

# House Bill 3638

Sponsored by 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 **as introduced**.

Modifies process for release on post-prison supervision following successful completion of alternative incarceration program. Modifies certain rights and privileges of persons convicted of felony while incarcerated. Requires counties, with state reimbursement of costs, to conduct national criminal history check for persons incarcerated in county facilities.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; amending ORS 137.281, 137.721, 137.750, 421.502, 421.508,  
3 and 421.510; and declaring an emergency.

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

5 **SECTION 1. (1) When a court sentences a defendant to a term of incarceration that ex-**  
6 **ceeds one year, the defendant may request a determination of the defendant's eligibility for**  
7 **release on post-prison supervision under ORS 421.508 (4). The court shall order in the judg-**  
8 **ment that the Department of Corrections may release the defendant on post-prison super-**  
9 **vision under ORS 421.508 (4) only if, after a hearing, the court finds that:**

10 (a) **The defendant meets the eligibility requirements of subsections (2) and (3) of this**  
11 **section;**

12 (b) **The defendant was not on probation, parole or post-prison supervision for an offense**  
13 **listed in ORS 137.712 (4) at the time of the commission of the current crime of conviction;**

14 (c) **The defendant has not previously been released on post-prison supervision under ORS**  
15 **421.508 (4);**

16 (d) **The harm or loss caused by the crime is not significantly greater than usual for that**  
17 **type of crime;**

18 (e) **The crime was not part of an organized criminal operation; and**

19 (f) **After considering the nature of the offense and the harm to the victim, the defend-**  
20 **ant's successful completion of the program would:**

21 (A) **Increase public safety;**

22 (B) **Enhance the likelihood that the defendant would be rehabilitated; and**

23 (C) **Not unduly reduce the appropriate punishment.**

24 (2) **Except as provided in subsection (4) of this section, a defendant may not be released**  
25 **on post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a**  
26 **crime under ORS 163.145, 163.165 (1)(a) or (b) or 811.705 (2)(b).**

27 (3) **A defendant may not be released on post-prison supervision under ORS 421.508 (4) if**  
28 **the defendant is being sentenced for a crime listed in ORS 137.700, 137.707, 163.095 or 181.594**  
29 **(4).**

30 (4) **Notwithstanding subsection (1) of this section, the parties may stipulate to a defend-**

**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 ant's eligibility for release on post-prison supervision under ORS 421.508 (4). If the court ac-  
 2 cepts the stipulation, the court does not need to make explicit findings regarding the factors  
 3 described in subsection (1)(b) to (f) of this section. The parties may not stipulate to the de-  
 4 fendant's release on post-prison supervision under ORS 421.508 (4) if the defendant is being  
 5 sentenced for a crime described in subsection (3) of this section.

6 (5) If the court makes the findings described in subsection (1) of this section or accepts  
 7 the stipulation of the parties under subsection (4) of this section, the court shall:

8 (a) Order on the record in open court as part of the sentence imposed that the defendant  
 9 may be considered by the department for release on post-prison supervision under ORS  
 10 421.508 (4); and

11 (b) Include the order described in paragraph (a) of this subsection in the judgment.

12 (6) Subject to the requirements of this section, the court may order that the defendant  
 13 serve a minimum period of incarceration before the defendant is released on post-prison  
 14 supervision under ORS 421.508 (4). Nothing in this section authorizes the release of the de-  
 15 fendant on post-prison supervision before the defendant has served the period of time de-  
 16 scribed in ORS 421.508 (4)(b).

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

18 137.750. (1) When a court sentences a defendant to a term of incarceration upon conviction of  
 19 a crime, the court shall order on the record in open court as part of the sentence imposed that the  
 20 defendant may be considered by the executing or releasing authority for any form of temporary  
 21 leave from custody, reduction in sentence, work release[, *alternative incarceration program*] or pro-  
 22 gram of conditional or supervised release authorized by law for which the defendant is otherwise  
 23 eligible at the time of sentencing, unless the court finds on the record in open court substantial and  
 24 compelling reasons to order that the defendant not be considered for such leave, release or [*pro-*  
 25 *grams*] **program**.

26 (2) The executing or releasing authority may consider the defendant for [*the programs*] a **pro-**  
 27 **gram** described in subsection (1) of this section only upon order of the sentencing court appearing  
 28 in the judgment.

29 (3) As used in this section:

30 (a) "Executing or releasing authority" means the Department of Corrections, State Board of  
 31 Parole and Post-Prison Supervision, Psychiatric Security Review Board, sentencing court or super-  
 32 visory authority.

33 (b) "Supervisory authority" has the meaning given that term in ORS 144.087.

34 **SECTION 3.** ORS 421.502 is amended to read:

35 421.502. As used in ORS 421.502 to 421.512:

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

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

40 [(3)(a) "Offender" includes a person who:]

41 [(A) Is in the custody of the department; and]

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

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

45 [(c) "Offender" does not include a person convicted of a crime described in ORS 163.095, 163.115,

1 163.118, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425,  
 2 163.427, 163.435, 163.525, 164.325 or 164.415.]

3 [(4)] (3) "Program" means the special alternative incarceration program established under ORS  
 4 421.504 and the intensive alternative incarceration addiction program established under ORS  
 5 421.506.

6 **SECTION 4.** ORS 421.508 is amended to read:

7 421.508. (1)(a) The Department of Corrections is responsible for determining which offenders are  
 8 eligible to participate in, and which offenders are accepted for, a program. [*However, the department*  
 9 *may not consider an offender for a program unless authorized to do so as provided in ORS 137.750.*]

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

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

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

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

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

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

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

27 [(3)] (4) When an offender has successfully completed a program, the department may release the  
 28 offender on post-prison supervision **if:**

29 **(a) The court has entered the order described in section 1 of this 2008 Act; and**

30 **(b) The offender has served:**

31 **(A) A term of incarceration of at least one year; and**

32 **(B) Eighty percent of the term of incarceration imposed.**

33 **(5) For purposes of calculating the term of incarceration:**

34 **(a) Served under subsection (4)(b) of this section, the department shall include:**

35 **(A) The time that an offender is confined under ORS 137.370 (2)(a); and**

36 **(B) The time for which an offender is granted nonprison leave under ORS 421.510.**

37 **(b) Imposed under subsection (4)(b)(B) of this section, the department shall include any**  
 38 **reduction in the term of incarceration earned by the offender under ORS 421.121.**

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

42 **SECTION 5.** ORS 421.510 is amended to read:

43 421.510. [*Offenders participating in a program are eligible for transitional leave as provided in*  
 44 *ORS 421.168. Notwithstanding the 30-day maximum period allowed in ORS 421.168, the Department*  
 45 *of Corrections may grant a transitional leave of up to 90 days for an offender in a program. The*

1 offender may not be released on transitional leave more than 90 days prior to the offender's discharge  
2 date.]

3 **(1) The Department of Corrections may consider an offender for nonprison leave under  
4 this section if the court has entered the order described in section 1 of this 2008 Act.**

5 **(2) Nonprison leave shall provide offenders with an opportunity to secure appropriate  
6 transitional support when necessary for successful reintegration into the community prior  
7 to the offenders' discharge to post-prison supervision.**

8 **(3) An offender may submit a nonprison leave plan to the Department of Corrections.  
9 The plan shall indicate that the offender has secured an employment, educational or other  
10 transitional opportunity in the community to which the offender will be released and that a  
11 leave of up to 90 days is an essential part of the offender's successful reintegration into the  
12 community.**

13 **(4) Upon verification of the offender's nonprison leave plan, the department may grant  
14 nonprison leave no more than 90 days prior to the offender's date of release on post-prison  
15 supervision under ORS 421.508 (4).**

16 **(5) The department shall establish by rule a set of conditions for offenders released on  
17 nonprison leave. An offender on nonprison leave shall be subject to immediate return to  
18 prison for any violation of the conditions of nonprison leave.**

19 **(6) During the period of nonprison leave, the offender must reside in, and be supervised  
20 within, the state.**

21 **SECTION 6.** ORS 137.721 is amended to read:

22 137.721. [(1) When a court sentences a person convicted of:]

23 [(a) Manufacture of methamphetamine under ORS 475.886 or 475.888, the court may not impose a  
24 sentence of optional probation or grant a downward dispositional departure or a downward durational  
25 departure of more than one-half of the presumptive prison sentence under the rules of the Oregon  
26 Criminal Justice Commission if the person has a previous conviction for:]

27 [(A) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;]

28 [(B) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888,  
29 475.892 or 475.904; or]

30 [(C) Possession of a precursor substance with intent to manufacture a controlled substance under  
31 ORS 475.967.]

32 [(b) Delivery of methamphetamine under ORS 475.890 or 475.892, the court may not impose a sen-  
33 tence of optional probation or grant a downward dispositional departure under the rules of the Oregon  
34 Criminal Justice Commission if:]

35 [(A) The delivery involved a substantial quantity of methamphetamine as described in ORS  
36 475.900; and]

37 [(B) The person has a previous conviction for:]

38 [(i) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;]

39 [(ii) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888,  
40 475.892 or 475.904; or]

41 [(iii) Possession of a precursor substance with intent to manufacture a controlled substance under  
42 ORS 475.967.]

43 [(c) **(1) When a court sentences a person convicted of** delivery of methamphetamine under  
44 ORS 475.890 or 475.892, the presumptive sentence is 19 months of incarceration, unless the rules of  
45 the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has

1 two or more previous convictions for any combination of the following crimes:

2 [(A)] (a) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;

3 [(B)] (b) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS  
4 475.888, 475.892 or 475.904; or

5 [(C)] (c) Possession of a precursor substance with intent to manufacture a controlled substance  
6 under ORS 475.967.

7 (2) The court may impose a sentence other than the sentence provided [by] **in** subsection (1) of  
8 this section if the court imposes[:]

9 [(a)] a longer term of incarceration that is otherwise required or authorized by law.[: or]

10 [(b)] *An upward or downward durational departure sentence that is authorized by law or the rules  
11 of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons  
12 unless otherwise noted in subsection (1) of this section. Unless otherwise authorized by law or rule  
13 of the Oregon Criminal Justice Commission, the maximum departure allowed for a person sentenced  
14 under this subsection is double the presumptive sentence provided in subsection (1) of this section.]*

15 (3) As used in this section, “previous conviction” means:

16 (a) Convictions occurring before, on or after August 16, 2005; and

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

18 (4)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have  
19 occurred upon the pronouncement of sentence in open court. However, when sentences are imposed  
20 for two or more convictions arising out of the same conduct or criminal episode, none of the con-  
21 victions is considered to have occurred prior to any of the other convictions arising out of the same  
22 conduct or criminal episode.

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

26 (5) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

27 **SECTION 7.** ORS 137.281 is amended to read:

28 137.281. (1) In any felony case, [*when the court sentences the defendant to a term of imprisonment  
29 in the custody of the Department of Corrections and execution of the sentence is not suspended, or ex-  
30 ecution is suspended upon condition that the defendant serve a term of imprisonment in the county  
31 jail,*] **when the defendant is sentenced to a term of incarceration**, the defendant is deprived of  
32 all rights and privileges described in subsection (3) of this section from the date of sentencing until:

33 (a) The defendant is **released from prison or jail** [*discharged or paroled from imprisonment*];

34 or

35 (b) The defendant’s conviction is set aside.

36 (2) **Subsection (1) of this section applies to any term of incarceration, whether the term  
37 of incarceration was imposed as a result of conviction or as a sanction or revocation re-  
38 sulting from the defendant’s violation of the terms and conditions of probation, parole or  
39 post-prison supervision.** [*In any felony case, when the court sentences the defendant to a term of  
40 imprisonment in the custody of the Department of Corrections and execution of the sentence is sus-  
41 pended upon any condition other than imprisonment in the county jail, if the sentence of probation is  
42 revoked and the suspended portion of the sentence is ordered executed, the defendant is deprived of the  
43 rights and privileges described in subsection (3) of this section from the date the sentence is ordered  
44 executed until:*]

45 [(a)] *The defendant is discharged or paroled from imprisonment; or]*

1        *[(b) The defendant's conviction is set aside.]*

2        (3) The rights and privileges of which a person may be deprived under this section are:

3        (a) Holding a public office or an office of a political party or becoming or remaining a candidate  
4 for either office;

5        (b) Holding a position of private trust;

6        (c) Acting as a juror; or

7        (d) Exercising the right to vote.

8        (4) If the court under subsection (1) of this section temporarily stays execution of sentence for  
9 any purpose other than probation, the defendant nonetheless is sentenced for purposes of subsection  
10 (1) of this section.

11        (5) A person convicted of any crime and serving a term of imprisonment in any federal  
12 correctional institution in this state is deprived of the rights to register to vote, update a registra-  
13 tion or vote in any election in this state from the date of sentencing until:

14        (a) The person is discharged or paroled from imprisonment; or

15        (b) The person's conviction is set aside.

16        (6) The county clerk or county official in charge of elections in any county may cancel the  
17 registration of any person serving a term of imprisonment in any federal correctional institution in  
18 this state.

19        (7) Except as otherwise provided in ORS 10.030, the rights and privileges withdrawn by this  
20 section are restored automatically upon discharge or parole from imprisonment, but in the case of  
21 parole shall be automatically withdrawn upon a subsequent imprisonment for violation of the terms  
22 of the parole.

23        **SECTION 8. (1) During the intake process, each county shall conduct a national criminal**  
24 **history check on every person incarcerated in the county correctional facility.**

25        **(2) The county shall develop policies and procedures to ensure that the results of the**  
26 **national criminal history check are received before an inmate is released.**

27        **(3) The state shall reimburse each county for the costs of conducting the national crim-**  
28 **inal history checks.**

29        **(4) This section does not apply to persons who are held for detoxification purposes under**  
30 **ORS 430.399.**

31        **SECTION 9. Sections 1 and 8 of this 2008 Act and the amendments to ORS 137.281,**  
32 **137.750, 421.502, 421.508 and 421.510 by sections 2, 3, 4, 5 and 7 of this 2008 Act:**

33        **(1)(a) Become operative on January 1, 2009; and**

34        **(b) Apply to persons sentenced for crimes committed on or after January 1, 2009; or**

35        **(2) Are repealed on November 4, 2008, if Initiative Petition 132 (2008) is placed on the**  
36 **ballot at the next regular general election held throughout this state on November 4, 2008.**

37        **SECTION 10. The amendments to ORS 137.721 by section 6 of this 2008 Act:**

38        **(1) Become operative on January 1, 2009, if Senate Bill 1087 (2008) is referred to the peo-**  
39 **ple and approved by a majority of votes cast thereon at the next regular general election held**  
40 **throughout this state on November 4, 2008, and:**

41        **(a) Initiative Petition 40 (2008) is not placed on the ballot at the next regular general**  
42 **election held throughout this state on November 4, 2008; or**

43        **(b) Initiative Petition 40 (2008) is placed on the ballot at the next regular general election**  
44 **held throughout this state on November 4, 2008, and:**

45        **(A) Initiative Petition 40 (2008) is rejected by the people; or**

1 (B) Initiative Petition 40 (2008) is approved by the people and Senate Bill 1087 (2008) re-  
2 ceives a number of affirmative votes greater than the number of affirmative votes received  
3 by Initiative Petition 40 (2008).

4 (2) Are repealed on December 31, 2008, if:

5 (a) Senate Bill 1087 (2008) is not referred to the people at the next regular general  
6 election held throughout this state on November 4, 2008; or

7 (b) Senate Bill 1087 (2008) is referred to the people at the next regular general election  
8 held throughout this state on November 4, 2008, and:

9 (A) Senate Bill 1087 (2008) is rejected by the people; or

10 (B) Initiative Petition 40 (2008) is placed on the ballot at the next regular general election  
11 held throughout this state on November 4, 2008, and:

12 (i) Both Initiative Petition 40 (2008) and Senate Bill 1087 (2008) are approved by a majority  
13 of the votes cast thereon; and

14 (ii) Initiative Petition 40 (2008) receives a number of affirmative votes greater than the  
15 number of affirmative votes received by Senate Bill 1087 (2008).

16 SECTION 11. This 2008 Act being necessary for the immediate preservation of the public  
17 peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect  
18 on its passage.  
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