

**A-Engrossed**  
**House Bill 2329**

Ordered by the House May 4  
Including House Amendments dated May 4

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Decreases penalty for crime of cheating to maximum of one year's imprisonment, \$6,250 fine, or both.]*

**Increases presumptive sentences for specified property crimes committed by persons with previous convictions.**

**Requires court to determine if defendant is eligible for alternative incarceration program when defendant is sentenced to incarceration that exceeds one year and if court finds that participation is appropriate or parties stipulate on record that defendant is eligible.**

**Requires stipulation for specified violent felonies and certain sex crimes or for person who previously completed alternative incarceration program and is being sentenced for crime committed less than five years from date of release from custody.**

**Requires court to state on record maximum possible reduction of sentence defendant may receive for successfully completing alternative incarceration program. Requires offender who has successfully completed alternative incarceration program to serve at least 12 months and that offender have no more than 24 months remaining on sentence imposed before release on post-prison supervision.**

**A BILL FOR AN ACT**

1  
2 Relating to crime; creating new provisions; and amending ORS 137.712, 137.717, 137.750, 421.502,  
3 421.508 and 421.510.

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

5 **SECTION 1.** ORS 137.717 is amended to read:

6 137.717. (1) When a court sentences a person convicted of:

7 (a) Aggravated theft in the first degree under ORS 164.057, *[or]* burglary in the first degree un-  
8 der ORS 164.225 **or robbery in the third degree under ORS 164.395**, the presumptive sentence is  
9 *[19]* **27** months of incarceration, unless the rules of the Oregon Criminal Justice Commission pre-  
10 scribe a longer presumptive sentence, if the person has:

11 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary  
12 in the first degree under ORS 164.225, **robbery in the third degree under ORS 164.395**, robbery  
13 in the second degree under ORS 164.405 or robbery in the first degree under ORS 164.415; or

14 (B) Four previous convictions for any combination of the other crimes listed in subsection (2)  
15 of this section.

16 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS  
17 164.135, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under  
18 ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013,  
19 **criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent**  
20 **use of a credit card under ORS 165.055 (4)(b)**, identity theft under ORS 165.800, possession of a

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the  
2 presumptive sentence is [13] 18 months of incarceration, unless the rules of the Oregon Criminal  
3 Justice Commission prescribe a longer presumptive sentence, if the person has:

4 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-  
5 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, **rob-**  
6 **bery in the third degree under ORS 164.395**, robbery in the second degree under ORS 164.405,  
7 robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300 or  
8 trafficking in stolen vehicles under ORS 819.310; or

9 (B) Four previous convictions for any combination of the other crimes listed in subsection (2)  
10 of this section.

11 (2) The crimes to which subsection (1) of this section applies are:

12 (a) Theft in the second degree under ORS 164.045;

13 (b) Theft in the first degree under ORS 164.055;

14 [(c) *Aggravated theft in the first degree under ORS 164.057;*]

15 [(d)] (c) Unauthorized use of a vehicle under ORS 164.135;

16 [(e)] (d) Burglary in the second degree under ORS 164.215;

17 [(f) *Burglary in the first degree under ORS 164.225;*]

18 [(g)] (e) Criminal mischief in the second degree under ORS 164.354;

19 [(h)] (f) Criminal mischief in the first degree under ORS 164.365;

20 [(i)] (g) Computer crime under ORS 164.377;

21 [(j)] (h) Forgery in the second degree under ORS 165.007;

22 [(k)] (i) Forgery in the first degree under ORS 165.013;

23 [(L)] (j) Criminal possession of a forged instrument in the second degree under ORS 165.017;

24 [(m)] (k) Criminal possession of a forged instrument in the first degree under ORS 165.022;

25 [(n)] (L) Fraudulent use of a credit card under ORS 165.055;

26 [(o)] (m) Identity theft under ORS 165.800;

27 [(p)] (n) Possession of a stolen vehicle under ORS 819.300; and

28 [(q)] (o) Trafficking in stolen vehicles under ORS 819.310.

29 (3)(a) **A presumptive sentence described in subsection (1)(a) or (b) of this section shall**  
30 **be increased by two months for each previous conviction the person has that:**

31 (A) **Was for any of the crimes listed in subsection (1) or (2) of this section; and**

32 (B) **Was not used as a predicate for the presumptive sentence under subsection (1)(a) or**  
33 **(b) of this section.**

34 (b) **Previous convictions under this subsection may not increase a presumptive sentence**  
35 **described in subsection (1)(a) or (b) of this section by more than 12 months.**

36 [(3)] (4) The court may impose a sentence other than the sentence provided by subsection (1)  
37 **or (3)** of this section if the court imposes:

38 (a) A longer term of incarceration that is otherwise required or authorized by law; or

39 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission  
40 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon  
41 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-  
42 lowed for a person sentenced under this subsection is double the presumptive sentence provided in  
43 subsection (1) **or (3)** of this section.

44 (5) **Notwithstanding subsection (4)(b) of this section, the court may not sentence a person**  
45 **under subsection (4) of this section to a term of incarceration that exceeds the period of time**

1 **described in ORS 161.605.**

2 [(4)] (6) As used in this section, “previous conviction” includes:

3 (a) Convictions occurring before, on or after July 1, 2003; and

4 (b) Convictions entered in any other state or federal court for comparable offenses.

5 [(5)(a)] (7)(a) For a crime committed on or after November 1, 1989, a conviction is considered  
6 to have occurred upon the pronouncement of sentence in open court. However, when sentences are  
7 imposed for two or more convictions arising out of the same conduct or criminal episode, none of  
8 the convictions is considered to have occurred prior to any of the other convictions arising out of  
9 the same conduct or criminal episode.

10 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-  
11 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open  
12 court of the suspended imposition of a sentence.

13 [(6)] (8) For purposes of this section, previous convictions must be proven pursuant to ORS  
14 137.079.

15 **(9) A person sentenced under this section shall be sentenced to at least the presumptive**  
16 **sentence described in subsection (1) or (3) of this section if:**

17 **(a) At the time of the commission of the current crime of conviction, the person was on**  
18 **probation for a crime described in this section; and**

19 **(b) That probationary sentence was a departure from a presumptive sentence described**  
20 **in subsection (1) or (3) of this section.**

21 **SECTION 2.** ORS 137.750 is amended to read:

22 137.750. (1) When a court sentences a defendant to a term of incarceration upon conviction of  
23 a crime, the court shall order on the record in open court as part of the sentence imposed that the  
24 defendant may be considered by the executing or releasing authority for any form of temporary  
25 leave from custody, reduction in sentence, work release[, *alternative incarceration program*] or pro-  
26 gram of conditional or supervised release authorized by law for which the defendant is otherwise  
27 eligible at the time of sentencing, unless the court finds on the record in open court substantial and  
28 compelling reasons to order that the defendant not be considered for such leave, release or pro-  
29 grams.

30 (2) The executing or releasing authority may consider the defendant for the programs described  
31 in subsection (1) of this section only upon order of the sentencing court appearing in the judgment.

32 (3) As used in this section:

33 (a) “Executing or releasing authority” means the Department of Corrections, State Board of  
34 Parole and Post-Prison Supervision, Psychiatric Security Review Board, sentencing court or super-  
35 visory authority.

36 (b) “Supervisory authority” has the meaning given that term in ORS 144.087.

37 **SECTION 3. (1) When the court sentences a defendant to a term of incarceration that**  
38 **exceeds one year, the court shall determine whether the defendant is eligible for a program.**  
39 **The court shall order in the judgment that the Department of Corrections may, in its dis-**  
40 **cretion, accept the defendant into a program if, after considering the following factors, the**  
41 **court finds that participation in a program is appropriate:**

42 **(a) The requirements described in subsections (2), (3) and (4) of this section;**

43 **(b) The nature of the offense;**

44 **(c) The harm to the victim caused by the defendant’s criminal conduct; and**

45 **(d) Whether society would benefit from and community safety would be enhanced by the**

1 **defendant participating in a program.**

2 **(2) Except as provided in subsection (5) of this section, a defendant may not participate**  
3 **in a program if the defendant:**

4 **(a) Is being sentenced for a crime under ORS 163.145, 163.165 (1)(a) or (b) or 811.705 (2)(b);**  
5 **or**

6 **(b) Has previously completed a program, was released on post-prison supervision under**  
7 **ORS 421.508 and is being sentenced for a crime committed less than five years from the date**  
8 **the defendant was released from physical custody or from the end of the transitional leave**  
9 **period described in ORS 421.510, whichever occurs later.**

10 **(3) A defendant who is being sentenced for a crime described in ORS 181.594 (4) may not**  
11 **participate in a program.**

12 **(4) If the court determines that a defendant is eligible for a program, the court shall:**

13 **(a) Order on the record in open court as part of the sentence imposed that the defendant**  
14 **may be considered by the department for a program; and**

15 **(b) State on the record that if the department accepts the defendant into a program, the**  
16 **defendant may not be released from a program on post-prison supervision until the defendant**  
17 **has no more than 24 months remaining to serve on the term of incarceration imposed by the**  
18 **court.**

19 **(5) Subject to the requirements of subsections (3) and (4) of this section, the parties may**  
20 **stipulate to a defendant's program eligibility. If the stipulation is approved by the court, the**  
21 **court need not make explicit findings regarding the factors described in subsection (1)(b) to**  
22 **(d) of this section.**

23 **(6) As used in this section, "program" has the meaning given that term in ORS 421.502.**

24 **SECTION 4.** ORS 137.712 is amended to read:

25 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of  
26 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-  
27 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the  
28 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,  
29 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first  
30 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS  
31 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice  
32 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700  
33 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)  
34 of this section and finds that a substantial and compelling reason under the rules of the Oregon  
35 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under  
36 this subsection, the person is **only** eligible for a reduction in the sentence as provided in ORS  
37 421.121, **169.110 or 169.120** [and any other statute].

38 **(b) In order to make a dispositional departure under this section, the court must make the fol-**  
39 **lowing additional findings on the record:**

40 **(A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this**  
41 **subsection;**

42 **(B) A sentence of probation will be more effective than a prison term in reducing the risk of**  
43 **offender recidivism; and**

44 **(C) A sentence of probation will better serve to protect society.**

45 **(2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on**

1 the record by a preponderance of the evidence:

2 (a) If the conviction is for manslaughter in the second degree:

3 (A) That the defendant is the mother or father of the victim;

4 (B) That the death of the victim was the result of an injury or illness that was not caused by  
5 the defendant;

6 (C) That the defendant treated the injury or illness solely by spiritual treatment in accordance  
7 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual  
8 treatment would bring about the victim's recovery from the injury or illness;

9 (D) That no other person previously under the defendant's care has died or sustained significant  
10 physical injury as a result of or despite the use of spiritual treatment, regardless of whether the  
11 spiritual treatment was used alone or in conjunction with medical care; and

12 (E) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
13 of this section or for criminal mistreatment in the second degree.

14 (b) If the conviction is for assault in the second degree:

15 (A) That the victim was not physically injured by means of a deadly weapon;

16 (B) That the victim did not suffer a significant physical injury; and

17 (C) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
18 of this section.

19 (c) If the conviction is for kidnapping in the second degree:

20 (A) That the victim was at least 12 years of age at the time the crime was committed; and

21 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
22 of this section.

23 (d) If the conviction is for robbery in the second degree:

24 (A) That the victim did not suffer a significant physical injury;

25 (B) That, if the defendant represented by words or conduct that the defendant was armed with  
26 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-  
27 nificant physical injury;

28 (C) That, if the defendant represented by words or conduct that the defendant was armed with  
29 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical  
30 injury; and

31 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
32 of this section.

33 (e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual  
34 abuse in the first degree:

35 (A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the  
36 offense;

37 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of  
38 this section;

39 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile  
40 court for an act that would have been a felony sexual offense if the act had been committed by an  
41 adult;

42 (D) That the defendant was no more than five years older than the victim at the time of the  
43 offense;

44 (E) That the offense did not involve sexual contact with any minor other than the victim; and

45 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being

1 under 18 years of age at the time of the offense.

2 (f) If the conviction is for unlawful sexual penetration in the second degree:

3 (A) That the victim was 12 years of age or older at the time of the offense;

4 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of  
5 this section;

6 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile  
7 court for an act that would have been a felony sexual offense if the act had been committed by an  
8 adult;

9 (D) That the defendant was no more than five years older than the victim at the time of the  
10 offense;

11 (E) That the offense did not involve sexual contact with any minor other than the victim;

12 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being  
13 under 18 years of age at the time of the offense; and

14 (G) That the object used to commit the unlawful sexual penetration was the hand or any part  
15 thereof of the defendant.

16 (3) In making the findings required by subsections (1) and (2) of this section, the court may  
17 consider any evidence presented at trial and may receive and consider any additional relevant in-  
18 formation offered by either party at sentencing.

19 (4) The crimes to which subsection (2)(a)(E), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section  
20 refer are:

21 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);

22 (b) Escape in the first degree, as defined in ORS 162.165;

23 (c) Aggravated murder, as defined in ORS 163.095;

24 (d) Criminally negligent homicide, as defined in ORS 163.145;

25 (e) Assault in the third degree, as defined in ORS 163.165;

26 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

27 (g) Rape in the third degree, as defined in ORS 163.355;

28 (h) Sodomy in the third degree, as defined in ORS 163.385;

29 (i) Sexual abuse in the second degree, as defined in ORS 163.425;

30 (j) Stalking, as defined in ORS 163.732;

31 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person  
32 felony under the rules of the Oregon Criminal Justice Commission;

33 (L) Arson in the first degree, as defined in ORS 164.325;

34 (m) Robbery in the third degree, as defined in ORS 164.395;

35 (n) Intimidation in the first degree, as defined in ORS 166.165;

36 (o) Promoting prostitution, as defined in ORS 167.012; and

37 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)  
38 of this subsection.

39 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section  
40 violates a condition of probation by committing a new crime, the court shall revoke the probation  
41 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-  
42 tice Commission.

43 (6) As used in this section:

44 (a) "Conviction" includes, but is not limited to:

45 (A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS

1 419C.005, if the person was at least 15 years of age at the time the person committed the offense  
2 that brought the person within the jurisdiction of the juvenile court.

3 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-  
4 stitute a crime listed in subsection (4) of this section.

5 (b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the  
6 current crime provided that the prior conviction is based on a crime committed in a separate crim-  
7 inal episode. "Previous conviction" does not include a conviction for a Class C felony, including an  
8 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was  
9 entered within the 10-year period immediately preceding the date on which the current crime was  
10 committed.

11 (c) "Significant physical injury" means a physical injury that:

12 (A) Creates a risk of death that is not a remote risk;

13 (B) Causes a serious and temporary disfigurement;

14 (C) Causes a protracted disfigurement; or

15 (D) Causes a prolonged impairment of health or the function of any bodily organ.

16 **SECTION 5.** ORS 137.712, as amended by section 22, chapter 843, Oregon Laws 2005, is  
17 amended to read:

18 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of  
19 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-  
20 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the  
21 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,  
22 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first  
23 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS  
24 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice  
25 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700  
26 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)  
27 of this section and finds that a substantial and compelling reason under the rules of the Oregon  
28 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under  
29 this subsection, the person is **only** eligible for a reduction in the sentence as provided in ORS  
30 421.121, **169.110 or 169.120** [and any other statute].

31 (b) In order to make a dispositional departure under this section, the court must make the fol-  
32 lowing additional findings on the record:

33 (A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this  
34 subsection;

35 (B) A sentence of probation will be more effective than a prison term in reducing the risk of  
36 offender recidivism; and

37 (C) A sentence of probation will better serve to protect society.

38 (2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on  
39 the record by a preponderance of the evidence:

40 (a) If the conviction is for manslaughter in the second degree:

41 (A) That the defendant is the mother or father of the victim;

42 (B) That the death of the victim was the result of an injury or illness that was not caused by  
43 the defendant;

44 (C) That the defendant treated the injury or illness solely by spiritual treatment in accordance  
45 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual

1 treatment would bring about the victim's recovery from the injury or illness;

2 (D) That no other person previously under the defendant's care has died or sustained significant  
3 physical injury as a result of or despite the use of spiritual treatment, regardless of whether the  
4 spiritual treatment was used alone or in conjunction with medical care; and

5 (E) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
6 of this section or for criminal mistreatment in the second degree.

7 (b) If the conviction is for assault in the second degree:

8 (A) That the victim was not physically injured by means of a deadly weapon;

9 (B) That the victim did not suffer a significant physical injury; and

10 (C) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
11 of this section.

12 (c) If the conviction is for kidnapping in the second degree:

13 (A) That the victim was at least 12 years of age at the time the crime was committed; and

14 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
15 of this section.

16 (d) If the conviction is for robbery in the second degree:

17 (A) That the victim did not suffer a significant physical injury;

18 (B) That, if the defendant represented by words or conduct that the defendant was armed with  
19 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-  
20 nificant physical injury;

21 (C) That, if the defendant represented by words or conduct that the defendant was armed with  
22 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical  
23 injury; and

24 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
25 of this section.

26 (e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual  
27 abuse in the first degree:

28 (A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the  
29 offense;

30 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of  
31 this section;

32 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile  
33 court for an act that would have been a felony sexual offense if the act had been committed by an  
34 adult;

35 (D) That the defendant was no more than five years older than the victim at the time of the  
36 offense;

37 (E) That the offense did not involve sexual contact with any minor other than the victim; and

38 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being  
39 under 18 years of age at the time of the offense.

40 (f) If the conviction is for unlawful sexual penetration in the second degree:

41 (A) That the victim was 12 years of age or older at the time of the offense;

42 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of  
43 this section;

44 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile  
45 court for an act that would have been a felony sexual offense if the act had been committed by an



1 adult;

2 (D) That the defendant was no more than five years older than the victim at the time of the  
3 offense;

4 (E) That the offense did not involve sexual contact with any minor other than the victim;

5 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being  
6 under 18 years of age at the time of the offense; and

7 (G) That the object used to commit the unlawful sexual penetration was the hand or any part  
8 thereof of the defendant.

9 (3) In making the findings required by subsections (1) and (2) of this section, the court may  
10 consider any evidence presented at trial and may receive and consider any additional relevant in-  
11 formation offered by either party at sentencing.

12 (4) The crimes to which subsection (2)(a)(E), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section  
13 refer are:

14 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);

15 (b) Escape in the first degree, as defined in ORS 162.165;

16 (c) Aggravated murder, as defined in ORS 163.095;

17 (d) Criminally negligent homicide, as defined in ORS 163.145;

18 (e) Assault in the third degree, as defined in ORS 163.165;

19 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

20 (g) Rape in the third degree, as defined in ORS 163.355;

21 (h) Sodomy in the third degree, as defined in ORS 163.385;

22 (i) Sexual abuse in the second degree, as defined in ORS 163.425;

23 (j) Stalking, as defined in ORS 163.732;

24 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person  
25 felony under the rules of the Oregon Criminal Justice Commission;

26 (L) Arson in the first degree, as defined in ORS 164.325;

27 (m) Robbery in the third degree, as defined in ORS 164.395;

28 (n) Intimidation in the first degree, as defined in ORS 166.165;

29 (o) Promoting prostitution, as defined in ORS 167.012; and

30 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)  
31 of this subsection.

32 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section  
33 violates a condition of probation by committing a new crime, the court shall revoke the probation  
34 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-  
35 tice Commission.

36 (6) As used in this section:

37 (a) "Conviction" includes, but is not limited to:

38 (A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS  
39 419C.005, if the person was at least 15 years of age at the time the person committed the offense  
40 that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include  
41 a juvenile court adjudication described in this subparagraph if the person successfully asserted the  
42 defense set forth in ORS 419C.522.

43 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-  
44 stitute a crime listed in subsection (4) of this section.

45 (b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the

1 current crime provided that the prior conviction is based on a crime committed in a separate crim-  
2 inal episode. "Previous conviction" does not include a conviction for a Class C felony, including an  
3 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was  
4 entered within the 10-year period immediately preceding the date on which the current crime was  
5 committed.

6 (c) "Significant physical injury" means a physical injury that:

7 (A) Creates a risk of death that is not a remote risk;

8 (B) Causes a serious and temporary disfigurement;

9 (C) Causes a protracted disfigurement; or

10 (D) Causes a prolonged impairment of health or the function of any bodily organ.

11 **SECTION 6.** ORS 421.502 is amended to read:

12 421.502. As used in ORS 421.502 to 421.512:

13 (1) "Cognitive restructuring" means any rehabilitation process that redirects the thinking of an  
14 offender into more socially acceptable directions and that is generally accepted by rehabilitation  
15 professionals.

16 (2) "Department" means the Department of Corrections.

17 (3)(a) "Offender" **means a person whom the court has ordered the department to consider**  
18 **for a program under section 3 of this 2007 Act.** [*includes a person who:*]

19 [(A) *Is in the custody of the department; and*

20 [(B) *Is at least 18 years of age at the time of entry into the program.*]

21 [(b) "Offender" *includes a person who is under 18 years of age and has been convicted of a crime*  
22 *upon remand from the juvenile court.*]

23 [(c) "Offender" *does not include a person convicted of a crime described in ORS 163.095, 163.115,*  
24 *163.118, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425,*  
25 *163.427, 163.435, 163.525, 164.325 or 164.415.*]

26 (4) "Program" means the special alternative incarceration program established under ORS  
27 421.504 and the intensive alternative incarceration addiction program established under ORS  
28 421.506.

29 **SECTION 7.** ORS 421.508 is amended to read:

30 421.508. (1)(a) The Department of Corrections is responsible for determining which offenders are  
31 eligible to participate in, and which offenders are accepted for, a program. However, the department  
32 may not consider an offender for a program unless authorized to do so as provided in [*ORS*  
33 *137.750*] **section 3 of this 2007 Act.**

34 (b) The department may not accept an offender into a program unless the offender submits a  
35 written request to participate. The request must contain a signed statement providing that the  
36 offender:

37 (A) Is physically and mentally able to withstand the rigors of the program; and

38 (B) Has reviewed the program description provided by the department and agrees to comply with  
39 each of the requirements of the program.

40 (c) The department may deny, for any reason, a request to participate in a program. The de-  
41 partment shall make the final determination regarding an offender's physical or mental ability to  
42 withstand the rigors of the program.

43 (d) If the department determines that an offender's participation in a program is consistent with  
44 the safety of the community, the welfare of the applicant, the program objectives and the rules of  
45 the department, the department may, in its discretion, accept the offender into the program.

1 (2) The department may suspend an offender from a program for administrative or disciplinary  
2 reasons.

3 **(3) The department may not accept an offender into a program if the offender has been**  
4 **removed from a program by the department during the term of incarceration for which the**  
5 **offender is currently sentenced.**

6 [(3)] (4) When an offender has successfully completed a program, the department may release the  
7 offender on post-prison supervision[,] if:

8 (a) **The offender has served at least 12 months of the term of incarceration imposed; and**

9 (b) **The offender has no more than 24 months remaining on the term of incarceration**  
10 **imposed.**

11 **(5) For the purposes of calculating the amount of the term of incarceration served and**  
12 **remaining under subsection (4) of this section, the department may not include the reduction**  
13 **in the term of incarceration provided for in ORS 421.121.**

14 (6) Successful completion of a program does not relieve the offender from fulfilling any other  
15 obligations imposed as part of the sentence including, but not limited to, the payment of restitution  
16 and fines.

17 **SECTION 8.** ORS 421.510 is amended to read:

18 421.510. Offenders participating in a program are eligible for transitional leave as provided in  
19 ORS 421.168. Notwithstanding the 30-day maximum period allowed in ORS 421.168, the Department  
20 of Corrections may grant a transitional leave of up to 90 days for an offender in a program. The  
21 offender may not be released on transitional leave more than 90 days prior to the offender's dis-  
22 charge date. **During the period of transitional leave, the offender must reside in and be**  
23 **supervised within this state.**

24 **SECTION 9.** Section 3 of this 2007 Act and the amendments to ORS 137.712, 137.717,  
25 137.750, 421.502, 421.508 and 421.510 by sections 1, 2, 4, 5, 6, 7 and 8 of this 2007 Act apply to  
26 crimes committed on or after the effective date of this 2007 Act.  
27