

HOUSE AMENDMENTS TO HOUSE BILL 2329

By COMMITTEE ON JUDICIARY

May 4

1 In line 2 of the printed bill, after the semicolon delete the rest of the line and insert “creating
2 new provisions; and amending ORS 137.712, 137.717, 137.750, 421.502, 421.508 and 421.510.”.

3 Delete lines 4 through 18 and insert:

4 “**SECTION 1.** ORS 137.717 is amended to read:

5 “137.717. (1) When a court sentences a person convicted of:

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

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

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

15 “(b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
16 164.135, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under
17 ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013,
18 **criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent**
19 **use of a credit card under ORS 165.055 (4)(b)**, identity theft under ORS 165.800, possession of a
20 stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the
21 presumptive sentence is [13] **18** months of incarceration, unless the rules of the Oregon Criminal
22 Justice Commission prescribe a longer presumptive sentence, if the person has:

23 “(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
24 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, **rob-**
25 **bery in the third degree under ORS 164.395**, robbery in the second degree under ORS 164.405,
26 robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300 or
27 trafficking in stolen vehicles under ORS 819.310; or

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

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

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

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

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

34 “[*(d)*] (c) Unauthorized use of a vehicle under ORS 164.135;

35 “[*(e)*] (d) Burglary in the second degree under ORS 164.215;

1 “[f] *Burglary in the first degree under ORS 164.225;*
2 “[g] (e) Criminal mischief in the second degree under ORS 164.354;
3 “[h] (f) Criminal mischief in the first degree under ORS 164.365;
4 “[i] (g) Computer crime under ORS 164.377;
5 “[j] (h) Forgery in the second degree under ORS 165.007;
6 “[k] (i) Forgery in the first degree under ORS 165.013;
7 “[L] (j) Criminal possession of a forged instrument in the second degree under ORS 165.017;
8 “[m] (k) Criminal possession of a forged instrument in the first degree under ORS 165.022;
9 “[n] (L) Fraudulent use of a credit card under ORS 165.055;
10 “[o] (m) Identity theft under ORS 165.800;
11 “[p] (n) Possession of a stolen vehicle under ORS 819.300; and
12 “[q] (o) Trafficking in stolen vehicles under ORS 819.310.
13 **“(3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall**
14 **be increased by two months for each previous conviction the person has that:**
15 **“(A) Was for any of the crimes listed in subsection (1) or (2) of this section; and**
16 **“(B) Was not used as a predicate for the presumptive sentence under subsection (1)(a)**
17 **or (b) of this section.**
18 **“(b) Previous convictions under this subsection may not increase a presumptive sentence**
19 **described in subsection (1)(a) or (b) of this section by more than 12 months.**
20 “[3] (4) The court may impose a sentence other than the sentence provided by subsection (1)
21 **or (3) of this section if the court imposes:**
22 (a) A longer term of incarceration that is otherwise required or authorized by law; or
23 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
24 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
25 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
26 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
27 subsection (1) **or (3) of this section.**
28 **“(5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a per-**
29 **son under subsection (4) of this section to a term of incarceration that exceeds the period**
30 **of time described in ORS 161.605.**
31 “[4] (6) As used in this section, ‘previous conviction’ includes:
32 (a) Convictions occurring before, on or after July 1, 2003; and
33 (b) Convictions entered in any other state or federal court for comparable offenses.
34 “[5)(a)] (7)(a) For a crime committed on or after November 1, 1989, a conviction is considered
35 to have occurred upon the pronouncement of sentence in open court. However, when sentences are
36 imposed for two or more convictions arising out of the same conduct or criminal episode, none of
37 the convictions is considered to have occurred prior to any of the other convictions arising out of
38 the same conduct or criminal episode.
39 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
40 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open
41 court of the suspended imposition of a sentence.
42 “[6] (8) For purposes of this section, previous convictions must be proven pursuant to ORS
43 137.079.
44 **“(9) A person sentenced under this section shall be sentenced to at least the presumptive**
45 **sentence described in subsection (1) or (3) of this section if:**

1 “(a) At the time of the commission of the current crime of conviction, the person was
2 on probation for a crime described in this section; and

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

5 “**SECTION 2.** ORS 137.750 is amended to read:

6 “137.750. (1) When a court sentences a defendant to a term of incarceration upon conviction of
7 a crime, the court shall order on the record in open court as part of the sentence imposed that the
8 defendant may be considered by the executing or releasing authority for any form of temporary
9 leave from custody, reduction in sentence, work release[, *alternative incarceration program*] or pro-
10 gram of conditional or supervised release authorized by law for which the defendant is otherwise
11 eligible at the time of sentencing, unless the court finds on the record in open court substantial and
12 compelling reasons to order that the defendant not be considered for such leave, release or pro-
13 grams.

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

16 “(3) As used in this section:

17 “(a) ‘Executing or releasing authority’ means the Department of Corrections, State Board of
18 Parole and Post-Prison Supervision, Psychiatric Security Review Board, sentencing court or super-
19 visory authority.

20 “(b) ‘Supervisory authority’ has the meaning given that term in ORS 144.087.

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

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

27 “(b) **The nature of the offense;**

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

29 “(d) **Whether society would benefit from and community safety would be enhanced by the**
30 **defendant participating in a program.**

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

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

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

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

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

42 “(a) **Order on the record in open court as part of the sentence imposed that the defend-**
43 **ant may be considered by the department for a program; and**

44 “(b) **State on the record that if the department accepts the defendant into a program,**
45 **the defendant may not be released from a program on post-prison supervision until the de-**

1 **defendant has no more than 24 months remaining to serve on the term of incarceration im-**
2 **posed by the court.**

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

7 **“(6) As used in this section, ‘program’ has the meaning given that term in ORS 421.502.**

8 **“SECTION 4.** ORS 137.712 is amended to read:

9 **“137.712. (1)(a)** Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
10 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
11 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
12 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
13 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
14 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
15 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
16 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
17 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
18 of this section and finds that a substantial and compelling reason under the rules of the Oregon
19 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
20 this subsection, the person is **only** eligible for a reduction in the sentence as provided in ORS
21 421.121, **169.110 or 169.120** [and any other statute].

22 **“(b)** In order to make a dispositional departure under this section, the court must make the
23 following additional findings on the record:

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

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

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

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

31 **“(a)** If the conviction is for manslaughter in the second degree:

32 **“(A)** That the defendant is the mother or father of the victim;

33 **“(B)** That the death of the victim was the result of an injury or illness that was not caused by
34 the defendant;

35 **“(C)** That the defendant treated the injury or illness solely by spiritual treatment in accordance
36 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual
37 treatment would bring about the victim’s recovery from the injury or illness;

38 **“(D)** That no other person previously under the defendant’s care has died or sustained signif-
39 icant physical injury as a result of or despite the use of spiritual treatment, regardless of whether
40 the spiritual treatment was used alone or in conjunction with medical care; and

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

43 **“(b)** If the conviction is for assault in the second degree:

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

45 **“(B)** That the victim did not suffer a significant physical injury; and

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

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

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

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

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

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

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

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

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

17 “(e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual
18 abuse in the first degree:

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

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

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

26 “(D) That the defendant was no more than five years older than the victim at the time of the
27 offense;

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

29 “(F) That the victim’s lack of consent was due solely to incapacity to consent by reason of being
30 under 18 years of age at the time of the offense.

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

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

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

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

38 “(D) That the defendant was no more than five years older than the victim at the time of the
39 offense;

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

41 “(F) That the victim’s lack of consent was due solely to incapacity to consent by reason of being
42 under 18 years of age at the time of the offense; and

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

45 “(3) In making the findings required by subsections (1) and (2) of this section, the court may

1 consider any evidence presented at trial and may receive and consider any additional relevant in-
2 formation offered by either party at sentencing.

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

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

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

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

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

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

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

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

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

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

14 “(j) Stalking, as defined in ORS 163.732;

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

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

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

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

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

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

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

27 “(6) As used in this section:

28 “(a) ‘Conviction’ includes, but is not limited to:

29 “(A) A juvenile court adjudication finding a person within the court’s jurisdiction under ORS
30 419C.005, if the person was at least 15 years of age at the time the person committed the offense
31 that brought the person within the jurisdiction of the juvenile court.

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

34 “(b) ‘Previous conviction’ means a conviction that was entered prior to imposing sentence on the
35 current crime provided that the prior conviction is based on a crime committed in a separate crim-
36 inal episode. ‘Previous conviction’ does not include a conviction for a Class C felony, including an
37 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
38 entered within the 10-year period immediately preceding the date on which the current crime was
39 committed.

40 “(c) ‘Significant physical injury’ means a physical injury that:

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

42 “(B) Causes a serious and temporary disfigurement;

43 “(C) Causes a protracted disfigurement; or

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

45 “**SECTION 5.** ORS 137.712, as amended by section 22, chapter 843, Oregon Laws 2005, is

1 amended to read:

2 “137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
3 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
4 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
5 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
6 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
7 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
8 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
9 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
10 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
11 of this section and finds that a substantial and compelling reason under the rules of the Oregon
12 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
13 this subsection, the person is **only** eligible for a reduction in the sentence as provided in ORS
14 421.121, **169.110 or 169.120** [and any other statute].

15 “(b) In order to make a dispositional departure under this section, the court must make the
16 following additional findings on the record:

17 “(A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this
18 subsection;

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

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

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

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

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

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

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

31 “(D) That no other person previously under the defendant’s care has died or sustained signif-
32 icant physical injury as a result of or despite the use of spiritual treatment, regardless of whether
33 the spiritual treatment was used alone or in conjunction with medical care; and

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

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

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

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

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

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

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

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

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

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

2 “(B) That, if the defendant represented by words or conduct that the defendant was armed with

3 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-

4 nificant physical injury;

5 “(C) That, if the defendant represented by words or conduct that the defendant was armed with

6 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical

7 injury; and

8 “(D) That the defendant does not have a previous conviction for a crime listed in subsection (4)

9 of this section.

10 “(e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual

11 abuse in the first degree:

12 “(A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the

13 offense;

14 “(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of

15 this section;

16 “(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile

17 court for an act that would have been a felony sexual offense if the act had been committed by an

18 adult;

19 “(D) That the defendant was no more than five years older than the victim at the time of the

20 offense;

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

22 “(F) That the victim’s lack of consent was due solely to incapacity to consent by reason of being

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

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

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

26 “(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of

27 this section;

28 “(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile

29 court for an act that would have been a felony sexual offense if the act had been committed by an

30 adult;

31 “(D) That the defendant was no more than five years older than the victim at the time of the

32 offense;

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

34 “(F) That the victim’s lack of consent was due solely to incapacity to consent by reason of being

35 under 18 years of age at the time of the offense; and

36 “(G) That the object used to commit the unlawful sexual penetration was the hand or any part

37 thereof of the defendant.

38 “(3) In making the findings required by subsections (1) and (2) of this section, the court may

39 consider any evidence presented at trial and may receive and consider any additional relevant in-

40 formation offered by either party at sentencing.

41 “(4) The crimes to which subsection (2)(a)(E), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section

42 refer are:

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

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

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

1 “(d) Criminally negligent homicide, as defined in ORS 163.145;
2 “(e) Assault in the third degree, as defined in ORS 163.165;
3 “(f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);
4 “(g) Rape in the third degree, as defined in ORS 163.355;
5 “(h) Sodomy in the third degree, as defined in ORS 163.385;
6 “(i) Sexual abuse in the second degree, as defined in ORS 163.425;
7 “(j) Stalking, as defined in ORS 163.732;
8 “(k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
9 felony under the rules of the Oregon Criminal Justice Commission;
10 “(L) Arson in the first degree, as defined in ORS 164.325;
11 “(m) Robbery in the third degree, as defined in ORS 164.395;
12 “(n) Intimidation in the first degree, as defined in ORS 166.165;
13 “(o) Promoting prostitution, as defined in ORS 167.012; and
14 “(p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
15 of this subsection.
16 “(5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section
17 violates a condition of probation by committing a new crime, the court shall revoke the probation
18 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-
19 tice Commission.
20 “(6) As used in this section:
21 “(a) ‘Conviction’ includes, but is not limited to:
22 “(A) A juvenile court adjudication finding a person within the court’s jurisdiction under ORS
23 419C.005, if the person was at least 15 years of age at the time the person committed the offense
24 that brought the person within the jurisdiction of the juvenile court. ‘Conviction’ does not include
25 a juvenile court adjudication described in this subparagraph if the person successfully asserted the
26 defense set forth in ORS 419C.522.
27 “(B) A conviction in another jurisdiction for a crime that if committed in this state would con-
28 stitute a crime listed in subsection (4) of this section.
29 “(b) ‘Previous conviction’ means a conviction that was entered prior to imposing sentence on the
30 current crime provided that the prior conviction is based on a crime committed in a separate crim-
31 inal episode. ‘Previous conviction’ does not include a conviction for a Class C felony, including an
32 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
33 entered within the 10-year period immediately preceding the date on which the current crime was
34 committed.
35 “(c) ‘Significant physical injury’ means a physical injury that:
36 “(A) Creates a risk of death that is not a remote risk;
37 “(B) Causes a serious and temporary disfigurement;
38 “(C) Causes a protracted disfigurement; or
39 “(D) Causes a prolonged impairment of health or the function of any bodily organ.
40 “**SECTION 6.** ORS 421.502 is amended to read:
41 “421.502. As used in ORS 421.502 to 421.512:
42 “(1) ‘Cognitive restructuring’ means any rehabilitation process that redirects the thinking of an
43 offender into more socially acceptable directions and that is generally accepted by rehabilitation
44 professionals.
45 “(2) ‘Department’ means the Department of Corrections.

1 “(3)[(a)] ‘Offender’ means a person whom the court has ordered the department to consider
2 for a program under section 3 of this 2007 Act. [includes a person who:]

3 “[A] Is in the custody of the department; and]

4 “[B] Is at least 18 years of age at the time of entry into the program.]

5 “[b] ‘Offender’ includes a person who is under 18 years of age and has been convicted of a crime
6 upon remand from the juvenile court.]

7 “[c] ‘Offender’ does not include a person convicted of a crime described in ORS 163.095, 163.115,
8 163.118, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425,
9 163.427, 163.435, 163.525, 164.325 or 164.415.]

10 “(4) ‘Program’ means the special alternative incarceration program established under ORS
11 421.504 and the intensive alternative incarceration addiction program established under ORS
12 421.506.

13 “**SECTION 7.** ORS 421.508 is amended to read:

14 “421.508. (1)(a) The Department of Corrections is responsible for determining which offenders
15 are eligible to participate in, and which offenders are accepted for, a program. However, the de-
16 partment may not consider an offender for a program unless authorized to do so as provided in [ORS
17 137.750] **section 3 of this 2007 Act.**

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

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

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

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

27 “(d) If the department determines that an offender’s participation in a program is consistent with
28 the safety of the community, the welfare of the applicant, the program objectives and the rules of
29 the department, the department may, in its discretion, accept the offender into the program.

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

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

35 “[3] (4) When an offender has successfully completed a program, the department may release
36 the offender on post-prison supervision[.] if:

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

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

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

44 “(6) Successful completion of a program does not relieve the offender from fulfilling any other
45 obligations imposed as part of the sentence including, but not limited to, the payment of restitution

1 and fines.

2 **“SECTION 8.** ORS 421.510 is amended to read:

3 “421.510. Offenders participating in a program are eligible for transitional leave as provided in
4 ORS 421.168. Notwithstanding the 30-day maximum period allowed in ORS 421.168, the Department
5 of Corrections may grant a transitional leave of up to 90 days for an offender in a program. The
6 offender may not be released on transitional leave more than 90 days prior to the offender’s dis-
7 charge date. **During the period of transitional leave, the offender must reside in and be**
8 **supervised within this state.**

9 **“SECTION 9. Section 3 of this 2007 Act and the amendments to ORS 137.712, 137.717,**
10 **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**
11 **crimes committed on or after the effective date of this 2007 Act.”.**

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