

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2290

By COMMITTEE ON JUDICIARY

June 8

1 On page 1 of the printed A-engrossed bill, line 2, after the second semicolon delete the rest of
2 the line and delete line 3 and insert “amending ORS 137.545, 475.840, 475.854, 475.874, 475.884 and
3 475.894; and declaring an emergency.”.

4 Delete lines 5 through 25 and delete pages 2 through 12 and insert:

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

29 “(3) Except for good cause shown or at the request of the probationer, the probationer shall be
30 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
31 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a
32 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
33 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
34 the probationer upon the condition that the probationer appear in court at a later date for a pro-
35 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,

1 the magistrate may order the probationer released subject to an additional order to the probationer
2 that the probationer report within seven calendar days to the court that imposed the probation.

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

7 “(a) Upon the motion of the district attorney or defense counsel in the county in which the
8 probationer is held; or

9 “(b) Upon the court’s own motion.

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

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

15 “(B) If no other sentence has been imposed, the court may impose any other sentence which
16 originally could have been imposed.

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

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

27 “(7) A defendant who has been previously confined in the county jail as a condition of probation
28 pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon
29 Criminal Justice Commission may be given credit for all time thus served in any order or judgment
30 of confinement resulting from revocation of probation.

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

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

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

41 “(11)(a) The victim has the right:

42 “(A) Upon request made within the time period prescribed in the notice required by ORS
43 147.417, to be notified by the district attorney of any hearing before the court that may result in the
44 revocation of the defendant’s probation;

45 “(B) To appear personally at the hearing; and

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

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

4 **“SECTION 2. (1) Each person convicted of a felony and sentenced to probation under the
5 rules of the Oregon Criminal Justice Commission is eligible for a reduction in the period of
6 probation for compliance with the conditions of probation and the person’s supervision plan,
7 as defined by rule of the Department of Corrections.**

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

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

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

14 **“SECTION 4. (1) All persons sentenced to the legal and physical custody of the supervi-
15 sory authority under ORS 137.124 (2) shall serve active periods of post-prison supervision as
16 follows:**

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

19 **“(b) Twelve months of active post-prison supervision for crimes in crime categories 4 to
20 10.**

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

24 **“(3) No sooner than 30 days prior to the expiration of an offender’s active post-prison
25 supervision period as provided in subsection (1) of this section, the parole and probation of-
26 ficer responsible for supervising the offender may send to the supervisory authority a report
27 requesting the supervisory authority to extend the active post-prison supervision period or
28 to return the offender to active supervision status, not to exceed the supervision term im-
29 posed by the sentencing court under the rules of the Oregon Criminal Justice Commission
30 and applicable laws, if the offender has not substantially fulfilled the supervision conditions
31 or has failed to complete payment of restitution. The report shall include:**

32 **“(a) An evaluation of the offender’s compliance with supervision conditions;**

33 **“(b) The status of the offender’s court-ordered monetary obligations, including fines and
34 restitution, if any;**

35 **“(c) The offender’s employment status;**

36 **“(d) The offender’s address;**

37 **“(e) Treatment program outcome;**

38 **“(f) Any new criminal activity; and**

39 **“(g) A recommendation that the supervisory authority extend the supervision period or
40 return the offender to active supervision status.**

41 **“(4) After reviewing the report submitted under subsection (3) of this section, the su-
42 pervisory authority may extend the active post-prison supervision period or return the
43 offender to active supervision status, not to exceed the supervision term imposed by the
44 sentencing court under the rules of the Oregon Criminal Justice Commission and applicable
45 laws, if the supervisory authority finds that the offender has not substantially fulfilled the**

1 supervision conditions or has failed to complete payment of restitution.

2 “(5) During the pendency of any violation proceedings, the running of the supervision
3 period and the sentence is stayed, and the supervisory authority has jurisdiction over the
4 offender until the proceedings are resolved.

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

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

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

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

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

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

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

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

21 “(2) The Governor may:

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

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

30 “**SECTION 6.** ORS 475.854 is amended to read:

31 “475.854. (1) It is unlawful for any person knowingly or intentionally to possess heroin.

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

33 “(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of heroin is a
34 Class A misdemeanor if:

35 “(A) The amount possessed is one-half gram or less of a mixture or substance containing
36 a detectable amount of heroin; or

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

40 “**SECTION 7.** ORS 475.874 is amended to read:

41 “475.874. (1) It is unlawful for any person knowingly or intentionally to possess
42 3,4-methylenedioxymethamphetamine.

43 “(2)(a) Unlawful possession of 3,4-methylenedioxymethamphetamine is a Class B felony.

44 “(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of
45 3,4-methylenedioxymethamphetamine is a Class A misdemeanor if:

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

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

7 **“SECTION 8.** ORS 475.884 is amended to read:

8 **“475.884. (1)** It is unlawful for any person knowingly or intentionally to possess cocaine unless
9 the substance was obtained directly from, or pursuant to, a valid prescription or order of a practi-
10 tioner while acting in the course of professional practice, or except as otherwise authorized by ORS
11 475.005 to 475.285 and 475.840 to 475.980.

12 **“(2)(a)** Unlawful possession of cocaine is a Class C felony.

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

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

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

20 **“SECTION 9.** ORS 475.894 is amended to read:

21 **“475.894. (1)** It is unlawful for any person knowingly or intentionally to possess methamphet-
22 amine unless the substance was obtained directly from, or pursuant to, a valid prescription or order
23 of a practitioner while acting in the course of professional practice, or except as otherwise author-
24 ized by ORS 475.005 to 475.285 and 475.840 to 475.980.

25 **“(2)(a)** Unlawful possession of methamphetamine is a Class C felony.

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

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

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

33 **“SECTION 10.** ORS 475.840 is amended to read:

34 **“475.840. (1)** Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is un-
35 lawful for any person to manufacture or deliver a controlled substance. Any person who violates this
36 subsection with respect to:

37 **“(a)** A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise
38 provided in ORS 475.860.

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

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

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

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

45 **“(2)** Except as authorized in ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any

1 person to create or deliver a counterfeit substance. Any person who violates this subsection with
2 respect to:

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

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

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

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

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

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

13 “(a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise
14 provided in ORS 475.864.

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

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

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

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

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

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

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

28 “[4] (5) In any prosecution under this section for manufacture, possession or delivery of that
29 plant of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the
30 peyote is being used or is intended for use:

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

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

33 “(c) In a manner that is not dangerous to the health of the user or others who are in the
34 proximity of the user.

35 “[5] (6) The affirmative defense created in subsection [(4)] (5) of this section is not available
36 to any person who has possessed or delivered the peyote while incarcerated in a correctional facility
37 in this state.

38 “**SECTION 11. When a person is convicted of violating ORS 475.840 (3), 475.854, 475.874,**
39 **475.884 or 475.894, the court shall impose upon the person, in addition to any other monetary**
40 **obligation imposed, a special assessment in the amount of \$100. The special assessment shall**
41 **be deposited in the Oregon Criminal Justice Commission Account established under ORS**
42 **137.662 for disbursement to drug court programs described in ORS 3.450.**

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

45 “(2) **Section 2 of this 2009 Act applies to persons convicted before, on or after the effec-**

1 tive date of this 2009 Act and who are on probation on or after the effective date of the rules
2 adopted by the Department of Corrections under section 2 (3) of this 2009 Act.

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

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

10 “(A) Four months or more of active post-prison supervision for crimes in crime catego-
11 ries 1 to 3; or

12 “(B) Ten months or more of active post-prison supervision for crimes in crime categories
13 4 to 10.

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

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

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

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

24 “(d) Section 4 of this 2009 Act and the provisions of this subsection do not apply to a
25 person sentenced to the legal and physical custody of the supervisory authority under ORS
26 137.124 (2) whose term of supervision imposed by the sentencing court expires on or before
27 the date that is two months after the effective date of this 2009 Act.

28 “(5) Section 11 of this 2009 Act and the amendments to ORS 475.840, 475.854, 475.874,
29 475.884 and 475.894 by sections 6 to 10 of this 2009 Act apply to conduct occurring on or after
30 the effective date of this 2009 Act.

31 “SECTION 13. This 2009 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
33 on its passage.”.