapters 474 and 475, with 1969 amendments, and Board of Pharmacy chapter 855, division 8, section 80-005, which designates dangerous drugs.

# # #

Section 1. Offenses involving narcotics and dangerous drugs; definitions. As used in this Article, unless the context requires otherwise:

(1) The definitions in ORS 474.010, 475.010 and 475.615 apply to this Article.

(2) "Ounce" means an avoirdupois ounce as applied to solids and semi-solids, and a fluid ounce as applied to liquids.

(3) "Sells" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.

(4) "Unlawfully" means in violation of any provision of ORS chapter 474 or 475, or any other Oregon statute or federal law.

Section 2. Criminal sale of drugs in the second degree. A person commits the crime of criminal sale of drugs in the second degree if he knowingly and unlawfully sells a narcotic or dangerous drug.

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Section 3. Criminal sale of drugs in the first degree. A person commits the crime of criminal sale of drugs in the first degree if he knowingly and unlawfully:

- (1) Sells a narcotic or dangerous drug to a person less than 21 years old; or
- (2) Sells in one transaction a narcotic or dangerous drug consisting of:
  - (a) One-quarter ounce or more of heroin; or
  - (b) One-half ounce or more of any narcotic drug other than heroin; or
  - (c) Fifty capsules or more of one or more dangerous drugs; or
  - (d) Fifty or more cigarettes containing marihuana.

Section 4. Criminal possession of drugs in the second degree. A person commits the crime of criminal possession of drugs in the second degree if he knowingly and unlawfully manufactures, grows, cultivates, transports or possesses a narcotic or dangerous drug.

Section 5. Criminal possession of drugs in the first degree. A person commits the crime of criminal possession of drugs in the first degree if he knowingly and unlawfully manufactures, grows, cultivates, transports or possesses:

- (1) One-quarter ounce or more of heroin; or
- (2) One-half ounce or more of any narcotic drug other than heroin; or
- (3) Fifty capsules or more of one or more dangerous drugs; or
- (4) Fifty or more cigarettes containing marihuana.

Section 6. Causing drug addiction in another. A person commits the crime of causing drug addiction in another if he knowingly and unlawfully causes or aids in causing another person to become addicted to a narcotic or dangerous drug.

Section 7. Criminal use of drugs. (1) A person commits the crime of criminal use of drugs if while in this state he knowingly and unlawfully uses or is under the influence of a narcotic or dangerous drug.

(2) In any prosecution for violation of subsection (1), it is not necessary to allege or prove what specific drug the defendant used, or was under the influence of, in order to establish a prima facie case. Evidence that the specific drug is not within the definition of narcotic drug in ORS 474.010 or the definition of dangerous drug in ORS 474.010 is a defense.

Section 8. Criminal drug promotion. A person commits the crime of criminal drug promotion if he knowingly maintains or frequents a place resorted to by drug addicts for the purpose of unlawfully using narcotics or dangerous drugs, or which is used for the unlawful keeping or sale of such drugs.

Section 9. Obtaining a drug unlawfully. (1) A person commits the crime of obtaining a drug unlawfully if he obtains or procures the administration of a narcotic or dangerous drug:

- (a) By fraud, deceit, misrepresentation or subterfuge; or
  - (b) By the forgery or alteration of a prescription or any written order; or
  - (c) By the concealment of a material fact; or
  - (d) By the use of a false name or the giving of a false address;
- or
- (e) By falsely assuming to be a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian or other authorized person.

(2) Information communicated to a physician in an effort to unlawfully obtain or procure the administration of a narcotic or dangerous drug shall not be considered a privileged communication.

Section 10. Criminal possession of drugs; prima facie evidence. Proof of unlawful manufacture, growth, cultivation, transportation or possession of a narcotic or dangerous drug is prima facie evidence of knowledge of its character.

Section 11. Burden of proof on exemption from drug law. In any prosecution for violation of this Article it shall not be necessary for the state to negative any exception, excuse, proviso or exemption contained in ORS chapter 474 or 475, and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

Section 12. Acquittal or conviction under federal law as precluding state prosecution. No person shall be prosecuted for a violation of any section in this Article if he has been acquitted or convicted under the federal narcotic laws of the same act or omission which it is alleged constitutes a violation of this Article.

COMMENTARY - OFFENSES INVOLVING NARCOTICS AND  
DANGEROUS DRUGS

A. Summary

Section 1 incorporates the definitions found in ORS chapter 475, Narcotic and Habit-forming Drugs, and ORS chapter 474, Uniform Narcotic Drug Act.

"Dangerous drug" is defined in ORS 475.010 (1) to mean a drug designated by the Drug Advisory Council as a dangerous drug and included in published regulations of the State Board of Pharmacy under ORS 689.620. Board of Pharmacy regulations, Chapter 855, Division 8, section 80-005, list 29 drugs designated as "dangerous" as of September, 1969. Subsection (1) includes 23 drugs which are essentially stimulants and depressants. Subsection (2) includes six drugs classified as hallucinogens.

"Narcotic drugs" is defined in ORS 474.010 (18) to mean coca leaves, opium, marihuana and every other substance neither chemically nor physically distinguishable from them.

The definition of "sells" in subsection (3) of section 1 expands its reach beyond ordinary usage. "Sale" is defined in ORS 474.010 (10) to include barter, exchange or offer thereof. The definition has been expanded here to avoid technical problems in enforcing the criminal sale provisions.

The term "unlawfully" is defined to mean in violation of the provisions of ORS chapter 474 or 475, the regulatory statutes governing the lawful licensing, sale and possession of narcotic and dangerous drugs.

Most of the provisions of ORS chapter 474 and 475 were designed originally to serve exclusively as licensing directives. Various amendments over the years have shifted the thrust of the two chapters towards suppression of illicit traffic in drugs. One result of this fragmented legislation has been an absence of rational standards providing a means of separating the large scale pusher from the occasional users.

The proposed Article is designed to achieve two goals. One is the restoration of the original function of ORS chapters 474 and 475 as a regulatory system in drugs. Misdemeanor penalties are effective policing measures in this area.

The second goal is to state standards, consistent with the demands of effective law enforcement, whereby the relative harmful consequences of the conduct can be realistically measured and appropriately punished.

The two major areas of illegal drug activity are criminal sale and criminal possession, which includes manufacture and transportation. Each of these activities is divided into two degrees, based upon the age of the recipient and the amount of drugs involved in the transaction.

"Sale" is liberally defined in section 1, subsection (3), to include both an act of sale, exchange or gift and an offer or agreement to complete the transfer. The sale must be both "knowing" and "unlawful". Knowledge of the character of the goods sold is easily inferred; it is not necessary to provide special provisions relating to presumptions of knowledge or prima facie evidence standards.

"Unlawful" is defined in section 1, subsection (4), to mean in violation of ORS chapters 474 and 475, the statutes regulating the lawful use and administration of drugs. Any other state or federal law now enacted or that may be enacted in the future is also included.

A first degree penalty is imposed on one who knowingly and unlawfully sells a narcotic or dangerous drug to a person less than 21 years old or who sells in amounts indicative of a large-scale pusher. Subsection (1) of section 3 is consistent with the prevailing view that activity tending to create drug addiction presents particularly harmful aspects and that minors are especially vulnerable to this influence. Subsection (2) of section 3 attempts to distinguish between the casual sale of drugs and the large scale operator who deals in bulk narcotics.

Second degree criminal sale of drugs applies to any sale of a narcotic or dangerous drug. It is anticipated that, consistent with existing law, this offense would be graded an indictable misdemeanor.

The two degrees of "possession" are distinguished by the amount of drug involved in the transaction. Since possession may be a neutral act, only "knowing" and "unlawful" possession is prohibited. Effective enforcement requires that the burden of asserting a lack of knowledge of the character of the substance be assumed by the defendant; section 10 therefore creates a presumption of knowledge based upon proof of possession.

First degree possession represents amounts of drugs in excess of a normal day's supply for the typical addict. Possession of drugs in excess of the stated amount strongly suggests possession for the purpose of sale. The object here is to reach the "pusher" on the basis of possession without the necessity of proving an actual sale.

Sections 6 through 12 restate existing Oregon law.

Section 6, causing drug addiction in another, is a restatement of the felony provision of ORS 475.070.

Section 7, criminal use of drugs, restates ORS 475.625, which was amended in 1969 to include dangerous drugs.

Section 8, criminal drug promotion, is taken from ORS 474.130, which declares that a place resorted to by drug addicts shall be considered a common nuisance. An abatement procedure is provided for in the statute.

Section 9, obtaining a drug unlawfully, is based upon ORS 474.170. There are certain prohibitions included in the statute that should be continued in a regulatory code, e.g., subsection (6): "No person shall affix any false or forged label to a package or receptacle containing narcotic drugs."

Sections 10 and 11 relate to evidential rules and burden of proof. Section 10 states that proof of unlawful possession of drugs is prima facie evidence that the actor had knowledge of the character of the substance. Facts going to a lack of such knowledge would be peculiarly within the knowledge of the defendant. Section 11 shifts the burden of going forward with the evidence to the defendant on the issue of his exemption from the drug laws.

Section 12 restates ORS 474.210.

#### B. Derivation

Sections 1 through 5 are taken from New York Revised Penal Law section 220.00 and Michigan Revised Criminal Code chapter 60. Changes have been made in form and structure, particularly in regard to the degree structure.

Section 6 restates ORS 475.070.

Section 7 is taken from ORS 475.625.

Section 8 is derived from subsections (2) and (3) of ORS 474.130.

Section 9 is taken from ORS 474.170.

Section 10 is based on Michigan Revised Criminal Code section 6015.

Section 11 is taken from ORS 474.180.

Section 12 is a restatement of ORS 474.210.

C. Relationship to Existing Law

Attached are copies of ORS chapters 474 and 475 and Board of Pharmacy Chapter 855, Division 8, section 80-005.

The penal provisions of the two chapters have been removed and combined in a separate form. The two chapters are then presented as they would appear after deletion of the penal provisions.

The case law on the subject of drugs is scant.

The constitutionality of penal legislation aimed at the possession of drugs was first raised in Ex Parte Mon Luck, 29 Or 421, 44 P 693 (1896), which involved a prosecution for the unlawful possession of opium. Affirming the constitutionality of the statute, the Court stated:

"No right secured by the fundamental law is interfered with or impaired by this legislation, because the possession and use of the drug are not restrained thereby so as to destroy its value as a remedial agent, its only recognized legitimate use. Its object and purpose is to so regulate the possession, sale, and disposition of a dangerous yet useful drug as to prevent the weak and unwary from using it to their own physical and mental ruin, and to the serious injury of the general public; and, in our opinion, violates no constitutional right..."

In State v. Oare, 86 Ad Sh 649 (1968), the defendant was convicted of the unlawful possession of marihuana. The defendant had been standing in the bathroom of a friend's home watching his friend attempt to flush marihuana down a toilet bowl when arrested. At issue was whether the

defendant had sufficient possession of the drug to warrant conviction. In reversing the defendant's conviction for unlawful possession, the Court commented on constructive possession as it relates to drug offenses:

"A person may have constructive as well as actual possession of contraband.... No inference can be drawn that [defendant] had possession of articles found in the house without in some way identifying him with their control. Evidence of the control or right to control is necessary to constructive possession...."

11 Op Atty Gen 689 (1924), stated that proof of possession of opium is prima facie evidence that such possession is unauthorized. This opinion recognizes the rule of evidence that proof of possession may be used as the basis for creating a rebuttable presumption of knowing and unlawful possession.

The proposed criminal sections on unlawful traffic in drugs work no appreciable change in the existing law. A more crucial consideration is met when penalty provisions are attached. It is anticipated that the penalty structure would closely approximate the present provisions of ORS chapters 474 and 475.

For a comprehensive overview of drugs and the law in the United States today, the following sources are recommended:

Drug Addiction: Crime or Disease? Interim and Final Reports of the Joint Committee of the A.B.A. and the A.M.A. on Narcotic Drugs (1961)

Narcotics and the Law: A Critique of the American Experiment in Narcotic Drug Control, Wm. Eldridge, American Bar Foundation (1962)

56 Cal L Rev 1 (1968): Symposium: Drugs and the Law

19 Hastings LJ 603 (1968): Symposium: Narcotics and Hallucinogenic Drugs

13 Villanova L Rev 851 (1968): Marijuana and the Law: The Constitutional Challenges to Marijuana Laws in Light of the Social Aspects of Marijuana Use

Text of New York Revised Penal Law

**§ 220.00 Dangerous drug offenses; definitions of terms**

The following definitions are applicable to this article:

1. "Narcotic drug" means any drug, article or substance declared to be "narcotic drugs" in section three thousand three hundred one of the public health law.
2. "Depressant or stimulant drug" means any drug, article or substance declared to be a "depressant or stimulant drug" in section three thousand three hundred seventy-one of the public health law.
3. "Hallucinogenic drug" means any drug, article or substance declared to be "hallucinogenic drugs" in section two hundred twenty-nine of the mental hygiene law.
4. "Dangerous drug" means any narcotic drug, depressant or stimulant drug, or hallucinogenic drug.
5. "Sell" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.
6. "Unlawfully" means in violation of article thirty-three, article thirty-three-A or article thirty-three-B of the public health law<sup>1</sup> or section two hundred twenty-nine of the mental hygiene law.
7. "Ounce" means an avoirdupois ounce as applied to solids and semi-solids, and a fluid ounce as applied to liquids. L.1965, c. 1030; amended L.1967, c. 791, § 30, eff. Sept. 1, 1967.

**§ 220.05 Criminal possession of a dangerous drug in the fourth degree**

A person is guilty of criminal possession of a dangerous drug in the fourth degree when he knowingly and unlawfully possesses a dangerous drug.

Criminal possession of a dangerous drug in the fourth degree is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 220.10 Criminal possession of a dangerous drug in the third degree**

A person is guilty of criminal possession of a dangerous drug in the third degree when he knowingly and unlawfully possesses a dangerous drug with intent to sell the same.

Criminal possession of a dangerous drug in the third degree is a class E felony. L.1965, c. 1030, eff. Sept. 1, 1967.

Text of New York Revised Penal Law (Cont'd)

**§ 220.15 Criminal possession of a dangerous drug in the second degree**

A person is guilty of criminal possession of a dangerous drug in the second degree when he knowingly and unlawfully possesses a narcotic drug:

1. With intent to sell the same; or
2. Consisting of (a) twenty-five or more cigarettes containing cannabis; or (b) one or more preparations, compounds, mixtures or substances of an aggregate weight of (i) one-eighth ounce or more, containing any of the respective alkaloids or salts of heroin, morphine or cocaine, or (ii) one-quarter ounce or more, containing any cannabis, or (iii) one-half ounce or more, containing raw or prepared opium, or (iv) one-half ounce or more, containing one or more than one of any of the other narcotic drugs.

Criminal possession of a dangerous drug in the second degree is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 220.20 Criminal possession of a dangerous drug in the first degree**

A person is guilty of criminal possession of a dangerous drug in the first degree when he knowingly and unlawfully possesses a narcotic drug consisting of (a) one hundred or more cigarettes containing cannabis; or (b) one or more preparations, compounds, mixtures or substances of an aggregate weight of (i) one or more ounces, containing any of the respective alkaloids or salts of heroin, morphine or cocaine, or (ii) one or more ounces, containing any cannabis, or (iii) two or more ounces, containing raw or prepared opium, or (iv) two or more ounces, containing one or more than one of any of the other narcotic drugs.

Criminal possession of a dangerous drug in the first degree is a class C felony. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 220.25 Criminal possession of a dangerous drug; presumption**

The presence of a dangerous drug in an automobile, other than a public omnibus, is presumptive evidence of knowing possession thereof by each and every person in the automobile at the time such drug was found; except that such presumption does not apply (a) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of his trade, or (b) to any person in the automobile if one of them, having obtained the drug and not being under duress, is authorized to possess it and such drug is in the same container as when he received possession thereof, or (c) when the drug is concealed upon the person of one of the occupants. L.1965, c. 1030, eff. Sept. 1, 1967.

Text of New York Revised Penal Law (Cont'd)

**§ 220.30**    **Criminally selling a dangerous drug in the third degree**

A person is guilty of criminally selling a dangerous drug in the third degree when he knowingly and unlawfully sells a dangerous drug.

Criminally selling a dangerous drug in the third degree is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 220.35**    **Criminally selling a dangerous drug in the second degree**

A person is guilty of criminally selling a dangerous drug in the second degree when he knowingly and unlawfully sells a narcotic drug.

Criminally selling a dangerous drug in the second degree is a class C felony. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 220.40**    **Criminally selling a dangerous drug in the first degree**

A person is guilty of criminally selling a dangerous drug in the first degree when he knowingly and unlawfully sells a narcotic drug to a person less than twenty-one years old.

Criminally selling a dangerous drug in the first degree is a class B felony. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 220.45**    **Criminally possessing a hypodermic instrument**

A person is guilty of criminally possessing a hypodermic instrument when he knowingly and unlawfully possesses or sells a hypodermic syringe or hypodermic needle.

Criminally possessing a hypodermic instrument is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

Text of Michigan Revised Criminal Code

[Definitions]

Sec. 6001. (1) The following definitions apply in this chapter.

(a) "Dangerous drug" means any substance characterized as a dangerous drug in section 1(a) of Act No. 204 of the Public Acts of 1943, as amended, being section 335.101(a) of the Compiled Laws of 1948.

[Criminal Sale of Narcotics in the First Degree]

Sec. 6005. (1) A person commits the crime of criminal sale of narcotics in the first degree if he knowingly and unlawfully sells any narcotic drug other than marijuana in any amount,  $\frac{1}{8}$ th ounce or more of marijuana, or 50 capsules or more of one or more dangerous drugs.

(2) Criminal sale of narcotics in the first degree is a Class A felony.

[Criminal Sale of Narcotics in the Second Degree]

Sec. 6006. (1) A person commits the crime of criminal sale of narcotics in the second degree if he knowingly and unlawfully sells any marijuana, dangerous drug or LSD to a minor.

(2) Criminal sale of narcotics in the second degree is a Class B felony.

[Criminal Sale of Narcotics in the Third Degree]

Sec. 6007. (1) A person commits the crime of criminal sale of narcotics in the third degree if he knowingly and unlawfully sells any marijuana, dangerous drug or LSD.

(2) Criminal sale of narcotics in the third degree is a Class C felony.

Text of Michigan Revised Criminal Code (Cont'd)

**[Criminal Possession of Narcotics in the First Degree]**

Sec. 6010. (1) A person commits the crime of criminal possession of narcotics in the first degree if he knowingly and unlawfully manufactures, transports or possesses:

- (a) Heroin, unless in a quantity less than 3250 milligrams and the less than 3250 milligrams are of less than 10% purity; or
- (b) 3250 milligrams or more of one or more narcotic drugs other than heroin or marijuana; or
- (c) 1 ounce or more of marijuana; or
- (d) 50 capsules or more of one or more dangerous drugs; or
- (e) 2 or more drugs in amounts not otherwise covered by this section.

(2) Criminal possession of narcotics in the first degree is a Class A felony.

**[Criminal Possession of Narcotics in the Second Degree]**

Sec. 6011. (1) A person commits the crime of criminal possession of narcotics in the second degree if he knowingly and unlawfully manufactures, transports or possesses any narcotic drug, dangerous drug or LSD.

(2) Criminal possession of narcotics in the second degree is a Class C felony.

**[Prima Facie Evidence]**

Sec. 6015. Proof of transportation or possession of any narcotic drug, dangerous drug or LSD is prima facie evidence of the transportation or possession of the substance with knowledge of its character.

## Chapter 474

## 1967 REPLACEMENT PART

## Uniform Narcotic Drug Act

474.010	Definitions	474.120	Applicability of chapter to carriers, warehousemen and public officers
474.014	Exemption of certain drugs otherwise subject to this chapter	474.130	Place resorted to by drug addicts declared to be nuisance
474.016	Reversal of exemption	474.140	Forfeiture and destruction of unlawfully possessed drugs
474.020	Dealing in narcotics unlawful	474.150	Forwarding copy of conviction to licensing authorities; reinstatement of license
474.020	License needed to cultivate, manufacture or wholesale narcotics	474.160	Inspection of prescriptions, orders, records and tickets
474.020	Persons eligible for license; revocation of license	474.170	Obtaining drug unlawfully
474.050	Persons eligible to obtain drugs from licensees; procedure for obtaining narcotics and under what conditions they may be dispensed	474.180	Defendant must prove exemption from drug laws
474.050	Sales of narcotics by apothecary	474.190	Duty to enforce chapter
474.070	Use and administration of drugs	474.200	Making rules and regulations
474.080	Drugs usable without prescription	474.210	Acquittal or conviction under federal law as precluding prosecution
474.090	Records required by persons manufacturing or selling drugs	474.220	Interpretation and construction of chapter
474.100	Labels affixed to containers of drugs	474.230	Penalties
474.110	Dispensation of drug lawful only in container		

## CROSS REFERENCES

Administrative procedures and rules of state agencies, Ch. 183  
 Boats, operating while under influence of drugs, 488.160  
 Intercepted telecommunication, use of, 165.540

Narcotic and habit-forming drugs, Ch. 475  
 Prosecution under narcotic laws, duly authorized officers or their agents immune from, 475.150  
 Teacher's certificate, revocation or refusal to issue for narcotic violation, 342.175

§474.010 ALCOHOLIC LIQUORS, NARCOTICS AND HABIT-FORMING DRUGS

**474.010 Definitions.** The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, copartnership or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who, by compounding, mixing, cultivating, growing or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist, as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this state.

(8) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

(9) "Laboratory" means a laboratory approved by the Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) "Sale" includes barter, exchange or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employe.

(11) "Coca leaves" include cocaine and

any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.

(12) "Opium" includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium.

(13) "Marihuana" includes all parts of the plant *Cannabis Sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

(14) The term "isonipeccaine" (meperidine) means the substance identified chemically as 1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester, or any salt thereof by whatever trade name identified.

(15) The term "amidone" (methadone) means any substance identified chemically as 4-4-diphenyl-6-dimethylaminoheptanone-3, or any salt thereof, by whatever trade name designated.

(16) The term "isoamidone" means any substance identified chemically as 4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3, or any salt thereof, by whatever trade name designated.

(17) The term "keto-bemidone" means any substance identified chemically as 4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride, or any salt thereof, by whatever trade name designated.

(18) "Narcotic drugs" means coca leaves, opium, marihuana and every other substance neither chemically nor physically distinguishable from them; or other drugs to which the federal narcotic laws may now or hereafter apply; or any drug found by the State Board of Pharmacy, after reasonable notice and opportunity for hearing, to have addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the publication of such finding.

(19) "Federal narcotic laws" means the

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laws of the United States relating to opium, coca leaves and other narcotic drugs.

(20) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Internal Revenue, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the Board of Pharmacy.

(21) "Dispense" includes distribute, leave with, give away, dispose of or deliver.

(22) "Registry number" means the number assigned to each person registered under the federal narcotic laws.

[Amended by 1953 c.342 §3; 1963 c.137 §1]

**474.014 Exemption of certain drugs otherwise subject to this chapter.** (1) The Board of Pharmacy may exempt any narcotic drug from the application of this chapter to the extent determined, after reasonable notice and opportunity for hearing, to be consistent with the public welfare if it finds that the narcotic drug does not:

(a) Possess sufficient addiction-formation or addiction-sustaining liability to warrant imposition of all of the requirements of this chapter; or

(b) Permit recovery of a narcotic drug having sufficient addiction-forming or addiction-sustaining liability with such technical simplicity and amount of yield as to create a risk of improper use.

(2) The Board of Pharmacy may by regulation and without special determination exempt from the application of this chapter to the extent determined to be consistent with the public welfare any narcotic drug exempt under the federal narcotics laws and regulations and permit the administering, dispensing or selling of such drugs under the same conditions imposed by the federal narcotics laws and regulations.

[1961 c.572 §2]

**474.016 Reversal of exemption.** If the Board of Pharmacy determines that any narcotic drug previously exempted from the operation of this chapter under subsection (1) or (2) of ORS 474.014 possesses a degree of addiction liability that may result in improper use, the board shall publish a notice of its determination in two newspapers of general circulation. The determination shall be final and after the expiration of a period of six

months from the date of publication of the notice, the exempt status shall cease to apply to such narcotic drug.

[1961 c.572 §3]

**474.020 Dealing in narcotics unlawful.**

(1) It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug, except as authorized in this chapter.

(2) It shall be unlawful for any person to conspire to commit, or facilitate the commission of any act prohibited by subsection (1) of this section and such person shall, upon conviction, be punished in the same manner prescribed for a person convicted of committing the prohibited act.

[Amended by 1957 c.587 §1]

**474.030 License needed to cultivate, manufacture or wholesale narcotics.** No person shall manufacture, compound, mix, cultivate, grow or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same without having first obtained a license so to do from the Board of Pharmacy.

**474.040 Persons eligible for license; revocation of license.** (1) No license shall be issued under ORS 474.030 unless and until the applicant therefor has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings and paraphernalia properly to carry on the business described in his application.

(2) No license shall be granted to any person who has within five years been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves or other narcotic drugs, or to any person who is a narcotic drug addict. The Board of Pharmacy may suspend or revoke any license for cause.

**474.050 Persons eligible to obtain drugs from licensee; procedure for obtaining narcotics and under what conditions they may be dispensed.** (1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler or apothecary.

(b) To a physician, dentist or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order as required by the federal narcotic laws, to a person in the employ of the United States Government or of any state, territorial, district, county, municipal or insular government, purchasing, receiving, possessing or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed; or to a physician or surgeon duly licensed in some state, territory or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy or Public Health Service, employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft, when not in port; provided, such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft, or to a physician, surgeon or retired commissioned medical officer of the United States Army, Navy or Public Health Service, employed upon such ship or aircraft, only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service.

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(3) An official written order for any narcotic drug shall be signed in triplicate by the person giving said order or by his duly authorized agent. The original and triplicate copy shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employe engaged in the enforcement of this chapter. It shall be deemed a compliance with this subsection

if the parties to the transaction have complied with the federal narcotic laws respecting the requirements governing the use of order forms.

(4) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, or a master of a ship, or a person in charge of any aircraft, upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States Army, Navy or Public Health Service, employed upon such ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this chapter.

[Amended by 1957 c.587 §"]

**474.060 Sales of narcotics by apothecary.** (1) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist or veterinarian, properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed.

(2) Notwithstanding the provisions of subsection (1) of this section, narcotic drugs or compounds of a narcotic drug which possess relatively little or no addiction liability which the State Board of Pharmacy shall find and by regulations designate, after reasonable notice and opportunity for hearing, to possess relatively little or no narcotic addiction liability may be sold and dispensed by an apothecary, in

good faith, to any person upon an oral prescription of a physician, dentist or veterinarian. In issuing an oral prescription, the prescriber shall furnish the same information as is required for a written prescription under subsection (1) of this section except for the written signature of the prescriber. Upon receipt of the oral prescription, the person filling the oral prescription shall promptly reduce the oral prescription to writing by recording:

(a) The date when the oral prescription was received.

(b) The full name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed.

(c) The full name, address and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered.

(d) If the oral prescription is for an animal, the species of the animal for which the drug is prescribed.

(3) The person filling an oral or written prescription under this section shall write the date of filling and his own signature on the face of the prescription. The oral or written prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employe engaged in the enforcement of this chapter. The oral or written prescription shall not be refilled.

(4) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler or apothecary, but only on an official written order, and with the approval of the District Director of Internal Revenue for the district of Oregon.

(5) An apothecary, only upon an official written order, may sell to a physician, dentist or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20 percent of the complete solution, to be used for medical purposes.

[Amended by 1955 c.60 §1]

**474.070 Use and administration of drugs.**

(1) A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer and dispense narcotic drugs, or he may cause

the same to be administered by a nurse or interne under his direction and supervision.

(2) A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

(3) Any person who has obtained from a physician, dentist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist or veterinarian shall return to such physician, dentist or veterinarian any unused portion of such drug when it is no longer required by the patient.

**474.080 Drugs usable without prescription.**

(1) Except as otherwise in this chapter specifically provided, this chapter shall not apply to the administering, dispensing or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semisolid preparation, in one avoirdupois ounce, not more than one grain of codeine, one-half grain of dihydrocodeine, two grains of Noscapine (also known as Narcotine), or two grains of Papaverine, or of any of their salts. The exemptions authorized by this section shall be subject to the following conditions:

(a) The medicinal preparation administered, dispensed or sold shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

(b) Such preparation shall be administered, dispensed and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

(2) Nothing in this section shall be construed to limit the quantity of codeine, dihydrocodeine, Noscapine (also known as Narcotine), Papaverine, or of any of their salts that may be prescribed, administered, dispensed or sold to any person or for the use of any person or animal, when it is prescribed, administered, dispensed or sold in compliance with the general provisions of this chapter.

[Amended by 1957 c.587 §3; 1967 c.117 §1]

**474.090 Records required by persons manufacturing or selling drugs.** (1) Every physician, dentist, veterinarian or other

person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients; provided, that no record need be kept of narcotic drugs administered, dispensed or professionally used in the treatment of any one patient when the amount administered, dispensed or professionally used for that purpose does not exceed in any 48 consecutive hours (a) four grains of opium, or (b) one-half of a grain of morphine or of any of its salts, or (c) two grains of codeine or of any of its salts, or (d) one-fourth of a grain of heroin or of any of its salts, or (e) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (5) of this section.

(3) Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (5) of this section.

(4) Every person who purchases for resale, or who sells narcotic drug preparations exempted by ORS 474.080, shall keep a record showing the quantities and kinds thereof received and sold or disposed of otherwise, in accordance with the provisions of subsection (5) of this section.

(5) The form of records shall be prescribed by the Board of Pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of

manufacture and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine or ecgonine contained in or producible from crude opium or coca leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis Sativa L.*, received or produced. The record of all narcotic drugs sold, administered, dispensed or otherwise disposed of shall show the date of selling, administering or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft.

**474.100 Labels affixed to containers of drugs.** (1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall affix securely to each package in which drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this chapter, shall alter, deface or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his name, address and registry number, or the name, address and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist or veterinarian by whom the prescription was written; and such directions as may be stated on the prescription. No person shall

alter, deface or remove any label so affixed so long as any of the original contents remain.

**474.110 Possession of drug lawful only in container.** A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed by a physician, dentist, apothecary or other person authorized under the provisions of ORS 474.050, and the owner of any animal for which any such drug has been prescribed, sold or dispensed by a veterinarian may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

**474.120 Applicability of chapter to carriers, warehousemen and public officers.** The provisions of this chapter restricting the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to any employe of the same acting within the scope of his employment; or to public officers or their employes in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employes or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

**474.130 Place resorted to by drug addicts declared to be nuisance.** (1) Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance and shall be abated in the manner provided in ORS 471.630 to 471.655.

(2) No person shall keep or maintain such a common nuisance.

(3) No person shall frequent any place if he knows it to be a place of the type described in subsection (1) of this section. [Amended by 1957 c.587 §4]

**474.140 Forfeiture and destruction of unlawfully possessed drugs.** All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited and disposed of as follows:

(1) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States Commissioner of Narcotics, by the officer who destroys them.

(2) Upon written application by the Board of Pharmacy, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said Board of Pharmacy for distribution or destruction, as hereinafter provided.

(3) Upon application by any hospital within this state, not operated for private gain, the Board of Pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The Board of Pharmacy may from time to time deliver excess stocks of such narcotic drugs to the United States Commissioner of Narcotics, or may destroy the same.

(4) The Board of Pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipt, disposal or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws.

**474.150 Forwarding copy of conviction to licensing authorities; reinstatement of license.** On the conviction of any person of the violation of any provision of this chapter, a copy of the judgment and sentence and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon

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proper showing and for good cause, said board or officer may reinstate such license or registration.

**474.160 Inspection of prescriptions, orders, records and stocks.** Prescriptions, orders and records required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

**474.170 Obtaining drug unlawfully.** (1) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug:

(a) By fraud, deceit, misrepresentation or subterfuge; or

(b) By the forgery or alteration of a prescription or of any written order; or

(c) By the concealment of a material fact; or

(d) By the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall wilfully make a false statement in any prescription, order, report or record required by this chapter.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of or represent himself to be a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian or other authorized person.

(5) No person shall make or utter any false or forged prescription or false or forged written order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of ORS 474.080

in the same way as they apply to transactions under all other sections.

**474.180 Defendant must prove exemption from drug laws.** In any complaint, information or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso or exemption contained in this chapter, and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

**474.190 Duty to enforce chapter.** It hereby is made the duty of the Board of Pharmacy, its officers, agents, inspectors and representatives, and of all peace officers within the state, and of all county attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state and of all other states relating to narcotic drugs.

**474.200 Making rules and regulations.** The Board of Pharmacy shall make all needed rules and regulations for carrying the provisions of this chapter into effect.

**474.210 Acquittal or conviction under federal law as precluding prosecution.** No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which it is alleged constitutes a violation of this chapter.

**474.220 Interpretation and construction of chapter.** This chapter shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it.

**474.990. Penalties.** (1) Except as otherwise specifically provided, any person violating any provision of this chapter, upon conviction, shall be punished by a fine not exceeding \$5,000, or by imprisonment in the state penitentiary for not exceeding 10 years, or both.

(2) Any person violating subsection (1) of ORS 474.020 by manufacturing, possessing, having under his control, selling, prescribing, administering, dispensing or compounding the narcotic drug marijuana shall be punished, upon conviction, by a fine of not more than \$5,000, or by imprisonment in the county jail for a period not exceeding one year, or both, or by imprisonment in the penitentiary for not exceeding 10 years, or by a fine of not more than \$5,000, or both.

(3) Violation of subsection (2) or (3) of ORS 474.130 is a misdemeanor.

## Chapter 475

## 1965 REPLACEMENT PART

## Narcotic and Habit-forming Drugs

- |         |   |         |  |
|---------|---|---------|--|
| 475.010 | Chapter definitions   | 475.635 | Criminal penalty; probation; minimum period of imprisonment  |
| 475.070 | Causing narcotic drug addiction   | 475.645 | Hospital treatment facilities; hospitalization in lieu of imprisonment   |
| 475.090 | Furnishing inmates with alcoholic beverages or drugs  | 475.655 | Warrant of detention of drug user  |
| 475.100 | Sale or possession of dangerous drugs without prescription prohibited; preservation and inspection of prescriptions | 475.665 | Tests on suspected drug users; use of results in evidence  |
| 475.110 | When ORS 475.100 not applicable   | 475.675 | Requiring person on parole or probation to submit to periodic tests  |
| 475.120 | Seizure and forfeiture of conveyances used in transporting or possessing narcotics                                  | 475.685 | Appointment of physicians to administer tests; instruction; providing forms  |
| 475.150 | Funds and officers available to enforce the narcotic laws; officers immune from prosecution under law               | 475.695 | Persons authorized to make examinations and administer tests; administering tests and reporting results; testing only upon written consent |
| 475.160 | Applicability of liquor laws setting apart funds for enforcement  | 475.705 | Charging cost of administering test  |
| 475.615 | Definitions for ORS 475.615 to 475.705  | 475.990 | Penalties  |
| 475.625 | Use of narcotic drugs prohibited; proof of specific drug used not required  |         |  |

## CROSS REFERENCES

- |  |   |
|--|---|
| Airplane, operating while under influence of drugs, 493.160        | Motor vehicle, operating while under influence of drugs, 483.992                      |
| Boats, operating while under influence of drugs, 488.160           | Pharmacists and pharmacies, Ch. 689   |
| Deaths or injuries to be reported to medical investigator, Ch. 146 | Publicizing effects of narcotic drugs, 430.080  |
| Drugs, poisons, caustics and corrosives, Ch. 453                   | Teacher's certificate, revocation or refusal to issue for narcotic violation, 342.175 |
| Intercepted telecommunications, use of, 165.540                    | Uniform Narcotic Drug Act, Ch. 474  |
| Juvenile court, jurisdiction over certain children, 419.476        | Water skiing or surfboarding while under influence of drugs, 488.144                  |
| Local mental health services, 430.610 to 430.660                   | 475.010   |
|  | Exemption of certain drugs, 474.014   |
|  | 475.090   |
|  | Furnishing beverages to prisoners, 169.130  |

**475.010 Chapter definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Dangerous drug" means a drug designated by the Drug Advisory Council as a dangerous drug and included in published regulations of the State Board of Pharmacy under ORS 689.620.

(2) "Licensed medical practitioner," "pharmacist," "pharmacy" and "prescription" have the meaning provided for those terms in ORS 689.010.

(3) "Narcotic drugs" and "veterinarian" have the meaning provided for those terms in ORS 474.010.

[Amended by 1953 c.342 §3; 1957 c.587 §6; 1965 c.545 §1]

**475.020** [Repealed by 1957 c.587 §12]

**475.030** [Repealed by 1957 c.587 §12]

**475.040** [Repealed by 1957 c.587 §12]

**475.050** [Repealed by 1957 c.587 §12]

**475.060** [Repealed by 1957 c.587 §12]

**475.070 Causing narcotic drug addiction.** Any person not authorized by law to manufacture, sell, prescribe or use narcotic drugs professionally, who causes or conspires to cause or knowingly contributes to the causing of narcotic drug addiction in any person, shall be punished, upon conviction, by imprisonment in the penitentiary for not more than 10 years.

[Amended by 1961 c.648 §12]

**475.080** [Repealed by 1959 c.411 §22]

**475.090 Furnishing inmates with alcoholic beverages or drugs.** (1) Except as provided in subsection (2) of this section, no person shall bring, send or otherwise introduce into the penitentiary, any penitentiary road camp or forest camp of which the warden of the penitentiary has custody, or penitentiary farm or annex, or any other penal or correctional institution of this state, or any state hospital, or any county jail, county hospital, city jail or city hospital, or any prison camp, prison farm or any other place where inmates or prisoners are in the custody of officers or employes of the state or of any of the political subdivisions thereof, any drug or alcoholic beverage in any form, for the use of any such inmate or prisoner, without being authorized so to do by the rules governing such institution or place or by specific authorization of the person in charge of such institution or place.

(2) Subsection (1) of this section does not apply to a physician or dentist, licensed to practice in this state, acting in good faith and in the course of his professional practice. [Amended by 1953 c.543 §3; 1957 c.587 §7]

**475.100 Sale or possession of dangerous drugs without prescription prohibited; preservation and inspection of prescriptions.**

(1) Except as provided in ORS 475.110, no person shall sell, give away, barter, distribute, buy, receive or possess a dangerous drug except:

(a) Upon a written prescription of a practitioner licensed by law to administer such drug; or

(b) Upon an oral prescription of a practitioner licensed to administer such drug which is reduced promptly to writing and filed by the pharmacist; or

(c) By refilling the written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist; or

(d) Without prescription if such drug is combined with one or more additional ingredients that prevent ingestion of an amount of such drug sufficient to cause a stimulating or hypnotic effect upon the central nervous system and if for this reason the combination may be sold without prescription under federal law.

(2) Every prescription or order required by subsection (1) of this section shall be at all times open to inspection by duly authorized officers of the law and shall be preserved for at least three years from the date of filing thereof.

(3) No person shall wilfully make any false statement in any prescription, order, report or record required by this section; or, by fraud, deceit, misrepresentation or subterfuge, obtain or attempt to obtain any drug or the administration of any drug included under subsection (1) of this section.

(4) When a person possesses a drug not in the container in which it was dispensed to him and a prescription for the drug is required under subsection (1) of this section, such possession is prima facie unlawful under that subsection if he does not also have in his possession a label prepared by the pharmacist for the drug dispensed.

[Amended by 1953 c.396 §2; 1957 c.587 §8; 1963 c.229 §1; 1965 c.15 §1; 1965 c.545 §2]

**475.110** When ORS 475.100 not applicable. ORS 475.100 does not apply:

(1) To sales by drug wholesalers and manufacturers to pharmacies, or to licensed medical practitioners and veterinarians, or to each other.

(2) To sales by pharmacists to each other or to licensed medical practitioners and veterinarians.

[Amended by 1953 c.396 §2; 1965 c.545 §3]

**475.120** Seizure and forfeiture of conveyances used in transporting or possessing narcotics. (1) Any district attorney, sheriff, deputy sheriff, constable or police officer charged with the enforcement of this chapter, having personal knowledge or reasonable information that narcotic drugs are being unlawfully carried or transported or possessed by any boat, vehicle or other conveyance, shall search the same without warrant and without any affidavit being filed. If he finds upon or in such conveyance, narcotic drugs unlawfully carried, transported or possessed, he shall seize them, arrest any person in charge of such conveyance and as soon as possible take the arrested person and the seized drugs before any court in the county in which the seizure is made. He shall also, without delay, make and file a complaint for such violation as the evidence justifies.

(2) Any such conveyance used by or with the knowledge of the owner or the person operating or in charge thereof in the unlawful transportation, or unlawful possession or concealment, of narcotic drugs within this state shall be forfeited to the state in the same manner, by the same procedure and with like effect as provided in ORS 471.660 and 471.665 for the forfeiture of conveyances used in unlawfully handling liquor.

**475.130** [Repealed by 1957 c.587 §12]

**475.140** [Repealed by 1957 c.587 §12]

**475.150** Funds and officers available to enforce the narcotic laws; officers immune from prosecution under law. (1) All special funds provided by law for enforcement of the liquor laws of this state are available, under the direction of the Governor, for the enforcement of the laws of this state regulating or prohibiting the sale and use of narcotic drugs.

(2) All officers, agents and inspectors authorized by law to enforce the liquor laws

of this state, shall likewise enforce the laws of this state regulating or prohibiting the sale or use of narcotic drugs.

(3) All duly authorized peace officers, agents and inspectors, while investigating violations of the laws of this state regulating or prohibiting the sale and use of narcotic drugs in the performance of their official duties, and persons working under their immediate direction, supervision or instruction, are immune from prosecution under those laws.

[Amended by 1959 c.411 §1]

**475.160** Applicability of liquor laws setting apart funds for enforcement. Any provision by law for setting apart for law enforcement funds, fines collected for violation of the liquor laws of this state, unless otherwise provided therein, applies in like manner and in like proportions to fines collected for violation of the laws of this state regulating or prohibiting the sale of narcotic drugs. The maximum amounts of such funds shall be as fixed in the laws providing for funds to enforce liquor laws.

**475.170 to 475.600** [Reserved for expansion]

**475.610** [1955 c.573 §2; 1957 c.587 §9; repealed by 1959 c.411 §2 (ORS 475.615 enacted in lieu of ORS 475.610)]

**475.615** Definitions for ORS 475.615 to 475.705. As used in ORS 475.615 to 475.705, unless the context requires otherwise:

(1) "Dispense" includes sell, exchange, leave with, give away, deliver or in any manner relinquish possession to another.

(2) "Physician" means a person licensed by the State Board of Medical Examiners. [1959 c.411 §3 (enacted in lieu of ORS 475.610)]

**475.625. Use of narcotic drugs prohibited.** (1) No person shall use narcotic drugs or be in this state while under the influence of narcotic drugs, except when administered or dispensed by or under the direction of a person authorized by law to prescribe and administer narcotic drugs to human beings.

(2) No person shall use dangerous drugs or be in this state while under the influence of dangerous drugs, except when administered or dispensed by or under the direction of a person authorized by law to prescribe and administer dangerous drugs to human beings.

## OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

§ 475.635 ALCOHOLIC LIQUORS, NARCOTICS AND HABIT-FORMING DRUGS

(3) In any complaint, information or indictment, and in any action or proceeding brought for the enforcement of subsection (1) or (2) of this section, it is not necessary to allege or prove what specific narcotic drug the defendant used, or was under the influence of, in order to establish a prima facie case. Evidence that the specific drug used is not within the definition of narcotic drugs in ORS 474.010 or the definition of dangerous drugs in ORS 475.010 is a defense.

**475.635. Penalty.** A person violating ORS 475.625 is guilty of a misdemeanor and shall be sentenced upon conviction to not more than one year in the county jail. The court may place that person on probation for a period not to exceed five years.

475.640 [1955 c.573 §8; repealed by 1959 c.411 §8 (ORS 475.665 enacted in lieu of ORS 475.640)]

**475.645 Hospital treatment facilities; hospitalization in lieu of imprisonment.** (1) The Mental Health Division of the State Board of Control shall establish facilities at one or more state hospitals for persons convicted of violating ORS 475.625, who are in need of temporary hospitalization because of sickness while withdrawing from addiction. When a person recovers from withdrawal sickness he shall be released to the sheriff of the county in which he was convicted. However, if the superintendent of the state hospital finds that the person may be substantially benefited by further treatment, he may request the court, in writing, for an order directing that person to remain at the hospital for an additional period, not to exceed six months, before being released.

(2) The sentence of imprisonment under ORS 475.635 may be reduced by the number of days a person is hospitalized, for the same offense, under subsection (1) of this section.

[1959 c.411 §21 (enacted in lieu of ORS 475.700)]

475.650 [1955 c.573 §6; repealed by 1959 c.411 §10 (ORS 475.635 enacted in lieu of ORS 475.650)]

**475.655 Warrant of detention of drug user.** Whenever a district attorney has good

cause to believe that a person in his county is unlawfully using, or under the influence of narcotic drugs, he may file with the circuit court a written request for a warrant of detention of that person. When the person is taken into custody upon the warrant, the district attorney shall immediately notify the county health officer, or a physician appointed by the State Health Officer under subsection (1) of ORS 475.685, who shall examine the person and make a report to the district attorney of his findings. The report shall also be made available to the person examined and shall be admissible against him in any subsequent judicial proceeding under ORS 475.625. No person shall remain in custody longer than 48 hours under the warrant of detention.

[1959 c.411 §7 (enacted in lieu of ORS 475.630); 1963 c.137 §3]

475.660 [1955 c.573 §7; repealed by 1959 c.411 §12 (ORS 475.675 enacted in lieu of ORS 475.660)]

**475.665 Tests on suspected drug users; use of results in evidence.** (1) When a person is arrested for violation of ORS 475.625, or is arrested upon another charge and is suspected of violating that section, the officer or person making the arrest may, upon the written consent of the arrested person, have a city or county health officer, or a physician appointed by the State Health Officer, administer a test to determine by use of an opiate or synthetic antinarcotic whether the arrested person is using or is under the influence of narcotic drugs. Results of the test shall be made available to the person tested and in a subsequent trial of that person, and upon the request of either party, the court may admit those results in evidence. Refusal of the arrested person to consent to the test at the time of his arrest is not admissible in evidence upon his trial.

(2) The health officer or physician examining a person detained under ORS 475.655, upon the written consent of that person, may administer a test to determine by use of an opiate or synthetic antinarcotic whether the person is using or is under the influence of narcotic drugs. Results of the test shall be included in the findings of the health officer or physician, but a refusal of the detained person to consent to the test shall be excluded.

(3) Nothing in this section is intended to limit the introduction of other evidence bearing upon the question of whether or not a

person is using or is under the influence of narcotic drugs.

[1959 c.411 §9 (enacted in lieu of ORS 475.640)]

475.670 [1955 c.573 §8; repealed by 1959 c.411 §14 (ORS 475.705 enacted in lieu of ORS 475.670)]

**475.675 Requiring person on parole or probation to submit to periodic tests.** (1) When a court in this state grants probation to a person whom the court has good cause to believe is or has been an unlawful user of narcotic drugs, the court may require as a condition to probation that the probationer consent to undergo periodic tests by a city or county health officer, or by a physician appointed by the State Health Officer, to determine by use of an opiate or synthetic antinarcotic whether the probationer is using or is under the influence of narcotic drugs.

(2) When the State Board of Parole and Probation grants a parole to a person whom the board has good cause to believe is or has been an unlawful user of narcotic drugs, a condition of the parole shall be that the parolee consent to undergo periodic tests as provided in subsection (1) of this section. [1959 c.411 §13 (enacted in lieu of ORS 475.660)]

475.680 [1955 c.573 §§9, 13; repealed by 1959 c.411 §16 (ORS 475.685 enacted in lieu of ORS 475.680)]

**475.685 Appointment of physicians to administer tests; instruction; providing forms.** (1) The State Health Officer shall appoint physicians, in localities where needed, to assist city and county health officers in administration of tests under ORS 475.665 and 475.675, and shall instruct the physicians and health officers in the method of administering these tests.

(2) The State Health Officer shall provide the forms for the reports and written consent required by ORS 475.695.

[1959 c. 411 §17 (enacted in lieu of ORS 475.680)]

475.690 [1955 c.573 §9; repealed by 1959 c.411 §18 (ORS 475.695 enacted in lieu of ORS 475.690)]

**475.695 Persons authorized to make examinations and administer tests; administering tests and reporting results; testing only upon written consent.** City and county health officers, and physicians appointed by the

State Health Officer under ORS 475.685, shall make physical examinations under ORS 475.655, and shall administer tests under ORS 475.665 and 475.675. If the person tested has been placed under arrest or is detained under warrant, the test shall be administered promptly and the results reported without delay to the person who requested it. If the person tested is a probationer or parolee, results shall be reported to the probation officer. A person shall be tested only upon his written consent.

[1959 c.411 §19 (enacted in lieu of ORS 475.690)]

475.700 [1955 c.573 §10; repealed by 1959 c.411 §20 (ORS 475.645 enacted in lieu of ORS 475.700)]

**475.705 Charging cost of administering test.** The cost of administering tests under subsections (1) and (2) of ORS 475.665 and subsection (1) of ORS 475.675 shall be charged to the county. The cost of administering tests under subsection (2) of ORS 475.675 shall be charged to the state.

[1959 c.411 §15 (enacted in lieu of ORS 475.670)]

475.710 [1955 c.573 §11; repealed by 1959 c.411 §22]

475.720 [1955 c.573 §12; repealed by 1959 c.411 §22]

475.730 [1955 c.573 §13; repealed by 1959 c.411 §22]

475.740 [1955 c.573 §1; repealed by 1959 c.411 §22]

475.750 [1955 c.573 §3; repealed by 1959 c.411 §22]

475.760 to 475.980 [Reserved for expansion]

**475.990. Penalties.** (1) Violation of ORS 475.090 is punishable, upon conviction, by a fine of not more than \$1,000 or by imprisonment in the state penitentiary for not more than five years, or both.

(2) Violation of subsection (1) or (2) of ORS 475.100 is punishable, upon conviction, by a fine not exceeding \$5,000 or by imprisonment in the county jail not exceeding one year, or both, or by imprisonment in the penitentiary not exceeding 10 years, or by a fine of not more than \$5,000, or both.

(3) Violation of subsection (3) of ORS 475.100 is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail not to exceed one year, or both.

**474.020 Dealing in narcotics unlawful.**

(1) It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug, except as authorized in this chapter.

(2) It shall be unlawful for any person to conspire to commit, or facilitate the commission of any act prohibited by subsection (1) of this section and such person shall, upon conviction, be punished in the same manner prescribed for a person convicted of committing the prohibited act.

[Amended by 1957 c.587 §1]

**474.130**

(2) No person shall keep or maintain such a common nuisance.

(3) No person shall frequent any place if he knows it to be a place of the type described in subsection (1) of this section.

[Amended by 1957 c.587 §4]

**(3) Violation of subsection (2) or (3) of ORS 474.130 is a misdemeanor.**

**474.170 Obtaining drug unlawfully. (1)**

No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug:

(a) By fraud, deceit, misrepresentation or subterfuge; or

(b) By the forgery or alteration of a prescription or of any written order; or

(c) By the concealment of a material fact; or

(d) By the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall wilfully make a false statement in any prescription, order, report or record required by this chapter.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of or represent himself to be a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian or other authorized person.

(5) No person shall make or utter any false or forged prescription or false or forged written order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of ORS 474.080

in the same way as they apply to transactions under all other sections.

**474.990**

(2) Any person violating subsection (1) of ORS 474.020 by manufacturing, possessing, having under his control, selling, prescribing, administering, dispensing or compounding the narcotic drug marijuana shall be punished, upon conviction, by a fine of not more than \$5,000, or by imprisonment in the county jail for a period not exceeding one year, or both, or by imprisonment in the penitentiary for not exceeding 10 years, or by a fine of not more than \$5,000, or both.

**474.180 Defendant must prove exemption from drug laws.** In any complaint, information or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso or exemption contained in this chapter, and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

**474.210 Acquittal or conviction under federal law as precluding prosecution.** No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which it is alleged constitutes a violation of this chapter.

**475.070 Causing narcotic drug addiction.** Any person not authorized by law to manufacture, sell, prescribe or use narcotic drugs professionally, who causes or conspires to cause or knowingly contributes to the causing of narcotic drug addiction in any person, shall be punished, upon conviction, by imprisonment in the penitentiary for not more than 10 years.

[Amended by 1961 c.648 §12]

**475.080** [Repealed by 1959 c.411 §22]

**475.090 Furnishing inmates with alcoholic beverages or drugs.** (1) Except as provided in subsection (2) of this section, no person shall bring, send or otherwise introduce into the penitentiary, any penitentiary road camp or forest camp of which the warden of the penitentiary has custody, or penitentiary farm or annex, or any other penal or correctional institution of this state, or any state hospital, or any county jail, county hospital, city jail or city hospital, or any prison camp, prison farm or any other place where inmates or prisoners are in the custody of officers or employes of the state or of any of the political subdivisions thereof, any drug or alcoholic beverage in any form, for the use of any such inmate or prisoner, without being authorized so to do by the rules governing such institution or place or by specific authorization of the person in charge of such institution or place.

(2) Subsection (1) of this section does not apply to a physician or dentist, licensed to practice in this state, acting in good faith and in the course of his professional practice.  
[Amended by 1953 c.543 §3; 1957 c.587 §7]

**475.100 Sale or possession of dangerous drugs without prescription prohibited; preservation and inspection of prescriptions.**

(1) Except as provided in ORS 475.110, no person shall sell, give away, barter, distribute, buy, receive or possess a dangerous drug except:

(a) Upon a written prescription of a practitioner licensed by law to administer such drug; or

(b) Upon an oral prescription of a practitioner licensed to administer such drug which is reduced promptly to writing and filed by the pharmacist; or

(c) By refilling the written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist; or

(d) Without prescription if such drug is combined with one or more additional ingredients that prevent ingestion of an amount of such drug sufficient to cause a stimulating or hypnotic effect upon the central nervous system and if for this reason the combination may be sold without prescription under federal law.

(2) Every prescription or order required by subsection (1) of this section shall be at all times open to inspection by duly authorized officers of the law and shall be preserved for at least three years from the date of filing thereof.

(3) No person shall wilfully make any false statement in any prescription, order, report or record required by this section; or, by fraud, deceit, misrepresentation or subterfuge, obtain or attempt to obtain any drug or the administration of any drug included under subsection (1) of this section.

(4) When a person possesses a drug not in the container in which it was dispensed to him and a prescription for the drug is required under subsection (1) of this section, such possession is prima facie unlawful under that subsection if he does not also have in his possession a label prepared by the pharmacist for the drug dispensed.

[Amended by 1953 c.396 §2; 1957 c.587 §8; 1963 c.229 §1; 1965 c.15 §1; 1965 c.545 §2]

**475.110 When ORS 475.100 not applicable.** ORS 475.100 does not apply:

(1) To sales by drug wholesalers and manufacturers to pharmacies, or to licensed medical practitioners and veterinarians, or to each other.

(2) To sales by pharmacists to each other or to licensed medical practitioners and veterinarians.

[Amended by 1953 c.396 §2; 1965 c.545 §3]

**475.120 Seizure and forfeiture of conveyances used in transporting or possessing narcotics.** (1) Any district attorney, sheriff, deputy sheriff, constable or police officer charged with the enforcement of this chapter, having personal knowledge or reasonable information that narcotic drugs are being unlawfully carried or transported or possessed by any boat, vehicle or other conveyance, shall search the same without warrant and without any affidavit being filed. If he finds upon or in such conveyance, narcotic drugs unlawfully carried, transported or possessed, he shall seize them, arrest any person in charge of such conveyance and as soon as possible take the arrested person

and the seized drugs before any court in the county in which the seizure is made. He shall also, without delay, make and file a complaint for such violation as the evidence justifies.

(2) Any such conveyance used by or with the knowledge of the owner or the person operating or in charge thereof in the unlawful transportation, or unlawful possession or concealment, of narcotic drugs within this state shall be forfeited to the state in the same manner, by the same procedure and with like effect as provided in ORS 471.660 and 471.665 for the forfeiture of conveyances used in unlawfully handling liquor.

475.625. Use of narcotic drugs prohibited. (1) No person shall use narcotic drugs or be in this state while under the influence of narcotic drugs, except when administered or dispensed by or under the direction of a person authorized by law to prescribe and administer narcotic drugs to human beings.

(2) No person shall use dangerous drugs or be in this state while under the influence of dangerous drugs, except when administered or dispensed by or under the direction of a person authorized by law to prescribe and administer dangerous drugs to human beings.

(3) In any complaint, information or indictment, and in any action or proceeding brought for the enforcement of subsection (1) or (2) of this section, it is not necessary to allege or prove what specific narcotic drug the defendant used, or was under the influence of, in order to establish a prima facie case. Evidence that the specific drug used is not within the definition of narcotic drugs in ORS 474.010 or the definition of dangerous drugs in ORS 475.010 is a defense.

475.635. Penalty. A person violating ORS 475.625 is guilty of a misdemeanor and shall be sentenced upon conviction to not more than one year in the county jail. The court may place that person on probation for a period not to exceed five years.

475.640 [1955 c.573 §5; repealed by 1989 c.411 §8 (ORS 475.665 enacted in lieu of ORS 475.640)]

475.990. Penalties. (1) Violation of ORS 475.090 is punishable, upon conviction, by a fine of not more than \$1,000 or by imprisonment in the state penitentiary for not more than five years, or both.

(2) Violation of subsection (1) or (2) of ORS 475.100 is punishable, upon conviction, by a fine not exceeding \$5,000 or by imprisonment in the county jail not exceeding one year, or both, or by imprisonment in the penitentiary not exceeding 10 years, or by a fine of not more than \$5,000, or both.

(3) Violation of subsection (3) of ORS 475.100 is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail not to exceed one year, or both.

## Chapter 474

### 1967 REPLACEMENT PART

## Uniform Narcotic Drug Act

474.010	Definitions	474.120	Applicability of chapter to carriers, warehousemen and public officers
474.014	Exemption of certain drugs otherwise subject to this chapter	474.130	Place resorted to by drug addicts declared to be nuisance
474.016	Reversal of exemption	474.140	Forfeiture and destruction of unlawfully possessed drugs
<del>474.020</del>	<del>Dealing in narcotics unlawful</del>	474.150	Forwarding copy of conviction to licensing authorities; reinstatement of license
474.030	License needed to cultivate, manufacture or wholesale narcotics	474.160	Inspection of prescriptions, orders, records and stocks
474.040	Persons eligible for license; revocation of license	<del>474.170</del>	<del>Obtaining drug unlawfully</del>
474.050	Persons eligible to obtain drugs from license; procedure for obtaining narcotics and under what conditions they may be dispensed	<del>474.180</del>	<del>Defendant must prove exemption from drug laws</del>
474.060	Sales of narcotics by apothecary	474.190	Duty to enforce chapter
474.070	Use and administration of drugs	474.200	Making rules and regulations
474.080	Drugs usable without prescription	<del>474.210</del>	<del>Acquittal or conviction under federal law as precluding prosecution</del>
474.090	Records required by persons manufacturing or selling drugs	474.220	Interpretation and construction of chapter
474.100	Labels affixed to containers of drugs	474.990	Penalties
474.110	Possession of drug lawful only in container		

### CROSS REFERENCES

Administrative procedures and rules of state agencies, Ch. 183  
Boats, operating while under influence of drugs, 488.160  
Intercepted telecommunication, use of, 165.540

Narcotic and habit-forming drugs, Ch. 475  
Prosecution under narcotic laws, duly authorized officers or their agents immune from, 475.150  
Teacher's certificate, revocation or refusal to issue for narcotic violation, 342.175

**474.010 Definitions.** The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, copartnership or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who, by compounding, mixing, cultivating, growing or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist, as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this state.

(8) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

(9) "Laboratory" means a laboratory approved by the Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) "Sale" includes barter, exchange or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employe.

(11) "Coca leaves" include cocaine and

any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.

(12) "Opium" includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium.

(13) "Marihuana" includes all parts of the plant *Cannabis Sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

(14) The term "isonipecaïne" (meperidine) means the substance identified chemically as 1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester, or any salt thereof by whatever trade name identified.

(15) The term "amidone" (methadone) means any substance identified chemically as 4-4-diphenyl-6-dimethylaminoheptanone-3, or any salt thereof, by whatever trade name designated.

(16) The term "isoamidone" means any substance identified chemically as 4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3, or any salt thereof, by whatever trade name designated.

(17) The term "keto-bemidone" means any substance identified chemically as 4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride, or any salt thereof, by whatever trade name designated.

(18) "Narcotic drugs" means coca leaves, opium, marihuana and every other substance neither chemically nor physically distinguishable from them; or other drugs to which the federal narcotic laws may now or hereafter apply; or any drug found by the State Board of Pharmacy, after reasonable notice and opportunity for hearing, to have addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the publication of such finding.

(19) "Federal narcotic laws" means the

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laws of the United States relating to opium, coca leaves and other narcotic drugs.

(20) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Internal Revenue, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the Board of Pharmacy.

(21) "Dispense" includes distribute, leave with, give away, dispose of or deliver.

(22) "Registry number" means the number assigned to each person registered under the federal narcotic laws.

[Amended by 1953 c.342 §3; 1963 c.137 §1]

**474.014 Exemption of certain drugs otherwise subject to this chapter.** (1) The Board of Pharmacy may exempt any narcotic drug from the application of this chapter to the extent determined, after reasonable notice and opportunity for hearing, to be consistent with the public welfare if it finds that the narcotic drug does not:

(a) Possess sufficient addiction-formation or addiction-sustaining liability to warrant imposition of all of the requirements of this chapter; or

(b) Permit recovery of a narcotic drug having sufficient addiction-forming or addiction-sustaining liability with such technical simplicity and amount of yield as to create a risk of improper use.

(2) The Board of Pharmacy may by regulation and without special determination exempt from the application of this chapter to the extent determined to be consistent with the public welfare any narcotic drug exempt under the federal narcotics laws and regulations and permit the administering, dispensing or selling of such drugs under the same conditions imposed by the federal narcotics laws and regulations.

[1961 c.572 §2]

**474.016 Reversal of exemption.** If the Board of Pharmacy determines that any narcotic drug previously exempted from the operation of this chapter under subsection (1) or (2) of ORS 474.014 possesses a degree of addiction liability that may result in improper use, the board shall publish a notice of its determination in two newspapers of general circulation. The determination shall be final and after the expiration of a period of six

months from the date of publication of the notice, the exempt status shall cease to apply to such narcotic drug.

[1961 c.572 §3]

**474.030 License needed to cultivate, manufacture or wholesale narcotics.** No person shall manufacture, compound, mix, cultivate, grow or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same without having first obtained a license so to do from the Board of Pharmacy.

**474.040 Persons eligible for license; revocation of license.** (1) No license shall be issued under ORS 474.030 unless and until the applicant therefor has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings and paraphernalia properly to carry on the business described in his application.

(2) No license shall be granted to any person who has within five years been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves or other narcotic drugs, or to any person who is a narcotic drug addict. The Board of Pharmacy may suspend or revoke any license for cause.

**474.050 Persons eligible to obtain drugs from licensee; procedure for obtaining narcotics and under what conditions they may be dispensed.** (1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings and paraphernalia properly to carry on the business described in his application.

(2) No license shall be granted to any person who has within five years been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves or other narcotic drugs, or to any person who is a narcotic drug addict. The Board of Pharmacy may suspend or revoke any license for cause.

(1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler or apothecary.

(b) To a physician, dentist or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order as required by the federal narcotic laws, to a person in the employ of the United States Government or of any state, territorial, district, county, municipal or insular government, purchasing, receiving, possessing or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed; or to a physician or surgeon duly licensed in some state, territory or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy or Public Health Service, employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft, when not in port; provided, such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft, or to a physician, surgeon or retired commissioned medical officer of the United States Army, Navy or Public Health Service, employed upon such ship or aircraft, only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service.

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(3) An official written order for any narcotic drug shall be signed in triplicate by the person giving said order or by his duly authorized agent. The original and triplicate copy shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employe engaged in the enforcement of this chapter. It shall be deemed a compliance with this subsection

if the parties to the transaction have complied with the federal narcotic laws respecting the requirements governing the use of order forms.

(4) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, or a master of a ship, or a person in charge of any aircraft, upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States Army, Navy or Public Health Service, employed upon such ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this chapter.

[Amended by 1957 c.587 §2]

**474.060 Sales of narcotics by apothecary.** (1) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist or veterinarian, properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed.

(2) Notwithstanding the provisions of subsection (1) of this section, narcotic drugs or compounds of a narcotic drug which possess relatively little or no addiction liability which the State Board of Pharmacy shall find and by regulations designate, after reasonable notice and opportunity for hearing, to possess relatively little or no narcotic addiction liability may be sold and dispensed by an apothecary, in

good faith, to any person upon an oral prescription of a physician, dentist or veterinarian. In issuing an oral prescription, the prescriber shall furnish the same information as is required for a written prescription under subsection (1) of this section except for the written signature of the prescriber. Upon receipt of the oral prescription, the person filling the oral prescription shall promptly reduce the oral prescription to writing by recording:

(a) The date when the oral prescription was received.

(b) The full name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed.

(c) The full name, address and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered.

(d) If the oral prescription is for an animal, the species of the animal for which the drug is prescribed.

(3) The person filling an oral or written prescription under this section shall write the date of filling and his own signature on the face of the prescription. The oral or written prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employe engaged in the enforcement of this chapter. The oral or written prescription shall not be refilled.

(4) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler or apothecary, but only on an official written order, and with the approval of the District Director of Internal Revenue for the district of Oregon.

(5) An apothecary, only upon an official written order, may sell to a physician, dentist or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20 percent of the complete solution, to be used for medical purposes.

[Amended by 1955 c.60 §1]

**474.070 Use and administration of drugs.**

(1) A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer and dispense narcotic drugs, or he may cause

the same to be administered by a nurse or interne under his direction and supervision.

(2) A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

(3) Any person who has obtained from a physician, dentist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist or veterinarian shall return to such physician, dentist or veterinarian any unused portion of such drug when it is no longer required by the patient.

**474.080 Drugs usable without prescription.** (1) Except as otherwise in this chapter specifically provided, this chapter shall not apply to the administering, dispensing or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semisolid preparation, in one avoirdupois ounce, not more than one grain of codeine, one-half grain of dihydrocodeine, two grains of Noscapine (also known as Narcotine), or two grains of Papaverine, or of any of their salts. The exemptions authorized by this section shall be subject to the following conditions:

(a) The medicinal preparation administered, dispensed or sold shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

(b) Such preparation shall be administered, dispensed and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

(2) Nothing in this section shall be construed to limit the quantity of codeine, dihydrocodeine, Noscapine (also known as Narcotine), Papaverine, or of any of their salts that may be prescribed, administered, dispensed or sold to any person or for the use of any person or animal, when it is prescribed, administered, dispensed or sold in compliance with the general provisions of this chapter.

[Amended by 1957 c.587 §3; 1967 c.117 §1]

**474.090 Records required by persons manufacturing or selling drugs.** (1) Every physician, dentist, veterinarian or other

person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients; provided, that no record need be kept of narcotic drugs administered, dispensed or professionally used in the treatment of any one patient when the amount administered, dispensed or professionally used for that purpose does not exceed in any 48 consecutive hours (a) four grains of opium, or (b) one-half of a grain of morphine or of any of its salts, or (c) two grains of codeine or of any of its salts, or (d) one-fourth of a grain of heroin or of any of its salts, or (e) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (5) of this section.

(3) Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (5) of this section.

(4) Every person who purchases for resale, or who sells narcotic drug preparations exempted by ORS 474.080, shall keep a record showing the quantities and kinds thereof received and sold or disposed of otherwise, in accordance with the provisions of subsection (5) of this section.

(5) The form of records shall be prescribed by the Board of Pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of

manufacture and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine or ecgonine contained in or producible from crude opium or coca leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis Sativa L.*, received or produced. The record of all narcotic drugs sold, administered, dispensed or otherwise disposed of shall show the date of selling, administering or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft.

**474.100 Labels affixed to containers of drugs.** (1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall affix securely to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this chapter, shall alter, deface or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his name, address and registry number, or the name, address and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist or veterinarian by whom the prescription was written; and such directions as may be stated on the prescription. No person shall

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§ 474.150

alter, deface or remove any label so affixed so long as any of the original contents remain.

**474.110 Possession of drug lawful only in container.** A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed by a physician, dentist, apothecary or other person authorized under the provisions of ORS 474.050, and the owner of any animal for which any such drug has been prescribed, sold or dispensed by a veterinarian may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

**474.120 Applicability of chapter to carriers, warehousemen and public officers.** The provisions of this chapter restricting the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to any employe of the same acting within the scope of his employment; or to public officers or their employes in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employes or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

**474.130 Place resorted to by drug addicts declared to be nuisance.** (1) Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance and shall be abated in the manner provided in ORS 471.630 to 471.655.

**474.140 Forfeiture and destruction of unlawfully possessed drugs.** All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited and disposed of as follows:

(1) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States Commissioner of Narcotics, by the officer who destroys them.

(2) Upon written application by the Board of Pharmacy, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said Board of Pharmacy for distribution or destruction, as hereinafter provided.

(3) Upon application by any hospital within this state, not operated for private gain, the Board of Pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The Board of Pharmacy may from time to time deliver excess stocks of such narcotic drugs to the United States Commissioner of Narcotics, or may destroy the same.

(4) The Board of Pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipt, disposal or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws.

**474.150 Forwarding copy of conviction to licensing authorities; reinstatement of license.** On the conviction of any person of the violation of any provision of this chapter, a copy of the judgment and sentence and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon

## ALCOHOLIC LIQUORS, NARCOTICS AND HABIT-FORMING DRUGS

proper showing and for good cause, said board or officer may reinstate such license or registration.

**474.160 Inspection of prescriptions, orders, records and stocks.** Prescriptions, orders and records required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

**474.190 Duty to enforce chapter.** It hereby is made the duty of the Board of Pharmacy, its officers, agents, inspectors and representatives, and of all peace officers within the state, and of all county attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state and of all other states relating to narcotic drugs.

**474.200 Making rules and regulations.** The Board of Pharmacy shall make all needed rules and regulations for carrying the provisions of this chapter into effect.

**474.220 Interpretation and construction of chapter.** This chapter shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it.

**474.990. Penalties.** (1) Except as otherwise specifically provided, any person violating any provision of this chapter, upon conviction, shall be punished by a fine not exceeding \$5,000, or by imprisonment in the state penitentiary for not exceeding 10 years, or both.

## Chapter 475

### 1965 REPLACEMENT PART

## Narcotic and Habit-forming Drugs

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|--|--|
| 475.010 Chapter definitions  | <del>475.685 Criminal penalty; probation; minimum period of imprisonment</del>   |
| <del>475.070 Causing narcotic drug addiction</del>   | 475.645 Hospital treatment facilities; hospitalization in lieu of imprisonment   |
| <del>475.090 Furnishing inmates with alcoholic beverages or drugs</del>  | 475.655 Warrant of detention of drug user  |
| <del>475.100 Sale or possession of dangerous drugs without prescription prohibited; preservation and inspection of prescriptions</del> | 475.665 Tests on suspected drug users; use of results in evidence  |
| <del>475.110 When ORS 475.100 not applicable</del>   | 475.675 Requiring person on parole or probation to submit to periodic tests  |
| <del>475.120 Seizure and forfeiture of conveyances used in transporting or possessing narcotics</del>                                  | 475.685 Appointment of physicians to administer tests; instruction; providing forms  |
| 475.150 Funds and officers available to enforce the narcotic laws; officers immune from prosecution under law                          | 475.695 Persons authorized to make examinations and administer tests; administering tests and reporting results; testing only upon written consent |
| 475.160 Applicability of liquor laws setting apart funds for enforcement   | 475.705 Charging cost of administering test  |
| 475.615 Definitions for ORS 475.615 to 475.705   | <del>475.690 Penalties</del>   |
| <del>475.695 Use of narcotic drugs prohibited; proof of specific drug used not required</del>  |  |

### CROSS REFERENCES

- |  |   |
|--|---|
| Airplane, operating while under influence of drugs, 493.160        | Motor vehicle, operating while under influence of drugs, 483.992                      |
| Boats, operating while under influence of drugs, 488.160           | Pharmacists and pharmacies, Ch. 689   |
| Deaths or injuries to be reported to medical investigator, Ch. 146 | Publicizing effects of narcotic drugs, 430.080  |
| Drugs, poisons, caustics and corrosives, Ch. 453                   | Teacher's certificate, revocation or refusal to issue for narcotic violation, 342.175 |
| Intercepted telecommunications, use of, 165.540                    | Uniform Narcotic Drug Act, Ch. 474  |
| Juvenile court, jurisdiction over certain children, 419.476        | Water skiing or surfboarding while under influence of drugs, 488.144                  |
| Local mental health services, 430.610 to 430.660                   | 475.010   |
|  | Exemption of certain drugs, 474.014   |
|  | 475.090   |
|  | Furnishing beverages to prisoners, 169.130  |

## § 475.010 ALCOHOLIC LIQUORS, NARCOTICS AND HABIT-FORMING DRUGS

**475.010 Chapter definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Dangerous drug" means a drug designated by the Drug Advisory Council as a dangerous drug and included in published regulations of the State Board of Pharmacy under ORS 689.620.

(2) "Licensed medical practitioner," "pharmacist," "pharmacy" and "prescription" have the meaning provided for those terms in ORS 689.010.

(3) "Narcotic drugs" and "veterinarian" have the meaning provided for those terms in ORS 474.010.

[Amended by 1953 c.342 §3; 1957 c.587 §6; 1965 c.545 §1]

**475.020** [Repealed by 1957 c.587 §12]

**475.030** [Repealed by 1957 c.587 §12]

**475.040** [Repealed by 1957 c.587 §12]

**475.050** [Repealed by 1957 c.587 §12]

**475.060** [Repealed by 1957 c.587 §12]

**475.150 Funds and officers available to enforce the narcotic laws; officers immune from prosecution under law.** (1) All special funds provided by law for enforcement of the liquor laws of this state are available, under the direction of the Governor, for the enforcement of the laws of this state regulating or prohibiting the sale and use of narcotic drugs.

(2) All officers, agents and inspectors authorized by law to enforce the liquor laws of this state, shall likewise enforce the laws of this state regulating or prohibiting the sale or use of narcotic drugs.

(3) All duly authorized peace officers, agents and inspectors, while investigating violations of the laws of this state regulating or prohibiting the sale and use of narcotic drugs in the performance of their official duties, and persons working under their immediate direction, supervision or instruction, are immune from prosecution under those laws.

[Amended by 1959 c.411 §1]

**475.160 Applicability of liquor laws setting apart funds for enforcement.** Any provision by law for setting apart for law enforcement funds, fines collected for violation of the liquor laws of this state, unless otherwise provided therein, applies in like manner and in like proportions to fines collected for violation of the laws of this state regulating or prohibiting the sale of narcotic drugs. The maximum amounts of such funds shall be as fixed in the laws providing for funds to enforce liquor laws.

**475.170 to 475.600** [Reserved for expansion]

**475.610** [1955 c.573 §2; 1957 c.587 §9; repealed by 1959 c.411 §2 (ORS 475.615 enacted in lieu of ORS 475.610)]

**475.615 Definitions for ORS 475.615 to 475.705.** As used in ORS 475.615 to 475.705, unless the context requires otherwise:

(1) "Dispense" includes sell, exchange, leave with, give away, deliver or in any manner relinquish possession to another.

(2) "Physician" means a person licensed by the State Board of Medical Examiners. [1959 c.411 §3 (enacted in lieu of ORS 475.610)]

**475.645 Hospital treatment facilities; hospitalization in lieu of imprisonment.** (1) The Mental Health Division of the State Board of Control shall establish facilities at one or more state hospitals for persons convicted of violating ORS 475.625, who are in need of temporary hospitalization because of sickness while withdrawing from addiction. When a person recovers from withdrawal sickness he shall be released to the sheriff of the county in which he was convicted. However, if the superintendent of the state hospital finds that the person may be substantially benefited by further treatment, he may request the court, in writing, for an order directing that person to remain at the hospital for an additional period, not to exceed six months, before being released.

(2) The sentence of imprisonment under ORS 475.635 may be reduced by the number of days a person is hospitalized, for the same offense, under subsection (1) of this section.

[1959 c.411 §21 (enacted in lieu of ORS 475.700)]

**475.650** [1955 c.573 §6; repealed by 1959 c.411 §10 (ORS 475.635 enacted in lieu of ORS 475.650)]

**475.655 Warrant of detention of drug user.** Whenever a district attorney has good cause to believe that a person in his county is unlawfully using, or under the influence of narcotic drugs, he may file with the circuit court a written request for a warrant of detention of that person. When the person is taken into custody upon the warrant, the district attorney shall immediately notify the county health officer, or a physician appointed by the State Health Officer under subsection (1) of ORS 475.685, who shall examine the person and make a report to the district attorney of his findings. The report shall also be made available to the person examined and shall be admissible against him in any subsequent judicial proceeding under ORS 475.625. No person shall remain in custody longer than 48 hours under the warrant of detention.

[1959 c.411 §7 (enacted in lieu of ORS 475.630); 1963 c.137 §3]

**475.660** [1955 c.573 §7; repealed by 1959 c.411 §10 (ORS 475.635 enacted in lieu of ORS 475.660)]

## NARCOTIC AND HABIT-FORMING DRUGS

**475.665 Tests on suspected drug users; use of results in evidence.** (1) When a person is arrested for violation of ORS 475.625, or is arrested upon another charge and is suspected of violating that section, the officer or person making the arrest may, upon the written consent of the arrested person, have a city or county health officer, or a physician appointed by the State Health Officer, administer a test to determine by use of an opiate or synthetic antinarcotic whether the arrested person is using or is under the influence of narcotic drugs. Results of the test shall be made available to the person tested and in a subsequent trial of that person, and upon the request of either party, the court may admit those results in evidence. Refusal of the arrested person to consent to the test at the time of his arrest is not admissible in evidence upon his trial.

(2) The health officer or physician examining a person detained under ORS 475.655, upon the written consent of that person, may administer a test to determine by use of an opiate or synthetic antinarcotic whether the person is using or is under the influence of narcotic drugs. Results of the test shall be included in the findings of the health officer or physician, but a refusal of the detained person to consent to the test shall be excluded.

(3) Nothing in this section is intended to limit the introduction of other evidence bearing upon the question of whether or not a person is using or is under the influence of narcotic drugs.

[1959 c.411 §9 (enacted in lieu of ORS 475.640)]

**475.670** [1955 c.573 §8; repealed by 1959 c.411 §14 (ORS 475.705 enacted in lieu of ORS 475.670)]

**475.675 Requiring person on parole or probation to submit to periodic tests.** (1) When a court in this state grants probation to a person whom the court has good cause to believe is or has been an unlawful user of narcotic drugs, the court may require as a condition to probation that the probationer consent to undergo periodic tests by a city or county health officer, or by a physician appointed by the State Health Officer, to determine by use of an opiate or synthetic antinarcotic whether the probationer is using or is under the influence of narcotic drugs.

(2) When the State Board of Parole and Probation grants a parole to a person whom the board has good cause to believe is or has been an unlawful user of narcotic

drugs, a condition of the parole shall be that the parolee consent to undergo periodic tests as provided in subsection (1) of this section. [1959 c.411 §13 (enacted in lieu of ORS 475.660)]

**475.680** [1955 c.573 §§9, 13; repealed by 1959 c.411 §16 (ORS 475.685 enacted in lieu of ORS 475.680)]

**475.685 Appointment of physicians to administer tests; instruction; providing forms.** (1) The State Health Officer shall appoint physicians, in localities where needed, to assist city and county health officers in administration of tests under ORS 475.665 and 475.675, and shall instruct the physicians and health officers in the method of administering these tests.

(2) The State Health Officer shall provide the forms for the reports and written consent required by ORS 475.695.

[1959 c. 411 §17 (enacted in lieu of ORS 475.680)]

**475.690** [1955 c.573 §9; repealed by 1959 c.411 §18 (ORS 475.695 enacted in lieu of ORS 475.690)]

**475.695 Persons authorized to make examinations and administer tests; administering tests and reporting results; testing only upon written consent.** City and county health officers, and physicians appointed by the State Health Officer under ORS 475.685, shall make physical examinations under ORS 475.655, and shall administer tests under ORS 475.665 and 475.675. If the person tested has been placed under arrest or is detained under warrant, the test shall be administered promptly and the results reported without delay to the person who requested it. If the person tested is a probationer or parolee, results shall be reported to the probation officer. A person shall be tested only upon his written consent.

[1959 c.411 §19 (enacted in lieu of ORS 475.690)]

**475.700** [1955 c.573 §10; repealed by 1959 c.411 §20 (ORS 475.645 enacted in lieu of ORS 475.700)]

**475.705 Charging cost of administering test.** The cost of administering tests under subsections (1) and (2) of ORS 475.665 and subsection (1) of ORS 475.675 shall be charged to the county. The cost of administering tests under subsection (2) of ORS 475.675 shall be charged to the state.

[1959 c.411 §15 (enacted in lieu of ORS 475.670)]

**475.710** [1955 c.573 §11; repealed by 1959 c.411 §22]

**475.720** [1955 c.573 §12; repealed by 1959 c.411 §22]

**475.730** [1955 c.573 §13; repealed by 1959 c.411 §22]

**475.740** [1955 c.573 §1; repealed by 1959 c.411 §22]

**475.750** [1955 c.573 §3; repealed by 1959 c.411 §22]

**475.760 to 475.980** [Reserved for expansion]

DIVISION 8

DANGEROUS DRUGS

80-005 DESIGNATED DRUGS. The following drugs have been designated as "dangerous drugs" by the Drug Advisory Council and except as provided in ORS 475.100 and 475.110, no person shall sell, give away, barter, distribute, buy, receive or possess:

(1) Amobarbital, secobarbital, pentobarbital, phenobarbital, acid diethylbarbituric, amphetamine, dextroamphetamine, mephentermine, methamphetamine, phenmetrazine, methylphenidate hydrochloride, glutethimide, methyprylon, meprobamate, chlordiazepoxide HCL, diazepam, oxazepam, chloral hydrate, paraldehyde, ethchlorvynol and ethinamate, any salts, derivatives or compounds of the foregoing substances, any preparations or compound containing any of the foregoing substances or their salts, derivatives or compounds or any registered

trademarked or copyrighted preparation or compound registered in the United States Patent Office containing any of the foregoing substances.

(2) All products containing the substances lysergic acid diethylamide, psilocybin, dimethyltryptamine, methyltryptamine, peyote and mescaline.

(3) Those drugs in subsection (1) have been found to have a potential for abuse because of either their stimulant or depressant effect on the central nervous system. Those drugs in subsection (2) have been found to have a potential for abuse because of their hallucinogenic effect.

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ARTICLE 31.

OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

Preliminary Draft No. 1; October 1969

Section \_\_\_\_\_. Criminal possession of drugs in the second degree. A person to whom or for whose use any narcotic or dangerous drug has been prescribed commits the crime of criminal possession of drugs in the second degree if he knowingly possesses such narcotic or dangerous drug not in the container in which it was originally delivered, sold or dispensed.

Section \_\_\_\_\_. Forfeiture of conveyances. Any conveyance used with the knowledge of its owner for the unlawful transportation, possession or concealment of narcotic or dangerous drugs shall be forfeited to the state in the same manner and with like effect as provided in ORS 471.660 and 471.665.

Section \_\_\_\_\_. Immunity. All duly authorized peace officers, and all persons acting under their immediate direction or supervision, shall be immune from prosecution under the narcotic and dangerous drug provisions of this Article, while investigating violations of those laws in the performance of their official duties.