

2019 Oregon Legislative Session

DRUG POLICY

Substance abuse, and its negative impacts on public health and safety in Oregon, held some attention in the 2019 Legislative Session, especially in light of Oregon's status as a state with some of the highest rates of addiction and lowest access to prevention, treatment, and recovery support. For a few legislative sessions, there has been a focus on the opioid epidemic. However, the 2019 Legislative Session left very little room for [science-based drug policy](#) conversations. Drug policy in Oregon continues to be highly scattered. Multiple data sets also continue to show that Oregonians primarily abuse, and become addicted, to four substances, namely: alcohol, cannabis, methamphetamines, and opioids. Here are some of the highlights of the 2019 Legislative Session, by drug category, in regard to the last three:

Cannabis

Oregon continues to struggle to contain massive [overproduction](#) of cannabis that bleeds into the interstate and international black markets. That overproduction and leakage problem has recently expanded to include large quantities of hemp products that exceed the allowable amount of tetrahydrocannabinol (THC) under federal and state law. Especially in light of the [United States Attorney's Marijuana Enforcement Priorities](#), there is continuing legislative focus on the overproduction and leakage problem. [Senate Bill 218](#), introduced by the governor and passed by the Legislature, authorizes the state to impose a temporary moratorium on new marijuana production licenses. The moratorium sunsets on January 2, 2022. Efforts to further expand and enhance funding for enforcement, such as [House Bill 2382](#), which would have allowed certain high-production counties to ask their voters to impose a tax on medical and recreational marijuana production, failed in the face of steep opposition from the marijuana industry. In the meantime, the [Illegal Marijuana Market Enforcement Grant Program](#), created by [2018 Oregon legislation](#), continues to provide some funding for enhanced enforcement in a handful of Oregon counties.

With regard to hemp, the issues were kicked down the road to the 2020 Legislative Session. In part, that is because of changes in federal law. Part of the [2014 federal Farm Bill](#) authorized states to start industrial hemp research programs through registration and regulation. Oregon launched such a program, with the Oregon Department of Agriculture (ODA) being in the lead role. However, the [2018 federal Farm Bill](#) expanded federal authorization for states to implement a full-scale hemp program, including licensing of production, as well as interstate commerce in hemp products. But authorization under the 2018 Farm Bill requires that state programs first be certified by the federal government as being compliant with the law, as well as Food and Drug Administration (FDA) rules, which have yet to be written. [House Bill 2740](#) was introduced in an effort to rewrite Oregon's hemp laws in a manner that might move closer to the requirements of the 2018 Farm Bill. However, after amendments, that bill became problematic, as it would have arguably put Oregon out of compliance with the 2014 Farm Bill, fail to comply with the 2018 Farm Bill, and weaken Oregon laws with regard to unlawful interstate commerce in high-THC hemp products. Further amendments were negotiated, but the bill ultimately failed to pass, in part because it was simply premature.

No other big omnibus cannabis bills were enacted in the 2019 Legislative Session, but a number of bills that dealt with specific issues did make their way through the process, including:

- [Senate Bill 385](#), which, among other things, prohibits local governments from imposing system development charges on new marijuana production facilities in exclusive farm use zones. This bill

was targeted at Deschutes County, which has become a hotbed of cannabis production conflicts between and among neighbors and residents.

- [Senate Bill 420](#) and [Senate Bill 975](#), which provide an expedited process for persons with old marijuana convictions to get them set aside if they are no longer even offenses, or reduced to the lower level of offense that they are today.
- [Senate Bill 582](#), which authorizes the governor to enter into compacts with other states for interstate commerce in marijuana products, but only if the federal government first clears a path for such commerce by law or United States Department of Justice (USDOJ) policy. The goal of the bill is to enable Oregon to participate in such interstate commerce as soon as the federal government grants clearance, as well as create a path for the lawful distribution of excess marijuana being produced in Oregon.
- [Senate Bill 1012](#), which clarifies and resolves statutory confusion about when a land use compatibility statement is required for purposes of converting a grow site from medical to recreational production.
- [House Bill 2098](#), introduced by the governor at the request of Oregon Liquor Control Commission (OLCC), makes a number of modest changes and technical improvements to Oregon marijuana laws.
- [House Bill 3067](#), which allows for cities and counties to annually certify non-opt-out-status, rather than quarterly, for purposes of eligibility for sharing of state retail marijuana tax distributions.
- [House Bill 3200](#), which requires applicants for marijuana production licenses that do not own the premises to provide signed informed consent from the owner of the premises, since marijuana production is still a federal crime, potentially subjecting property owners to criminal or civil liability.

Finally, a few marijuana bills that did not pass are worth mentioning, primarily because they are likely to resurface in future legislative sessions:

- Social consumption legislation, meaning authorizing the state to issue licenses to premises for marijuana consumption, failed again this session. Examples are [Senate Bill 639](#) and [House Bill 2233](#). The primary issue has revolved around whether to grant an exemption to the Oregon Indoor Clean Air Act in order to allow indoor smoking. Thus far, there has not been legislative will to override public health concerns and create such an exemption for marijuana, or any other smokable substance for that matter.
- Allowing medical marijuana producers to sell more excess product into the retail system. [Senate Bill 3822](#) was the latest failed effort along those lines.

Methamphetamine

An attempt to remove the Oregon requirement to have a prescription for pseudoephedrine (PSE) products, and instead have Oregon utilize the [National Precursor Log Exchange \(NPLEx\)](#) system was reintroduced this Session. The prescription requirement was put in place through [2005 Oregon legislation](#), in order to stop group “smurfing” of PSE, which feeds local toxic meth labs when Drug Trafficking Organization (DTO) meth on the street lacks strong potency or purity, is scarce, or too expensive. That legislation led to the [virtual elimination](#) of local toxic meth labs in Oregon. By comparison, NPLEx cannot stop group smurfing, as [proven](#) in many other states that rely upon the NPLEx system.

This Session the bill to remove the prescription requirement for PSE was [House Bill 2303](#). As before, a strong [coalition opposed](#) the bill, but was largely ignored in the House. The bill passed the House on a small margin, barely advancing to the Senate.

On the Senate side, however, the opposition was given a true opportunity to explain their concerns, including [testimony](#) by Woodburn Policy Chief Jim Ferraris on behalf of Oregon Sheriffs and Chiefs, and a [presentation](#) by AOC Legal Counsel [Rob Bovett](#).

As a result, the bill was amended to retain the prescription requirement for PSE, but allow pharmacists to prescribe PSE under certain circumstances (commonly known as a “formulary” drug). The [amended bill](#) passed the Senate, but the House declined to concur, so the bill died on the House floor on the final day - the only bill to do so.

Opioids

In an effort to help stem the tide of the opioid epidemic, Oregon Governor Kate Brown established an [Opioid Epidemic Task Force](#). [House Bill 2257](#), which passed, was the task force’s main bill this session. Among other things, the bill declares substance abuse as a chronic illness, directs the Department of Corrections (DOC) to study issues related to continuity of care for inmates, begins the process of requiring accreditation for substance abuse treatment providers, prohibits public insurance policies from requiring prior authorization for the first 30 days of treatment, and targets enhanced funding for early intervention pilot programs for treatment for pregnant persons. In addition, the bill gives dental directors access to the Oregon Prescription Drug Monitoring Program (PDMP), and allows the PDMP to be used to compare prescriptions of certain drugs between similarly situated practitioners.

A second bill, [Senate Bill 910](#), initially introduced at the request of Multnomah County, became the vehicle for many other priorities, including additional task force recommendations. That bill passed as well, and requires pharmacies to provide written notice of the availability of naloxone (used to reverse opioid overdoses); allows pharmacists to offer to prescribe naloxone under certain circumstances; expands the overall availability of naloxone to first responders; removes the requirement for written approval by a probation officer for Medication Assisted Treatment (MAT) under certain circumstances; and allows for the expansion of the Oregon PDMP to monitor prescription drugs that are not controlled substances (commonly known as “legend drugs”). Further, with regard to naloxone, [Senate Bill 665](#) also passed, and provides for the expanded availability of naloxone in schools to address opioid overdoses.

[House Bill 3273](#), another big policy bill that was many years in the making, passed near the very end of the 2019 Legislative Session, after much drama between various elements of the pharmaceutical industry. Crafted for Representative Sheri Schouten (D-Beaverton) by AOC Legal Counsel [Rob Bovett](#), the bill will provide a comprehensive statewide drug take-back program, featuring kiosks in pharmacies, as well as mail-back options. The legislation was modeled, in part, on county ordinances from California and Washington, as well as Washington County. The program will be administered by the Oregon Department of Environmental Quality (DEQ), and paid for by the pharmaceutical industry.

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