

B-Engrossed
House Bill 2290

Ordered by the Senate June 8
Including House Amendments dated April 30 and Senate Amendments
dated June 8

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.

[Allows peace officer to issue citation to person who casts artificial light from motor vehicle while in physical presence of bow and arrow or firearm.]

[Adopts uniform definition of "firearm" for certain provisions relating to crime.]

[Makes certified copy of certain analytical reports of analysis of controlled substance or sample prima facie evidence of results of analysis.]

Limits length of term of incarceration that may be imposed for revocation of probation under certain circumstances.

Authorizes reduction in period of probation for persons who comply with conditions of probation and supervision plan.

Authorizes placement of persons sentenced to term of incarceration of 12 months or less on inactive post-prison supervision after certain period of time.

Modifies procedures related to reprieves, commutations and pardons under certain circumstances.

Punishes possession of controlled substance as Class A misdemeanor under certain circumstances. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Imposes special assessment of \$100 on person convicted of possessing controlled substance.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 137.545, 475.840, 475.854, 475.874, 475.884
3 and 475.894; and declaring an emergency.

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

5 **SECTION 1.** ORS 137.545 is amended to read:

6 137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice
7 Commission for felonies committed on or after November 1, 1989:

8 (a) The period of probation shall be as the court determines and may, in the discretion of the
9 court, be continued or extended.

10 (b) The court may at any time discharge a person from probation.

11 (2) At any time during the probation period, the court may issue a warrant and cause a de-
12 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
13 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
14 rant for violating any condition of probation, and a statement by the parole and probation officer
15 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
16 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
17 detention of the probationer in the county jail until the probationer can be brought before the court
18 or until the parole and probation officer or supervisory personnel impose and the offender agrees

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 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
2 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
3 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
4 personnel, the disposition shall take place in no more than five judicial days. If the offender does
5 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
6 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
7 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
8 tention to the court that imposed the probation. The parole and probation officer shall promptly
9 submit to the court a report showing in what manner the probationer has violated the conditions
10 of probation.

11 (3) Except for good cause shown or at the request of the probationer, the probationer shall be
12 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
13 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a
14 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
15 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
16 the probationer upon the condition that the probationer appear in court at a later date for a pro-
17 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
18 the magistrate may order the probationer released subject to an additional order to the probationer
19 that the probationer report within seven calendar days to the court that imposed the probation.

20 (4) When a probationer has been sentenced to probation in more than one county and the
21 probationer is being held on an out-of-county warrant for a probation violation, the court may con-
22 sider consolidation of some or all pending probation violation proceedings pursuant to rules made
23 and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

24 (a) Upon the motion of the district attorney or defense counsel in the county in which the
25 probationer is held; or

26 (b) Upon the court's own motion.

27 (5)(a) For defendants sentenced for felonies committed prior to November 1, 1989, and for any
28 misdemeanor, the court that imposed the probation, after summary hearing, may revoke the pro-
29 bation and:

30 (A) If the execution of some other part of the sentence has been suspended, the court shall cause
31 the rest of the sentence imposed to be executed.

32 (B) If no other sentence has been imposed, the court may impose any other sentence which ori-
33 ginally could have been imposed.

34 (b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that
35 imposed the probationary sentence may revoke probation supervision and impose a sanction as
36 provided by rules of the Oregon Criminal Justice Commission. **If the defendant was sentenced to**
37 **a presumptive period of probation or a period of probation following a downward departure**
38 **from a presumptive term of incarceration of 12 months or less, the court may not impose a**
39 **term of incarceration that exceeds 60 days as a revocation sanction unless the revocation is**
40 **the result of the defendant's conviction for a new crime.**

41 (6) Except for good cause shown, if the revocation hearing is not conducted within 14 calendar
42 days following the arrest or detention of the probationer, the probationer shall be released from
43 custody.

44 (7) A defendant who has been previously confined in the county jail as a condition of probation
45 pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon

1 Criminal Justice Commission may be given credit for all time thus served in any order or judgment
2 of confinement resulting from revocation of probation.

3 (8) In the case of any defendant whose sentence has been suspended but who has not been sen-
4 tenced to probation, the court may issue a warrant and cause the defendant to be arrested and
5 brought before the court at any time within the maximum period for which the defendant might or-
6 iginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
7 pension of sentence and cause the sentence imposed to be executed.

8 (9) If a probationer fails to appear or report to a court for further proceedings as required by
9 an order under subsection (3) of this section, the failure to appear may be prosecuted in the county
10 to which the probationer was ordered to appear or report.

11 (10) The probationer may admit or deny the violation by being physically present at the hearing
12 or by means of simultaneous electronic transmission as described in ORS 131.045.

13 (11)(a) The victim has the right:

14 (A) Upon request made within the time period prescribed in the notice required by ORS 147.417,
15 to be notified by the district attorney of any hearing before the court that may result in the revo-
16 cation of the defendant's probation;

17 (B) To appear personally at the hearing; and

18 (C) If present, to reasonably express any views relevant to the issues before the court.

19 (b) Failure of the district attorney to notify the victim under paragraph (a) of this subsection
20 or failure of the victim to appear at the hearing does not affect the validity of the proceeding.

21 **SECTION 2. (1) Each person convicted of a felony and sentenced to probation under the**
22 **rules of the Oregon Criminal Justice Commission is eligible for a reduction in the period of**
23 **probation for compliance with the conditions of probation and the person's supervision plan,**
24 **as defined by rule of the Department of Corrections.**

25 **(2) The maximum reduction in the period of probation may not exceed 50 percent of the**
26 **period of probation imposed by the court.**

27 **(3) The department shall adopt rules to establish a process for granting, retracting and**
28 **restoring probation credits earned by offenders under this section. A community corrections**
29 **agency shall comply with the rules adopted under this section.**

30 **SECTION 3. Section 4 of this 2009 Act is added to and made a part of ORS chapter 144.**

31 **SECTION 4. (1) All persons sentenced to the legal and physical custody of the supervisory**
32 **authority under ORS 137.124 (2) shall serve active periods of post-prison supervision as fol-**
33 **lows:**

34 **(a) Six months of active post-prison supervision for crimes in crime categories 1 to 3; and**

35 **(b) Twelve months of active post-prison supervision for crimes in crime categories 4 to**
36 **10.**

37 **(2) Except as authorized in subsections (3) and (4) of this section, when an offender has**
38 **served the active period of post-prison supervision established under subsection (1) of this**
39 **section, the supervisory authority shall place the offender on inactive supervision status.**

40 **(3) No sooner than 30 days prior to the expiration of an offender's active post-prison**
41 **supervision period as provided in subsection (1) of this section, the parole and probation of-**
42 **ficer responsible for supervising the offender may send to the supervisory authority a report**
43 **requesting the supervisory authority to extend the active post-prison supervision period or**
44 **to return the offender to active supervision status, not to exceed the supervision term im-**
45 **posed by the sentencing court under the rules of the Oregon Criminal Justice Commission**

1 and applicable laws, if the offender has not substantially fulfilled the supervision conditions
2 or has failed to complete payment of restitution. The report shall include:

3 (a) An evaluation of the offender's compliance with supervision conditions;

4 (b) The status of the offender's court-ordered monetary obligations, including fines and
5 restitution, if any;

6 (c) The offender's employment status;

7 (d) The offender's address;

8 (e) Treatment program outcome;

9 (f) Any new criminal activity; and

10 (g) A recommendation that the supervisory authority extend the supervision period or
11 return the offender to active supervision status.

12 (4) After reviewing the report submitted under subsection (3) of this section, the super-
13 visory authority may extend the active post-prison supervision period or return the offender
14 to active supervision status, not to exceed the supervision term imposed by the sentencing
15 court under the rules of the Oregon Criminal Justice Commission and applicable laws, if the
16 supervisory authority finds that the offender has not substantially fulfilled the supervision
17 conditions or has failed to complete payment of restitution.

18 (5) During the pendency of any violation proceedings, the running of the supervision pe-
19 riod and the sentence is stayed, and the supervisory authority has jurisdiction over the
20 offender until the proceedings are resolved.

21 (6) The supervisory authority shall send written notification to the supervised offender
22 of the expiration of the sentence.

23 (7) The Department of Corrections may adopt rules to carry out the provisions of this
24 section. A community corrections agency shall comply with the rules adopted under this
25 subsection.

26 **SECTION 5.** (1) The provisions of ORS 144.650 and 144.660 do not apply to a reprieve,
27 commutation or pardon granted by the Governor to a person:

28 (a) Who is incarcerated for an offense other than a person felony or person Class A
29 misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Com-
30 mission;

31 (b) Who has served at least one-half of the sentence imposed;

32 (c) Who is subject to an outstanding United States Immigration and Customs Enforce-
33 ment final order of removal, deportation or exclusion;

34 (d) Who has agreed to waive objections to deportation; and

35 (e) Whom United States Immigration and Customs Enforcement has agreed to detain
36 pending the execution of the final order of removal, deportation or exclusion.

37 (2) The Governor may:

38 (a) Enter into a written agreement with United States Immigration and Customs
39 Enforcement concerning the removal, deportation or exclusion of persons described in sub-
40 section (1) of this section; and

41 (b) File a motion in circuit court requesting the appointment of counsel for a person
42 described in subsection (1) of this section, for the limited purpose of advising the person re-
43 garding the waiver of any statutory or constitutional rights related to the state criminal
44 conviction. Upon receipt of the motion, the court shall appoint counsel for a financially eli-
45 gible person.

1 **SECTION 6.** ORS 475.854 is amended to read:

2 475.854. (1) It is unlawful for any person knowingly or intentionally to possess heroin.

3 (2)(a) Unlawful possession of heroin is a Class B felony.

4 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of heroin is a**
5 **Class A misdemeanor if:**

6 **(A) The amount possessed is one-half gram or less of a mixture or substance containing**
7 **a detectable amount of heroin; or**

8 **(B) The amount possessed is two grams or less of a mixture or substance containing a**
9 **detectable amount of heroin and the person has not previously been convicted of a felony for**
10 **the unlawful possession, delivery or manufacture of a controlled substance.**

11 **SECTION 7.** ORS 475.874 is amended to read:

12 475.874. (1) It is unlawful for any person knowingly or intentionally to possess
13 3,4-methylenedioxyamphetamine.

14 (2)(a) Unlawful possession of 3,4-methylenedioxyamphetamine is a Class B felony.

15 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of**
16 **3,4-methylenedioxyamphetamine is a Class A misdemeanor if:**

17 **(A) The amount possessed is one-half gram or less of a mixture or substance containing**
18 **a detectable amount of 3,4-methylenedioxyamphetamine; or**

19 **(B) The amount possessed is two grams or less of a mixture or substance containing a**
20 **detectable amount of 3,4-methylenedioxyamphetamine and the person has not previously**
21 **been convicted of a felony for the unlawful possession, delivery or manufacture of a con-**
22 **trolled substance.**

23 **SECTION 8.** ORS 475.884 is amended to read:

24 475.884. (1) It is unlawful for any person knowingly or intentionally to possess cocaine unless
25 the substance was obtained directly from, or pursuant to, a valid prescription or order of a practi-
26 tioner while acting in the course of professional practice, or except as otherwise authorized by ORS
27 475.005 to 475.285 and 475.840 to 475.980.

28 (2)(a) Unlawful possession of cocaine is a Class C felony.

29 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of cocaine is a**
30 **Class A misdemeanor if:**

31 **(A) The amount possessed is one-half gram or less of a mixture or substance containing**
32 **a detectable amount of cocaine; or**

33 **(B) The amount possessed is two grams or less of a mixture or substance containing a**
34 **detectable amount of cocaine and the person has not previously been convicted of a felony**
35 **for the unlawful possession, delivery or manufacture of a controlled substance.**

36 **SECTION 9.** ORS 475.894 is amended to read:

37 475.894. (1) It is unlawful for any person knowingly or intentionally to possess methamphetamine
38 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
39 practitioner while acting in the course of professional practice, or except as otherwise authorized
40 by ORS 475.005 to 475.285 and 475.840 to 475.980.

41 (2)(a) Unlawful possession of methamphetamine is a Class C felony.

42 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of metham-**
43 **phetamine is a Class A misdemeanor if:**

44 **(A) The amount possessed is one-half gram or less of a mixture or substance containing**
45 **a detectable amount of methamphetamine; or**

1 **(B) The amount possessed is two grams or less of a mixture or substance containing a**
2 **detectable amount of methamphetamine and the person has not previously been convicted**
3 **of a felony for the unlawful possession, delivery or manufacture of a controlled substance.**

4 **SECTION 10.** ORS 475.840 is amended to read:

5 475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful
6 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
7 section with respect to:

8 (a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise pro-
9 vided in ORS 475.860.

10 (b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise
11 provided in ORS 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 and 475.906.

12 (c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise
13 provided in ORS 475.904 and 475.906.

14 (d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

15 (e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

16 (2) Except as authorized in ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any
17 person to create or deliver a counterfeit substance. Any person who violates this subsection with
18 respect to:

19 (a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

20 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

21 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

22 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

23 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

24 (3) It is unlawful for any person knowingly or intentionally to possess a controlled substance
25 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
26 practitioner while acting in the course of professional practice, or except as otherwise authorized
27 by ORS 475.005 to 475.285 and 475.840 to 475.980. Any person who violates this subsection with re-
28 spect to:

29 (a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise pro-
30 vided in ORS 475.864.

31 (b) A controlled substance in Schedule II, is guilty of a Class C felony.

32 (c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

33 (d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

34 (e) A controlled substance in Schedule V, is guilty of a violation.

35 **(4) Notwithstanding subsection (3)(a) or (b) of this section, a person who violates sub-**
36 **section (3) of this section with respect to a controlled substance in Schedule I or II, is guilty**
37 **of a Class A misdemeanor if:**

38 **(a) The amount possessed is one-half gram or less of a mixture or substance containing**
39 **a detectable amount of the controlled substance; or**

40 **(b) The amount possessed is two grams or less of a mixture or substance containing a**
41 **detectable amount of the controlled substance and the person has not previously been con-**
42 **vinced of a felony for the unlawful possession, delivery or manufacture of a controlled sub-**
43 **stance.**

44 [(4)] (5) In any prosecution under this section for manufacture, possession or delivery of that
45 plant of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the

1 peyote is being used or is intended for use:

2 (a) In connection with the good faith practice of a religious belief;

3 (b) As directly associated with a religious practice; and

4 (c) In a manner that is not dangerous to the health of the user or others who are in the prox-
5 imity of the user.

6 [(5)] (6) The affirmative defense created in subsection [(4)] (5) of this section is not available to
7 any person who has possessed or delivered the peyote while incarcerated in a correctional facility
8 in this state.

9 **SECTION 11.** When a person is convicted of violating ORS 475.840 (3), 475.854, 475.874,
10 475.884 or 475.894, the court shall impose upon the person, in addition to any other monetary
11 obligation imposed, a special assessment in the amount of \$100. The special assessment shall
12 be deposited in the Oregon Criminal Justice Commission Account established under ORS
13 137.662 for disbursement to drug court programs described in ORS 3.450.

14 **SECTION 12.** (1) The amendments to ORS 137.545 by section 1 of this 2009 Act apply to
15 revocations of probation that occur on or after the effective date of this 2009 Act.

16 (2) Section 2 of this 2009 Act applies to persons convicted before, on or after the effective
17 date of this 2009 Act and who are on probation on or after the effective date of the rules
18 adopted by the Department of Corrections under section 2 (3) of this 2009 Act.

19 (3) Except as provided in subsection (4) of this section, section 4 of this 2009 Act applies
20 to persons sentenced to the legal and physical custody of the supervisory authority under
21 ORS 137.124 (2) who are released on post-prison supervision before, on or after the effective
22 date of this 2009 Act.

23 (4)(a) A person sentenced to the legal and physical custody of the supervisory authority
24 under ORS 137.124 (2) shall serve an active period of post-prison supervision of at least two
25 additional months if, on the effective date of this 2009 Act, the person has served:

26 (A) Four months or more of active post-prison supervision for crimes in crime categories
27 1 to 3; or

28 (B) Ten months or more of active post-prison supervision for crimes in crime categories
29 4 to 10.

30 (b) Except as provided in paragraph (c) of this subsection, the supervisory authority shall
31 place an offender described in paragraph (a) of this subsection on inactive supervision status
32 on the date that is two months after the effective date of this 2009 Act.

33 (c) At any time before the date that is two months after the effective date of this 2009
34 Act:

35 (A) The parole and probation officer responsible for supervising an offender described in
36 paragraph (a) of this subsection may send a report described in section 4 (3) of this 2009 Act
37 to the supervisory authority for review; and

38 (B) After reviewing the report, the supervisory authority may extend the active post-
39 prison supervision period in accordance with section 4 (4) of this 2009 Act.

40 (d) Section 4 of this 2009 Act and the provisions of this subsection do not apply to a
41 person sentenced to the legal and physical custody of the supervisory authority under ORS
42 137.124 (2) whose term of supervision imposed by the sentencing court expires on or before
43 the date that is two months after the effective date of this 2009 Act.

44 (5) Section 11 of this 2009 Act and the amendments to ORS 475.840, 475.854, 475.874,
45 475.884 and 475.894 by sections 6 to 10 of this 2009 Act apply to conduct occurring on or after

1 **the effective date of this 2009 Act.**

2 **SECTION 13. This 2009 Act being necessary for the immediate preservation of the public**
3 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
4 **on its passage.**

5
