

B-Engrossed
House Bill 2335

Ordered by the Senate June 8
Including House Amendments dated May 6 and Senate Amendments dated
June 8

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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.

Prohibits State Board of Parole and Post-Prison Supervision, after board denies petition for change in terms of confinement of prisoner convicted of aggravated murder or murder, from granting prisoner subsequent hearing that is less than two years, or more than 10 years, from date petition is denied. Specifies procedures for granting hearing after period of two years and issuing final order on hearing.

Prohibits board from considering release of certain prisoners on parole less than two years, or more than 10 years, from date on which parole is denied. Specifies procedures for granting hearing after period of two years and issuing final order on hearing.

Suspends certain provisions of Ballot Measure 57 (2008) until January 1, 2012.

Increases maximum reduction in term of incarceration for appropriate institutional behavior or participation in adult basic skills development program for certain classes of inmates. Sunsets increase on June 30, 2013.

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.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 137.545, 137.717, 137.721, 144.125, 144.228,
3 144.232, 163.105, 163.115, 164.162 and 421.121 and sections 5 and 11, chapter 14, Oregon Laws
4 2008; repealing sections 1, 3, 6, 8 and 9, chapter 14, Oregon Laws 2008, and sections 8, 9 and
5 10, chapter 35, Oregon Laws 2008; declaring an emergency; and providing for criminal sentence
6 reduction that requires approval by a two-thirds majority.

7 Whereas the State of Oregon, the nation and the world are in the midst of the worst recession
8 since the Great Depression; and

9 Whereas the 2008 Legislative Assembly referred Ballot Measure 57 to the voters; and

10 Whereas Ballot Measure 57 was a comprehensive plan to reduce property crime through drug
11 and alcohol treatment combined with increased incarcerative sanctions; and

12 Whereas the voters approved Ballot Measure 57; and

13 Whereas more than 100 offenders have been incarcerated under Ballot Measure 57, and these
14 offenders will, along with other offenders sentenced under Ballot Measure 57, remain incarcerated;
15 and

16 Whereas the majority of offenders will complete their sentences and eventually be released back
17 into the community; and

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 Whereas it is in the interest of public safety to develop sentencing policies based on evidence-
2 based research that reward prosocial behavior; and

3 Whereas evidence-based treatment programs are effective in reducing drug and alcohol addiction
4 and the accompanying criminal behavior; and

5 Whereas evidence-based treatment programs need time to be implemented and adequate funding
6 in order to be effective; and

7 Whereas the State of Oregon needs to phase in the implementation of Ballot Measure 57 in or-
8 der to achieve the goal of reducing property crime in Oregon; now, therefore,

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

10 **SECTION 1. (1)(a) If the State Board of Parole and Post-Prison Supervision denies a pe-**
11 **tion for a change in the terms of confinement filed by a prisoner convicted of aggravated**
12 **murder or murder, the board may not grant the prisoner a subsequent hearing that is less**
13 **than two years, or more than 10 years, from the date the petition is denied.**

14 (b) The board may not grant the prisoner a hearing that is more than two years from
15 the date a petition is denied unless the board finds that it is not reasonable to expect that
16 the prisoner would be granted a change in the terms of confinement before the date of the
17 subsequent hearing.

18 (c) The board shall determine the date of the subsequent hearing in accordance with
19 rules adopted by the board. Rules adopted under this paragraph must be based on the foun-
20 dation principles of criminal law described in section 15, Article I of the Oregon Constitution.

21 (2) If the board grants the prisoner a hearing that is more than two years from the date
22 a petition is denied, the prisoner may submit a request for an interim hearing not earlier
23 than the date that is two years from the date the petition is denied and at intervals of not
24 less than two years thereafter. If the board finds, based upon a request for an interim
25 hearing, that there is reasonable cause to believe that the prisoner may be granted a change
26 in the terms of confinement, the board shall conduct a hearing as soon as is reasonably
27 convenient.

28 (3) When the board grants a prisoner a hearing that is more than two years from the
29 date a petition is denied and when the board denies a petition for an interim hearing, the
30 board shall issue a final order. The order shall be accompanied by findings of fact and con-
31 clusions of law. The findings of fact shall consist of a concise statement of the underlying
32 facts supporting the findings as to each contested issue of fact and as to each ultimate fact
33 required to support the board's order. Unless the prisoner bears the burden of persuasion,
34 the order shall include findings necessary to deny the prisoner a change in the terms of
35 confinement for any period of time when the prisoner would be presumed to be eligible for
36 a change in the terms of confinement.

37 **SECTION 2. (1)(a) If the State Board of Parole and Post-Prison Supervision denies parole**
38 **to a prisoner sentenced for a crime committed prior to November 1, 1989, the board may not**
39 **grant the prisoner a subsequent hearing that is less than two years, or more than 10 years,**
40 **from the date parole is denied, unless the two-year period would exceed the maximum sen-**
41 **tence imposed by the court.**

42 (b) The board may not grant the prisoner a hearing that is more than two years from
43 the date parole is denied unless the board finds that it is not reasonable to expect that the
44 prisoner would be granted parole before the date of the subsequent hearing.

45 (c) The board shall determine the date of the subsequent hearing pursuant to rules

1 adopted by the board. Rules adopted under this paragraph must be based on the foundation
2 principles of criminal law described in section 15, Article I of the Oregon Constitution.

3 (2) If the board grants a prisoner a hearing that is more than two years from the date
4 parole is denied, the prisoner may submit a request for an interim hearing not earlier than
5 the date that is two years from the date parole is denied and at intervals of not less than
6 two years thereafter. If the board finds, based upon a request for an interim hearing, that
7 there is reasonable cause to believe that the prisoner may be granted parole, the board shall
8 conduct a hearing as soon as is reasonably convenient.

9 (3) When the board grants a prisoner a hearing that is more than two years from the
10 date parole is denied and when the board denies a petition for an interim hearing, the board
11 shall issue a final order. The order shall be accompanied by findings of fact and conclusions
12 of law. The findings of fact shall consist of a concise statement of the underlying facts sup-
13 porting the findings as to each contested issue of fact and as to each ultimate fact required
14 to support the board's order. Unless the prisoner bears the burden of persuasion, the order
15 shall include findings necessary to deny the prisoner parole for any period of time when the
16 prisoner would be presumed to be eligible for parole.

17 **SECTION 3.** ORS 144.125 is amended to read:

18 144.125. (1) Prior to the scheduled release of any prisoner on parole and prior to release re-
19 scheduled under this section, the State Board of Parole and Post-Prison Supervision may upon re-
20 quest of the Department of Corrections or on its own initiative interview the prisoner to review the
21 prisoner's parole plan and psychiatric or psychological report, if any, and the record of the prison-
22 er's conduct during confinement. To accommodate such review by the board, the Department of
23 Corrections shall provide to the board any psychiatric or psychological reports held by the depart-
24 ment regarding the prisoner. However, if the psychiatrist or psychologist who prepared any report
25 or any treating psychiatrist or psychologist determines that disclosure to the prisoner of the con-
26 tents of the report would be detrimental to the prisoner's mental or emotional health, the psychia-
27 trist or psychologist may indorse upon the report a recommendation that it not be disclosed to the
28 prisoner. The department may withhold from the board any report so indorsed.

29 (2) The board shall postpone a prisoner's scheduled release date if it finds, after a hearing, that
30 the prisoner engaged in serious misconduct during confinement. The board shall adopt rules defining
31 serious misconduct and specifying periods of postponement for such misconduct.

32 (3)(a) If the board finds the prisoner has a present severe emotional disturbance such as to
33 constitute a danger to the health or safety of the community, the board may order the postponement
34 of the scheduled parole release until a specified future date. **The board may not postpone a pris-
35 oner's scheduled release date to a date that is less than two years, or more than 10 years,
36 from the date of the hearing, unless the prisoner would be held beyond the maximum sen-
37 tence. The board shall determine the scheduled release date, and the prisoner may petition
38 for interim review, in accordance with section 2 of this 2009 Act.**

39 (b) If the board finds the prisoner has a present severe emotional disturbance such as to con-
40 stitute a danger to the health or safety of the community, but also finds that the prisoner can be
41 adequately controlled with supervision and mental health treatment and that the necessary super-
42 vision and treatment are available, the board may order the prisoner released on parole subject to
43 conditions that are in the best interests of community safety and the prisoner's welfare.

44 (4) Each prisoner shall furnish the board with a parole plan prior to the scheduled release of
45 the prisoner on parole. The board shall adopt rules specifying the elements of an adequate parole

1 plan and may defer release of the prisoner for not more than three months if it finds that the parole
2 plan is inadequate. The Department of Corrections shall assist prisoners in preparing parole plans.

3 **SECTION 4.** ORS 144.228 is amended to read:

4 144.228. (1)(a) Within six months after commitment to the custody of the Department of Cor-
5 rections of any person sentenced under ORS 161.725 and 161.735 as a dangerous offender, the State
6 Board of Parole and Post-Prison Supervision shall set a date for a parole consideration hearing in-
7 stead of an initial release date as otherwise required under ORS 144.120 and 144.125. The parole
8 consideration hearing date shall be the time the prisoner would otherwise be eligible for parole
9 under the board's rules.

10 (b)(A) At the parole consideration hearing, the prisoner shall be given a release date in ac-
11 cordance with the rules of the board if the board finds the prisoner no longer dangerous or finds
12 that the prisoner remains dangerous but can be adequately controlled with supervision and mental
13 health treatment and that the necessary resources for supervision and treatment are available to the
14 prisoner. If the board is unable to make such findings, *[reviews]* **a review** will be conducted *[at least*
15 *once every two years]* **no less than two years, and no more than 10 years, from the date of the**
16 **previous review**, until the board is able to make such findings, at which time release on parole
17 shall be ordered if the prisoner is otherwise eligible under the rules.

18 **(B) The board may not grant the prisoner a review hearing that is more than two years**
19 **from the date of the previous hearing unless the board finds that it is not reasonable to ex-**
20 **pect that the prisoner would be granted a release date before the date of the subsequent**
21 **hearing.**

22 **(C) The board shall determine the date of the review hearing in accordance with rules**
23 **adopted by the board. Rules adopted under this subparagraph must be based on the founda-**
24 **tion principles of criminal law described in section 15, Article I of the Oregon Constitution.**

25 **(D)** In no event shall the prisoner be held beyond the maximum sentence less good time credits
26 imposed by the court.

27 (c) Nothing in this section *[shall preclude]* **precludes** a prisoner from submitting a request for
28 a parole consideration hearing prior to the earliest time the prisoner is eligible for parole *[or a*
29 *two-year review]*. **If the board grants a prisoner a review hearing that is more than two years**
30 **from the date of the previous hearing, the prisoner may submit a request for an interim**
31 **review hearing not earlier than the date that is two years from the date of the previous**
32 **hearing and at intervals of not less than two years thereafter.** Should the board find, based
33 upon *[the]* **a request described in this paragraph**, that there is a reasonable cause to believe that
34 the prisoner is no longer dangerous or that necessary supervision and treatment are available based
35 upon the information provided in the request, it shall conduct a review as soon as is reasonably
36 convenient.

37 **(d) When the board grants a prisoner a review hearing that is more than two years from**
38 **the date of the previous hearing and when the board denies a petition for an interim hearing,**
39 **the board shall issue a final order. The order shall be accompanied by findings of fact and**
40 **conclusions of law. The findings of fact shall consist of a concise statement of the underlying**
41 **facts supporting the findings as to each contested issue of fact and as to each ultimate fact**
42 **required to support the board's order. Unless the prisoner bears the burden of persuasion,**
43 **the order shall include findings necessary to deny the prisoner a release date for any period**
44 **of time when the prisoner would be presumed to be eligible for a release date.**

45 (2) For the parole consideration hearing, the board shall cause to be brought before it and

1 consider all information regarding such person. The information shall include:

2 (a) The written report of the examining psychiatrist or psychologist which shall contain all the
3 facts necessary to assist the State Board of Parole and Post-Prison Supervision in making its de-
4 termination. The report of the examining psychiatrist or psychologist shall be made within two
5 months of the date of its consideration; and

6 (b) A written report to be made by the executive officer of the Department of Corrections in-
7 stitution in which the person has been confined. The executive officer's report shall contain:

8 (A) A detailed account of the person's conduct while confined, all infractions of rules and dis-
9 cipline, all punishment meted out to the person and the circumstances connected therewith, as well
10 as the extent to which the person has responded to the efforts made in the institution to improve
11 the person's mental and moral condition.

12 (B) A statement as to the person's present attitude towards society, towards the sentencing
13 judge, towards the prosecuting district attorney, towards the arresting police officer and towards the
14 person's previous criminal career.

15 (C) The work and program record of the person while in or under the supervision of the De-
16 partment of Corrections. The program history shall include a summary of any psychological or sub-
17 stance abuse treatment and other activities that will assist the board in understanding the
18 psychological adjustment and social skills and habits of the person and that will assist the board in
19 determining the likelihood for successful community reentry.

20 **SECTION 5.** ORS 144.232 is amended to read:

21 144.232. (1) A person sentenced under ORS 161.725 and 161.735 as a dangerous offender for fel-
22 onies committed on or after November 1, 1989, shall be considered for release to post-prison super-
23 vision. The offender is eligible for release to post-prison supervision after having served the required
24 incarceration term established under ORS 161.737.

25 (2) The State Board of Parole and Post-Prison Supervision shall hold a release hearing no later
26 than 10 days prior to the date on which the offender becomes eligible for release on post-prison
27 supervision as provided in subsection (1) of this section.

28 (3) The dangerous offender's eligibility for and release to post-prison supervision shall be deter-
29 mined in a manner consistent with the procedures and criteria required by ORS 144.228 for the
30 parole determination process applicable to dangerous offenders sentenced for crimes committed prior
31 to November 1, 1989.

32 (4) An offender released under this section shall serve the remainder of the sentence term im-
33 posed under ORS 161.725, 161.735 and 161.737 on post-prison supervision, however:

34 (a) Notwithstanding ORS 137.010 or the rules of the Oregon Criminal Justice Commission, the
35 State Board of Parole and Post-Prison Supervision may sanction an offender to the supervision of
36 the local authority for a maximum period of 180 days for any supervision violation. The sanction
37 may be imposed repeatedly during the term of post-prison supervision for subsequent supervision
38 violations.

39 (b) After release under this section, the board may at any time return the offender to prison and
40 require the offender to submit to a psychiatric or psychological examination as provided for in ORS
41 144.226. If the board finds that the offender's dangerousness has returned and cannot be adequately
42 controlled with supervision and mental and physical health treatment, or that resources for super-
43 vision and treatment are not available to the offender, the board may defer the offender's release
44 from prison for an indefinite period of time. An offender returned to prison under this paragraph is
45 entitled to periodic reviews [*once every two years*] for possible release to post-prison supervision as

1 provided by subsection (3) of this section.

2 **SECTION 6.** ORS 163.105 is amended to read:

3 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

4 (1)(a) Except as otherwise provided in ORS 137.700, when a defendant is convicted of aggravated
5 murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150, to
6 death, life imprisonment without the possibility of release or parole or life imprisonment.

7 (b) A person sentenced to life imprisonment without the possibility of release or parole under
8 this section shall not have that sentence suspended, deferred or commuted by any judicial officer,
9 and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce
10 the period of confinement in any manner whatsoever. The Department of Corrections or any execu-
11 tive official may not permit the prisoner to participate in any sort of release or furlough program.

12 (c) If sentenced to life imprisonment, the court shall order that the defendant shall be confined
13 for a minimum of 30 years without possibility of parole, release to post-prison supervision, release
14 on work release or any form of temporary leave or employment at a forest or work camp.

15 (2) At any time after completion of a minimum period of confinement pursuant to subsection
16 (1)(c) of this section, the State Board of Parole and Post-Prison Supervision, upon the petition of a
17 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
18 within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be re-
19 habilitated within a reasonable period of time. At the hearing, the prisoner has:

20 (a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation
21 within a reasonable period of time;

22 (b) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented
23 by legal counsel, appointed by the board, at board expense; and

24 (c) The right to a subpoena upon a showing of the general relevance and reasonable scope of
25 the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by
26 the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

27 (3) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members,
28 finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement
29 should be changed to life imprisonment with the possibility of parole, release to post-prison super-
30 vision or work release, it shall enter an order to that effect and the order shall convert the terms
31 of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-
32 prison supervision or work release and may set a release date. Otherwise the board shall deny the
33 relief sought in the petition.

34 **(4) If the board denies the relief sought in the petition, the board shall determine the date**
35 **of the subsequent hearing, and the prisoner may petition for an interim hearing, in accord-**
36 **ance with section 1 of this 2009 Act.**

37 [(4)] (5) The board's final order shall be accompanied by findings of fact and conclusions of law.
38 The findings of fact shall consist of a concise statement of the underlying facts supporting the
39 findings as to each contested issue of fact and as to each ultimate fact required to support the
40 board's order.

41 [(5) *Not less than two years after the denial of the relief sought in a petition under this section, the*
42 *prisoner may petition again for a change in the terms of confinement. Further petitions for a change*
43 *may be filed at intervals of not less than two years thereafter.*]

44 **SECTION 7.** ORS 163.115 is amended to read:

45 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes mur-

1 der:

2 (a) When it is committed intentionally, except that it is an affirmative defense that, at the time
3 of the homicide, the defendant was under the influence of an extreme emotional disturbance;

4 (b) When it is committed by a person, acting either alone or with one or more persons, who
5 commits or attempts to commit any of the following crimes and in the course of and in furtherance
6 of the crime the person is committing or attempting to commit, or during the immediate flight
7 therefrom, the person, or another participant if there be any, causes the death of a person other
8 than one of the participants:

9 (A) Arson in the first degree as defined in ORS 164.325;

10 (B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

11 (C) Burglary in the first degree as defined in ORS 164.225;

12 (D) Escape in the first degree as defined in ORS 162.165;

13 (E) Kidnapping in the second degree as defined in ORS 163.225;

14 (F) Kidnapping in the first degree as defined in ORS 163.235;

15 (G) Robbery in the first degree as defined in ORS 164.415;

16 (H) Any felony sexual offense in the first degree defined in this chapter;

17 (I) Compelling prostitution as defined in ORS 167.017; or

18 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
19 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
20 14 years of age; or

21 (c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to
22 the value of human life, causes the death of a child under 14 years of age or a dependent person,
23 as defined in ORS 163.205, and:

24 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-
25 tim or another child under 14 years of age or a dependent person; or

26 (B) The person causes the death by neglect or maltreatment.

27 (2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section
28 need not allege specific incidents of assault or torture.

29 (3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the
30 defendant:

31 (a) Was not the only participant in the underlying crime;

32 (b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause
33 or aid in the commission thereof;

34 (c) Was not armed with a dangerous or deadly weapon;

35 (d) Had no reasonable ground to believe that any other participant was armed with a dangerous
36 or deadly weapon; and

37 (e) Had no reasonable ground to believe that any other participant intended to engage in con-
38 duct likely to result in death.

39 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that
40 the child or dependent person was under care or treatment solely by spiritual means pursuant to the
41 religious beliefs or practices of the child or person or the parent or guardian of the child or person.

42 (5)(a) A person convicted of murder, who was at least 15 years of age at the time of committing
43 the murder, shall be punished by imprisonment for life.

44 (b) When a defendant is convicted of murder under this section, the court shall order that the
45 defendant shall be confined for a minimum of 25 years without possibility of parole, release to

1 post-prison supervision, release on work release or any form of temporary leave or employment at
2 a forest or work camp.

3 (c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
4 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
5 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
6 within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be re-
7 habilitated within a reasonable period of time. At the hearing the prisoner has:

8 (A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation
9 within a reasonable period of time; and

10 (B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented
11 by legal counsel, appointed by the board, at board expense; and

12 (C) The right to a subpoena upon a showing of the general relevance and reasonable scope of
13 the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by
14 the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

15 (d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members,
16 finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement
17 should be changed to life imprisonment with the possibility of parole, release to post-prison super-
18 vision or work release, it shall enter an order to that effect and the order shall convert the terms
19 of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-
20 prison supervision or work release and may set a release date. Otherwise, the board shall deny the
21 relief sought in the petition.

22 (e) **If the board denies the relief sought in the petition, the board shall determine the**
23 **date of the subsequent hearing, and the prisoner may petition for an interim hearing, in ac-**
24 **cordance with section 1 of this 2009 Act.**

25 [(e)] (f) The board's final order shall be accompanied by findings of fact and conclusions of law.
26 The findings of fact shall consist of a concise statement of the underlying facts supporting the
27 findings as to each contested issue of fact and as to each ultimate fact required to support the
28 board's order.

29 [(f) *Not less than two years after the denial of the relief sought in a petition under paragraph (c)*
30 *of this subsection, the prisoner may petition again for a change in the terms of confinement. Further*
31 *petitions for a change may be filed at intervals of not less than two years thereafter.*]

32 (6) As used in this section:

33 (a) "Assault" means to intentionally, knowingly or recklessly cause physical injury to another
34 person. "Assault" does not include the causing of physical injury in a motor vehicle accident that
35 occurs by reason of the reckless conduct of a defendant.

36 (b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545 or 163.547 or a failure
37 to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
38 welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to
39 replace or affect the duty or standard of care required under ORS chapter 677.

40 (c) "Pattern or practice" means one or more previous episodes.

41 (d) "Torture" means to intentionally inflict intense physical pain upon an unwilling victim as a
42 separate objective apart from any other purpose.

43 **SECTION 8.** ORS 137.717, as amended by section 7, chapter 14, Oregon Laws 2008, is amended
44 to read:

45 137.717. (1) When a court sentences a person convicted of:

1 (a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under
2 ORS 164.225[, *robbery in the third degree under ORS 164.395, identity theft under ORS 165.800*] or
3 aggravated identity theft under ORS 165.803, the presumptive sentence is [24] **19** months of
4 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
5 presumptive sentence, if the person has:

6 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
7 in the first degree under ORS 164.225, [*robbery in the third degree under ORS 164.395,*] robbery in
8 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated
9 identity theft under ORS 165.803; **or**

10 (B) [*Two*] **Four** or more previous convictions for any combination of the crimes listed in sub-
11 section (2) of this section[; *or*].

12 [*C*] *A previous conviction for a crime listed in subsection (2) of this section if the current crime*
13 *of conviction was committed while the defendant was on supervision for the previous conviction or less*
14 *than three years after the date the defendant completed the period of supervision for the previous con-*
15 *viction.*]

16 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
17 164.135, [*mail theft or receipt of stolen mail under ORS 164.162,*] burglary in the second degree under
18 ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS
19 164.377, forgery in the first degree under ORS 165.013, [*criminal possession of a forged instrument in*
20 *the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),*] **identity**
21 **theft under ORS 165.800**, possession of a stolen vehicle under ORS 819.300 or trafficking in stolen
22 vehicles under ORS 819.310, the presumptive sentence is [18] **13** months of incarceration, unless the
23 rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the
24 person has:

25 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
26 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, [*robbery*
27 *in the third degree under ORS 164.395,*] robbery in the second degree under ORS 164.405, robbery in
28 the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in
29 stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803; **or**

30 (B) [*Two*] **Four** or more previous convictions for any combination of the crimes listed in sub-
31 section (2) of this section[; *or*].

32 [*C*] *A previous conviction for a crime listed in subsection (2) of this section if the current crime*
33 *of conviction was committed while the defendant was on supervision for the previous conviction or less*
34 *than three years after the date the defendant completed the period of supervision for the previous con-*
35 *viction.*]

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

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

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

39 (c) Aggravated theft in the first degree under ORS 164.057;

40 (d) Unauthorized use of a vehicle under ORS 164.135;

41 [*e*] *Mail theft or receipt of stolen mail under ORS 164.162;*

42 [*f*] (e) Burglary in the second degree under ORS 164.215;

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

44 [*h*] (g) Criminal mischief in the second degree under ORS 164.354;

45 [*i*] (h) Criminal mischief in the first degree under ORS 164.365;

1 [(j)] **(i)** Computer crime under ORS 164.377;
2 [(k)] **(j)** Forgery in the second degree under ORS 165.007;
3 [(L)] **(k)** Forgery in the first degree under ORS 165.013;
4 [(m)] **(L)** Criminal possession of a forged instrument in the second degree under ORS 165.017;
5 [(n)] **(m)** Criminal possession of a forged instrument in the first degree under ORS 165.022;
6 [(o)] **(n)** Fraudulent use of a credit card under ORS 165.055;
7 [(p)] **(o)** Identity theft under ORS 165.800;
8 [(q)] **(p)** Possession of a stolen vehicle under ORS 819.300; **and**
9 [(r)] **(q)** Trafficking in stolen vehicles under ORS 819.310[; *and*]
10 [(s)] *Any attempt to commit a crime listed in this subsection.*
11 [(3)(a)] *A presumptive sentence described in subsection (1) of this section shall be increased by two*
12 *months for each previous conviction the person has that:]*
13 [(A)] *Was for any of the crimes listed in subsection (1) or (2) of this section; and]*
14 [(B)] *Was not used as a predicate for the presumptive sentence under subsection (1) of this*
15 *section.]*
16 [(b)] *Previous convictions may not increase a presumptive sentence described in subsection (1) of this*
17 *section by more than 12 months under this subsection.]*
18 [(4)] **(3)** The court may impose a sentence other than the sentence provided by subsection (1)
19 [or (3)] of this section if the court imposes:
20 (a) A longer term of incarceration that is otherwise required or authorized by law; or
21 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
22 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
23 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
24 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
25 subsection (1) [or (3)] of this section.
26 [(5)] *Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under*
27 *subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS*
28 *161.605.]*
29 [(6)] *The court shall sentence a person under this section to at least the presumptive sentence de-*
30 *scribed in subsection (1) or (3) of this section, unless the parties stipulate otherwise or the court finds*
31 *that:]*
32 [(a)] *The person was not on probation, parole or post-prison supervision for a crime listed in sub-*
33 *section (1) of this section at the time of the commission of the current crime of conviction;]*
34 [(b)] *The person has not previously received a downward departure from a presumptive sentence for*
35 *a crime listed in subsection (1) of this section;]*
36 [(c)] *The harm or loss caused by the crime is not greater than usual for that type of crime; and]*
37 [(d)] *In consideration of the nature of the offense and the harm to the victim, a downward departure*
38 *will:]*
39 [(A)] *Increase public safety;]*
40 [(B)] *Enhance the likelihood that the person will be rehabilitated; and]*
41 [(C)] *Not unduly reduce the appropriate punishment.]*
42 [(7)(a)] **(4)(a)** For a crime committed on or after November 1, 1989, a conviction is considered
43 to have occurred upon the pronouncement of sentence in open court. However, when sentences are
44 imposed for two or more convictions arising out of the same conduct or criminal episode, none of
45 the convictions is considered to have occurred prior to any of the other convictions arising out of

1 the same conduct or criminal episode.

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

5 [(8)] (5) For purposes of this section, previous convictions must be proven pursuant to ORS
6 137.079.

7 [(9)] (6) As used in this section[:],

8 [(a) "Downward departure" means a downward dispositional departure or a downward durational
9 departure under the rules of the Oregon Criminal Justice Commission.]

10 [(b)] "previous conviction" includes:

11 [(A)] (a) Convictions occurring before, on or after July 1, 2003; and

12 [(B)] (b) Convictions entered in any other state or federal court for comparable offenses.

13 **SECTION 9.** ORS 164.162, as amended by section 10, chapter 14, Oregon Laws 2008, is amended
14 to read:

15 164.162. (1) A person commits the crime of mail theft or receipt of stolen mail if the person in-
16 tentionally:

17 (a) Takes or, by fraud or deception, obtains mail from a post office, postal station, mail recep-
18 tacle, authorized depository or mail carrier;

19 (b) Takes from mail any article contained therein;

20 (c) Secretes, embezzles or destroys mail or any article contained therein;

21 (d) Takes or, by fraud or deception, obtains mail that has been delivered to or left for collection
22 on or adjacent to a mail receptacle or authorized depository; or

23 (e) Buys, receives, conceals or possesses mail or any article contained therein knowing that the
24 mail or article has been unlawfully taken or obtained.

25 (2) Mail theft or receipt of stolen mail is a Class [C felony] **A misdemeanor.**

26 **SECTION 10.** Section 5, chapter 14, Oregon Laws 2008, is amended to read:

27 **Sec. 5.** As used in [sections 2 to 5 of this 2008 Act] **this section and section 2, chapter 14,**
28 **Oregon Laws 2008:**

29 (1) "Controlled substance" means:

30 (a) Cocaine;

31 (b) Methamphetamine;

32 (c) Heroin; or

33 (d) Ecstasy.

34 (2) "Ecstasy" means:

35 (a) 3,4-methylenedioxyamphetamine;

36 (b) 3,4-methylenedioxyamphetamine; or

37 (c) 3,4-methylenedioxy-N-ethylamphetamine.

38 (3) "Mixture or substance" means any mixture or substance, whether or not the mixture or
39 substance is in an ingestible or marketable form at the time of the offense.

40 **SECTION 11.** Section 11, chapter 14, Oregon Laws 2008, is amended to read:

41 **Sec. 11.** (1) When a court sentences a person under [sections 2 to 5 of this 2008 Act] **section 2**
42 **or 4, chapter 14, Oregon Laws 2008:**

43 (a) The court shall use the criminal history scale of the sentencing guidelines grid of the Oregon
44 Criminal Justice Commission to determine the sentence to impose. The sentence described in:

45 (A) Section 2 (1), **chapter 14, Oregon Laws 2008,** [of this 2008 Act] shall be determined utilizing

1 crime category 10 of the sentencing guidelines grid.

2 (B) [Sections] **Section 2 (2), chapter 14, Oregon Laws 2008, [and 3 (1) of this 2008 Act]** shall
3 be determined utilizing crime category 9 of the sentencing guidelines grid.

4 (C) **Section 4, chapter 14, Oregon Laws 2008, [of this 2008 Act]** shall be determined utilizing
5 crime category 8 of the sentencing guidelines grid.

6 (b)(A) Notwithstanding ORS 161.605, the court shall impose the sentence described in [sections
7 2 to 5 of this 2008 Act] **section 2 or 4, chapter 14, Oregon Laws 2008**, and may not impose a
8 sentence of optional probation or grant a downward dispositional departure or a downward dura-
9 tional departure under the rules of the commission.

10 (B) The court may impose a sentence other than the sentence described in [sections 2 to 5 of this
11 2008 Act] **section 2 or 4, chapter 14, Oregon Laws 2008**, if the court imposes a longer term of
12 incarceration that is otherwise required or authorized by law.

13 (2) A person sentenced under [sections 2 to 5 of this 2008 Act] **section 2 or 4, chapter 14,**
14 **Oregon Laws 2008**, may not receive a reduction in the term of incarceration for appropriate insti-
15 tutional behavior that exceeds 20 percent of the sentence imposed.

16 **SECTION 12. (1) When a person is convicted of the unlawful delivery of cocaine, meth-**
17 **amphetamine, heroin or ecstasy to a person under 18 years of age, the court shall sentence**
18 **the person to a term of incarceration ranging from 34 months to 72 months, depending on**
19 **the person's criminal history.**

20 (2) **The sentence described in subsection (1) of this section does not apply to a person**
21 **who is less than three years older than the person under 18 years of age to whom the con-**
22 **trolled substance was delivered, unless the person has a previous conviction for delivery of**
23 **cocaine, methamphetamine, heroin or ecstasy to a person under 18 years of age.**

24 **SECTION 13.** Section 5, chapter 14, Oregon Laws 2008, as amended by section 10 of this 2009
25 Act, is amended to read:

26 **Sec. 5.** As used in this section and section 2, chapter 14, Oregon Laws 2008, **and section 12**
27 **of this 2009 Act:**

28 (1) "Controlled substance" means:

- 29 (a) Cocaine;
- 30 (b) Methamphetamine;
- 31 (c) Heroin; or
- 32 (d) Ecstasy.

33 (2) "Ecstasy" means:

- 34 (a) 3,4-methylenedioxymethamphetamine;
- 35 (b) 3,4-methylenedioxyamphetamine; or
- 36 (c) 3,4-methylenedioxy-N-ethylamphetamine.

37 (3) "Mixture or substance" means any mixture or substance, whether or not the mixture or
38 substance is in an ingestible or marketable form at the time of the offense.

39 **SECTION 14.** Section 11, chapter 14, Oregon Laws 2008, as amended by section 11 of this 2009
40 Act, is amended to read:

41 **Sec. 11.** (1) When a court sentences a person under section 2 or 4, chapter 14, Oregon Laws
42 2008, **or section 12 of this 2009 Act:**

43 (a) The court shall use the criminal history scale of the sentencing guidelines grid of the Oregon
44 Criminal Justice Commission to determine the sentence to impose. The sentence described in:

45 (A) Section 2 (1), chapter 14, Oregon Laws 2008, shall be determined utilizing crime category

1 10 of the sentencing guidelines grid.

2 (B) Section 2 (2), chapter 14, Oregon Laws 2008, **and section 12 (1) of this 2009 Act** shall be
3 determined utilizing crime category 9 of the sentencing guidelines grid.

4 (C) Section 4, chapter 14, Oregon Laws 2008, shall be determined utilizing crime category 8 of
5 the sentencing guidelines grid.

6 (b)(A) Notwithstanding ORS 161.605, the court shall impose the sentence described in section 2
7 or 4, chapter 14, Oregon Laws 2008, **or section 12 of this 2009 Act** and may not impose a sentence
8 of optional probation or grant a downward dispositional departure or a downward durational de-
9 parture under the rules of the commission.

10 (B) The court may impose a sentence other than the sentence described in section 2 or 4,
11 chapter 14, Oregon Laws 2008, **or section 12 of this 2009 Act** if the court imposes a longer term
12 of incarceration that is otherwise required or authorized by law.

13 (2) A person sentenced under section 2 or 4, chapter 14, Oregon Laws 2008, **or section 12 of**
14 **this 2009 Act** may not receive a reduction in the term of incarceration for appropriate institutional
15 behavior that exceeds 20 percent of the sentence imposed.

16 **SECTION 15. (1) When a court sentences a person convicted of a crime listed in sub-**
17 **section (2) of this section, the court may not impose a sentence of optional probation or**
18 **grant a downward dispositional departure or a downward durational departure under the**
19 **rules of the Oregon Criminal Justice Commission if the person has a previous conviction for**
20 **any of the crimes listed in subsection (2) of this section.**

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

22 (a) **Manufacture or delivery of a controlled substance, other than marijuana, under ORS**
23 **475.840 (1);**

24 (b) **Creation or delivery of a counterfeit substance, other than marijuana, under ORS**
25 **475.840 (2);**

26 (c) **Manufacture or delivery of heroin under ORS 475.846, 475.848, 475.850 or 475.852;**

27 (d) **Manufacture or delivery of 3,4-methylenedioxymethamphetamine under ORS 475.866,**
28 **475.868, 475.870 or 475.872;**

29 (e) **Manufacture or delivery of cocaine under ORS 475.876, 475.878, 475.880 or 475.882;**

30 (f) **Manufacture or delivery of methamphetamine under ORS 475.886, 475.888, 475.890 or**
31 **475.892;**

32 (g) **Manufacture or delivery of a controlled substance within 1,000 feet of a school under**
33 **ORS 475.904;**

34 (h) **Delivery of a controlled substance to a person under 18 years of age under ORS**
35 **475.906; and**

36 (i) **Possession of a precursor substance with intent to manufacture a controlled sub-**
37 **stance under ORS 475.967.**

38 (3)(a) **For a crime committed on or after November 1, 1989, a conviction is considered to**
39 **have occurred upon the pronouncement in open court of sentence. However, when sentences**
40 **are imposed for two or more convictions arising out of the same conduct or criminal episode,**
41 **none of the convictions is considered to have occurred prior to any of the other convictions**
42 **arising out of the same conduct or criminal episode.**

43 (b) **For a crime committed prior to November 1, 1989, a conviction is considered to have**
44 **occurred upon the pronouncement in open court of a sentence or upon the pronouncement**
45 **in open court of the suspended imposition of a sentence.**

1 **(4) For purposes of this section, previous convictions must be proven pursuant to ORS**
2 **137.079.**

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

4 **(a) Convictions occurring before, on or after the effective date of this 2009 Act; and**

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

6 **SECTION 16.** ORS 137.717, as amended by section 7, chapter 14, Oregon Laws 2008, and section
7 8 of this 2009 Act, is amended to read:

8 137.717. (1) When a court sentences a person convicted of:

9 (a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under
10 **ORS 164.225, robbery in the third degree under ORS 164.395, identity theft under ORS 165.800**
11 or aggravated identity theft under ORS 165.803, the presumptive sentence is [19] **24** months of
12 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
13 presumptive sentence, if the person has:

14 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
15 in the first degree under ORS 164.225, **robbery in the third degree under ORS 164.395**, robbery
16 in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggra-
17 vated identity theft under ORS 165.803; [or]

18 (B) [Four] **Two** or more previous convictions for any combination of the crimes listed in sub-
19 section (2) of this section[.]; **or**

20 (C) **A previous conviction for a crime listed in subsection (2) of this section, if the cur-**
21 **rent crime of conviction was committed while the defendant was on supervision for the**
22 **previous conviction or less than three years after the date the defendant completed the pe-**
23 **riod of supervision for the previous conviction.**

24 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
25 **164.135, mail theft or receipt of stolen mail under ORS 164.162**, burglary in the second degree
26 under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under
27 ORS 164.377, forgery in the first degree under ORS 165.013, **criminal possession of a forged in-**
28 **strument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS**
29 **165.055 (4)(b)**, [*identity theft under ORS 165.800*,] possession of a stolen vehicle under ORS 819.300
30 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is [13] **18** months of
31 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
32 presumptive sentence, if the person has:

33 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
34 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, **rob-**
35 **bery in the third degree under ORS 164.395**, robbery in the second degree under ORS 164.405,
36 robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300,
37 trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;
38 [or]

39 (B) [Four] **Two** or more previous convictions for any combination of the crimes listed in sub-
40 section (2) of this section[.]; **or**

41 (C) **A previous conviction for a crime listed in subsection (2) of this section, if the cur-**
42 **rent crime of conviction was committed while the defendant was on supervision for the**
43 **previous conviction or less than three years after the date the defendant completed the pe-**
44 **riod of supervision for the previous conviction.**

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

- 1 (a) Theft in the second degree under ORS 164.045;
2 (b) Theft in the first degree under ORS 164.055;
3 (c) Aggravated theft in the first degree under ORS 164.057;
4 (d) Unauthorized use of a vehicle under ORS 164.135;
5 **(e) Mail theft or receipt of stolen mail under ORS 164.162;**
6 [(e)] **(f)** Burglary in the second degree under ORS 164.215;
7 [(f)] **(g)** Burglary in the first degree under ORS 164.225;
8 [(g)] **(h)** Criminal mischief in the second degree under ORS 164.354;
9 [(h)] **(i)** Criminal mischief in the first degree under ORS 164.365;
10 [(i)] **(j)** Computer crime under ORS 164.377;
11 [(j)] **(k)** Forgery in the second degree under ORS 165.007;
12 [(k)] **(L)** Forgery in the first degree under ORS 165.013;
13 [(L)] **(m)** Criminal possession of a forged instrument in the second degree under ORS 165.017;
14 [(m)] **(n)** Criminal possession of a forged instrument in the first degree under ORS 165.022;
15 [(n)] **(o)** Fraudulent use of a credit card under ORS 165.055;
16 [(o)] **(p)** Identity theft under ORS 165.800;
17 [(p)] **(q)** Possession of a stolen vehicle under ORS 819.300; [and]
18 [(q)] **(r)** Trafficking in stolen vehicles under ORS 819.310; and
19 **(s) Any attempt to commit a crime listed in this subsection.**
20 **(3)(a) A presumptive sentence described in subsection (1) of this section shall be in-**
21 **creased by two months for each previous conviction the person has that:**
22 **(A) Was for any of the crimes listed in subsection (1) or (2) of this section; and**
23 **(B) Was not used as a predicate for the presumptive sentence described in subsection (1)**
24 **of this section.**
25 **(b) Previous convictions may not increase a presumptive sentence described in subsection**
26 **(1) of this section by more than 12 months under this subsection.**
27 [(3)] **(4)** The court may impose a sentence other than the sentence provided by subsection (1)
28 **or (3) of this section if the court imposes:**
29 (a) A longer term of incarceration that is otherwise required or authorized by law; or
30 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
31 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
32 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
33 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
34 subsection (1) **or (3)** of this section.
35 **(5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person**
36 **under subsection (4) of this section to a term of incarceration that exceeds the period of time**
37 **described in ORS 161.605.**
38 **(6) The court shall sentence a person under this section to at least the presumptive**
39 **sentence described in subsection (1) or (3) of this section, unless the parties stipulate oth-**
40 **erwise or the court finds that:**
41 **(a) The person was not on probation, parole or post-prison supervision for a crime listed**
42 **in subsection (1) of this section at the time of the commission of the current crime of con-**
43 **viction;**
44 **(b) The person has not previously received a downward departure from a presumptive**
45 **sentence for a crime listed in subsection (1) of this section;**

1 (c) **The harm or loss caused by the crime is not greater than usual for that type of crime;**
2 **and**

3 (d) **In consideration of the nature of the offense and the harm to the victim, a downward**
4 **departure will:**

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

6 (B) **Enhance the likelihood that the person will be rehabilitated; and**

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

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

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

16 [(5)] (8) For purposes of this section, previous convictions must be proven pursuant to ORS
17 137.079.

18 [(6)] (9) As used in this section[,]:

19 (a) **“Downward departure” means a downward dispositional departure or a downward**
20 **durational departure under the rules of the Oregon Criminal Justice Commission.**

21 (b) **“Previous conviction” includes:**

22 [(a)] (A) Convictions occurring before, on or after July 1, 2003; and

23 [(b)] (B) Convictions entered in any other state or federal court for comparable offenses.

24 **SECTION 17. (1) The Department of Corrections shall:**

25 (a) **Provide appropriate treatment services to drug-addicted persons in the custody of the**
26 **department who are at a high or medium risk of reoffending and who have moderate to se-**
27 **vere treatment needs; and**

28 (b) **Make grants to counties in order to provide supplemental funding for:**

29 (A) **The operation of local jails;**

30 (B) **Appropriate treatment services for drug-addicted persons on probation, parole or**
31 **post-prison supervision; or**

32 (C) **The intensive supervision of drug-addicted persons on probation, parole or post-prison**
33 **supervision, including the incarceration of drug-addicted persons who have violated the**
34 **terms and conditions of probation, parole or post-prison supervision.**

35 (2) **The Oregon Criminal Justice Commission shall make grants to counties in order to**
36 **provide supplemental funding for drug courts for drug-addicted persons, including the costs**
37 **of appropriate treatment services and the incarceration of persons who have violated the**
38 **terms and conditions of a drug court.**

39 (3)(a) **The appropriate legislative committee shall periodically conduct oversight hearings**
40 **on the effectiveness of this section.**

41 (b) **The Oregon Criminal Justice Commission shall periodically conduct independent**
42 **evaluations of the programs funded by this section for their effectiveness in reducing crimi-**
43 **nal behavior in a cost-effective manner.**

44 (4) **The Department of Corrections shall determine which persons are eligible for treat-**
45 **ment under subsection (1)(a) of this section using an actuarial risk assessment tool.**

1 (5) The department shall adopt rules to administer the grant program described in sub-
2 section (1)(b) of this section.

3 (6) Prior to adopting the rules described in subsection (5) of this section, the department
4 shall consult with a broad-based committee that includes representatives of:

- 5 (a) County boards of commissioners;
- 6 (b) County sheriffs;
- 7 (c) District attorneys;
- 8 (d) County community corrections;
- 9 (e) The Oregon Criminal Justice Commission;
- 10 (f) Presiding judges of the judicial districts of this state;
- 11 (g) Public defenders; and
- 12 (h) Treatment providers.

13 (7) In determining which grant proposals to fund within each county, the department
14 shall:

- 15 (a) Consult with the committee described in subsection (6) of this section;
- 16 (b) Give priority to those proposals that are best designed to reduce crime and drug ad-
17 diction; and
- 18 (c) Be guided by evidence-based practices, risk assessment tools or other research-based
19 considerations.

20 (8) Nothing in this section:

- 21 (a) Creates any claim, right of action or civil liability; or
- 22 (b) Requires a supervisory authority or the Department of Corrections to provide treat-
23 ment to any individual under the authority's supervision or in the custody of the department.

24 (9) As used in this section:

25 (a) "Drug-addicted person" means a person who has lost the ability to control the per-
26 sonal use of controlled substances or alcohol, or who uses controlled substances or alcohol
27 to the extent that the health of the person or that of others is substantially impaired or
28 endangered or the social or economic function of the person is substantially disrupted. A
29 drug-addicted person may be physically dependent, a condition in which the body requires a
30 continuing supply of a controlled substance or alcohol to avoid characteristic withdrawal
31 symptoms, or psychologically dependent, a condition characterized by an overwhelming
32 mental desire for continued use of a controlled substance or alcohol.

33 (b) "Intensive supervision" means the active monitoring of a person's performance in a
34 treatment program by a parole and probation officer and the imposition of sanctions, or re-
35 quest to a court for sanctions, if the person fails to abide by the terms and conditions of a
36 treatment program.

37 **SECTION 18.** If a person on probation, parole or post-prison supervision is required to
38 successfully complete a drug or alcohol treatment program as a condition of supervision and
39 the person refuses or otherwise fails to successfully complete the treatment program, the
40 court or the supervising authority shall impose swift and certain punishment, including
41 incarceration in jail.

42 **SECTION 19.** ORS 164.162, as amended by section 10, chapter 14, Oregon Laws 2008, and sec-
43 tion 9 of this 2009 Act, is amended to read:

44 164.162. (1) A person commits the crime of mail theft or receipt of stolen mail if the person in-
45 tentiously:

1 (a) Takes or, by fraud or deception, obtains mail from a post office, postal station, mail recep-
2 tacle, authorized depository or mail carrier;

3 (b) Takes from mail any article contained therein;

4 (c) Secretes, embezzles or destroys mail or any article contained therein;

5 (d) Takes or, by fraud or deception, obtains mail that has been delivered to or left for collection
6 on or adjacent to a mail receptacle or authorized depository; or

7 (e) Buys, receives, conceals or possesses mail or any article contained therein knowing that the
8 mail or article has been unlawfully taken or obtained.

9 (2) Mail theft or receipt of stolen mail is a Class [A *misdemeanor*] **C felony**.

10 **SECTION 20.** If Senate Bill 389 becomes law, ORS 137.721, as amended by section 1, chapter
11 191, Oregon Laws 2009 (Enrolled Senate Bill 389), is amended to read:

12 137.721. (1) **Except as provided in ORS 475.900 or section 2, chapter 14, Oregon Laws 2008,**
13 **when a court sentences a person convicted of:**

14 (a) **Manufacture of methamphetamine under ORS 475.886 or 475.888, the court may not**
15 **impose a sentence of optional probation or grant a downward dispositional departure or a**
16 **downward durational departure of more than one-half of the presumptive prison sentence**
17 **under the rules of the Oregon Criminal Justice Commission if the person has a previous**
18 **conviction for:**

19 (A) **Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;**

20 (B) **Delivery or manufacture of methamphetamine within 1,000 feet of a school under**
21 **ORS 475.888, 475.892 or 475.904; or**

22 (C) **Possession of a precursor substance with intent to manufacture a controlled sub-**
23 **stance under ORS 475.967.**

24 (b) **Delivery of methamphetamine under ORS 475.890 or 475.892, the court may not impose**
25 **a sentence of optional probation or grant a downward dispositional departure under the rules**
26 **of the Oregon Criminal Justice Commission if:**

27 (A) **The delivery involved a substantial quantity of methamphetamine as described in ORS**
28 **475.900; and**

29 (B) **The person has a previous conviction for:**

30 (i) **Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;**

31 (ii) **Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS**
32 **475.888, 475.892 or 475.904; or**

33 (iii) **Possession of a precursor substance with intent to manufacture a controlled sub-**
34 **stance under ORS 475.967.**

35 [(1)] (c) [*Except as provided in ORS 475.900 or section 2 or 3, chapter 14, Oregon Laws 2008, when*
36 *the court sentences a person convicted of*] Delivery of methamphetamine under ORS 475.890 or
37 475.892, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon
38 Criminal Justice Commission prescribe a longer presumptive sentence, if the person has two or more
39 previous convictions for any combination of the following crimes:

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

41 [(b)] (B) **Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS**
42 **475.888, 475.892 or 475.904; or**

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

45 (2) The court may impose a sentence other than the sentence provided by subsection (1) of this

1 section if the court imposes:

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

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

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

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

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

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

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

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

21 **SECTION 21.** If Senate Bill 389 becomes law, ORS 137.721, as amended by section 1, chapter
22 191, Oregon Laws 2009 (Enrolled Senate Bill 389), and section 20 of this 2009 Act, is amended to
23 read:

24 137.721. *[(1) Except as provided in ORS 475.900 or section 2, chapter 14, Oregon Laws 2008, when*
25 *a court sentences a person convicted of:]*

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

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

31 *[(B) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888,*
32 *475.892 or 475.904; or]*

33 *[(C) Possession of a precursor substance with intent to manufacture a controlled substance under*
34 *ORS 475.967.]*

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

38 *[(A) The delivery involved a substantial quantity of methamphetamine as described in ORS*
39 *475.900; and]*

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

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

42 *[(ii) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888,*
43 *475.892 or 475.904; or]*

44 *[(iii) Possession of a precursor substance with intent to manufacture a controlled substance under*
45 *ORS 475.967.]*

1 [(c)] (1) **Except as provided in ORS 475.900 or section 2, chapter 14, Oregon Laws 2008, or**
2 **section 12 of this 2009 Act, when the court sentences a person convicted of** delivery of meth-
3 amphetamine under ORS 475.890 or 475.892, the presumptive sentence is 19 months of incarceration,
4 unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sen-
5 tence, if the person has two or more previous convictions for any combination of the following
6 crimes:

7 (a) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;

8 (b) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS
9 475.888, 475.892 or 475.904; or

10 (c) Possession of a precursor substance with intent to manufacture a controlled substance under
11 ORS 475.967.

12 (2) The court may impose a sentence other than the sentence provided by subsection (1) of this
13 section if the court imposes:

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

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

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

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

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

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

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

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

33 **SECTION 22.** ORS 421.121 is amended to read:

34 421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the
35 Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a
36 reduction in the term of incarceration for appropriate institutional behavior, as defined by rule of
37 the Department of Corrections, and for participation in the adult basic skills development program
38 described in ORS 421.084.

39 (2)(a) The maximum amount of time credits earned for appropriate institutional behavior or for
40 participation in the adult basic skills development program described in ORS 421.084 may not exceed
41 [20] **30** percent of the total term of incarceration in a Department of Corrections institution.

42 (b) **Notwithstanding paragraph (a) of this subsection, the maximum amount of time**
43 **credits earned for appropriate institutional behavior or for participation in the adult basic**
44 **skills development program described in ORS 421.084 may not exceed 20 percent of the total**
45 **term of incarceration in a Department of Corrections institution if the inmate is serving a**

1 sentence for:

2 (A) Rape in the third degree under ORS 163.355;

3 (B) Sodomy in the third degree under ORS 163.385;

4 (C) Sexual abuse in the second degree under ORS 163.425;

5 (D) Criminally negligent homicide under ORS 163.145;

6 (E) Assault in the third degree under ORS 163.165;

7 (F) Assault in the fourth degree under ORS 163.160 (3); or

8 (G) An attempt to commit any crime listed in ORS 137.700 or subparagraphs (A) to (F)
9 of this paragraph.

10 (3) The time credits may not be used to shorten the term of actual prison confinement to less
11 than six months.

12 (4) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183
13 to establish a process for granting, retracting and restoring the time credits earned by the offender
14 as allowed in subsections (1) to (3) of this section.

15 **SECTION 23.** (1) Notwithstanding section 30 (7)(a) of this 2009 Act, the amendments to
16 ORS 421.121 by section 22 of this 2009 Act apply to inmates sentenced before the effective
17 date of this 2009 Act who are not prohibited by any other provision of law from obtaining a
18 reduction in the term of incarceration under ORS 421.121 if the court enters the order de-
19 scribed in subsection (3) of this section.

20 (2) If the Department of Corrections determines, pursuant to rules adopted by the de-
21 partment, that an inmate sentenced before the effective date of this 2009 Act is eligible for
22 a reduction in the term of incarceration under ORS 421.121 that exceeds 20 percent of the
23 total term of incarceration in a department institution, the department shall notify the
24 sentencing court. Upon receipt of the notice, the court shall appoint counsel for the inmate,
25 set a hearing date and notify the district attorney of the hearing date. If the inmate is
26 serving a sentence for which there is a victim, the district attorney shall notify the victim
27 of the hearing date.

28 (3) At the hearing, the inmate, the district attorney and the victim may introduce evi-
29 dence relevant to the determination of whether a reduction in the term of incarceration that
30 exceeds 20 percent may be appropriate. Upon the conclusion of the hearing, the court shall
31 order on the record in open court that the inmate may be considered by the department for
32 a reduction in the term of incarceration under ORS 421.121 of up to 30 percent of the total
33 term of incarceration in a department institution, unless the court finds on the record in
34 open court substantial and compelling reasons to order that the inmate not be considered for
35 the reduction.

36 (4) Notwithstanding ORS 137.030, the inmate may appear at the hearing described in
37 subsection (3) of this section by simultaneous electronic transmission in accordance with
38 ORS 131.045.

39 (5)(a) The sentencing court retains authority to modify its judgment and sentence to re-
40 flect the results of a resentencing hearing described in this section.

41 (b) Notwithstanding that the sentencing court originally found substantial and compelling
42 reasons to order that the inmate not be considered for the leave, release or program de-
43 scribed in ORS 137.750, an inmate who otherwise meets the requirements of this section may
44 be considered by the department and the sentencing court for a reduction in the term of
45 incarceration that exceeds 20 percent of the total term of incarceration in a department in-

stitution.

(6) Nothing in this section:

(a) Creates any cause of action for compensation or damages;

(b) Entitles any inmate to a hearing before the date set by the court under subsection (2) of this section; or

(c) Entitles an inmate to a reduction in the term of incarceration, except as authorized by the court and in accordance with department rules.

(7) The Oregon Criminal Justice Commission shall conduct a study that includes an assessment of the effects of this section and the amendments to ORS 421.121 by section 22 of this 2009 Act on reducing recidivism. The commission shall report the results of the study to the Legislative Assembly in the manner provided in ORS 192.245 no later than February 1, 2013.

(8) The department may adopt rules to carry out the provisions of this section.

SECTION 24. ORS 421.121, as amended by section 22 of this 2009 Act, is amended to read:

421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a reduction in the term of incarceration for appropriate institutional behavior, as defined by rule of the Department of Corrections, and for participation in the adult basic skills development program described in ORS 421.084.

(2)[(a)] The maximum amount of time credits earned for appropriate institutional behavior or for participation in the adult basic skills development program described in ORS 421.084 may not exceed [30] 20 percent of the total term of incarceration in a Department of Corrections institution.

[(b) Notwithstanding paragraph (a) of this subsection, the maximum amount of time credits earned for appropriate institutional behavior or for participation in the adult basic skills development program described in ORS 421.084 may not exceed 20 percent of the total term of incarceration in a Department of Corrections institution if the inmate is serving a sentence for:]

[(A) Rape in the third degree under ORS 163.355;]

[(B) Sodomy in the third degree under ORS 163.385;]

[(C) Sexual abuse in the second degree under ORS 163.425;]

[(D) Criminally negligent homicide under ORS 163.145;]

[(E) Assault in the third degree under ORS 163.165;]

[(F) Assault in the fourth degree under ORS 163.160 (3); or]

[(G) An attempt to commit any crime listed in ORS 137.700 or subparagraphs (A) to (F) of this paragraph.]

(3) The time credits may not be used to shorten the term of actual prison confinement to less than six months.

(4) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183 to establish a process for granting, retracting and restoring the time credits earned by the offender as allowed in subsections (1) to (3) of this section.

SECTION 25. ORS 137.545 is amended to read:

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

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

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

1 (2) At any time during the probation period, the court may issue a warrant and cause a de-
2 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
3 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
4 rant for violating any condition of probation, and a statement by the parole and probation officer
5 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
6 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
7 detention of the probationer in the county jail until the probationer can be brought before the court
8 or until the parole and probation officer or supervisory personnel impose and the offender agrees
9 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
10 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
11 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
12 personnel, the disposition shall take place in no more than five judicial days. If the offender does
13 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
14 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
15 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
16 tention to the court that imposed the probation. The parole and probation officer shall promptly
17 submit to the court a report showing in what manner the probationer has violated the conditions
18 of probation.

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

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

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

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

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

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

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

42 (b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that
43 imposed the probationary sentence may revoke probation supervision and impose a sanction as
44 provided by rules of the Oregon Criminal Justice Commission. **If the defendant was sentenced to**
45 **a presumptive period of probation or a period of probation following a downward departure**

1 **from a presumptive term of incarceration of 12 months or less, the court may not impose a**
2 **term of incarceration that exceeds 60 days as a revocation sanction unless the revocation is**
3 **the result of the defendant's conviction for a new crime.**

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

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

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

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

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

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

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

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

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

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

29 **SECTION 26. (1) Each person convicted of a felony and sentenced to probation under the**
30 **rules of the Oregon Criminal Justice Commission is eligible for a reduction in the period of**
31 **probation for compliance with the conditions of probation and the person's supervision plan,**
32 **as defined by rule of the Department of Corrections.**

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

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

38 **SECTION 27. Section 28 of this 2009 Act is added to and made a part of ORS chapter 144.**

39 **SECTION 28. (1) All persons sentenced to the legal and physical custody of the supervi-**
40 **sory authority under ORS 137.124 (2) shall serve active periods of post-prison supervision as**
41 **follows:**

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

43 **(b) Twelve months of active post-prison supervision for crimes in crime categories 4 to**
44 **10.**

45 **(2) Except as authorized in subsections (3) and (4) of this section, when an offender has**

1 served the active period of post-prison supervision established under subsection (1) of this
2 section, the supervisory authority shall place the offender on inactive supervision status.

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

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

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

14 (c) The offender's employment status;

15 (d) The offender's address;

16 (e) Treatment program outcome;

17 (f) Any new criminal activity; and

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

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

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

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

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

34 **SECTION 29.** Sections 1, 3, 6, 8 and 9, chapter 14, Oregon Laws 2008, and sections 8, 9
35 and 10, chapter 35, Oregon Laws 2008, are repealed.

36 **SECTION 30.** (1) Section 1 of this 2009 Act applies to prisoners convicted of aggravated
37 murder or murder that was committed before, on or after the effective date of this 2009 Act
38 and whose petition for a change in the terms of confinement is denied on or after January
39 1, 2010.

40 (2) Section 2 of this 2009 Act applies to prisoners sentenced for a crime committed prior
41 to November 1, 1989, and who are denied parole on or after January 1, 2010.

42 (3) The amendments to ORS 144.125, 144.228 and 144.232 by sections 3 to 5 of this 2009
43 Act apply to prisoners:

44 (a) Whose release date is postponed under ORS 144.125 on or after January 1, 2010.

45 (b) For whom the State Board of Parole and Post-Prison Supervision is unable to set a

1 release date under ORS 144.228 or 144.232 on or after January 1, 2010.

2 (4) The amendments to ORS 137.717 and 164.162 and sections 5 and 11, chapter 14, Oregon
3 Laws 2008, by sections 8 to 11 of this 2009 Act apply to sentences imposed for crimes com-
4 mitted:

5 (a) On or after the effective date of this 2009 Act; and

6 (b) Before January 1, 2012.

7 (5)(a) Sections 12, 15, 17 and 18 of this 2009 Act and the amendments to ORS 137.717 and
8 164.162 and sections 5 and 11, chapter 14, Oregon Laws 2008, by sections 13, 14, 16 and 19 of
9 this 2009 Act become operative on January 1, 2012.

10 (b) Sections 12 and 15 of this 2009 Act and the amendments to ORS 137.717 and 164.162
11 by sections 16 and 19 of this 2009 Act apply to sentences imposed for crimes committed on
12 or after January 1, 2012.

13 (6) If Senate Bill 389 becomes law, the amendments to ORS 137.721 by:

14 (a) Section 20 of this 2009 Act apply to sentences imposed for crimes committed:

15 (A) On or after the effective date of this 2009 Act; and

16 (B) Before January 1, 2012.

17 (b) Section 21 of this 2009 Act become operative on January 1, 2012.

18 (c) Section 21 of this 2009 Act apply to sentences imposed for crimes committed on or
19 after January 1, 2012.

20 (7)(a) The amendments to ORS 421.121 by section 22 of this 2009 Act apply to inmates
21 who:

22 (A) Are sentenced for crimes committed on or after the effective date of this 2009 Act
23 and before June 30, 2013; and

24 (B) Are not prohibited by any other provision of law from obtaining a reduction in the
25 term of incarceration under ORS 421.121.

26 (b) The amendments to ORS 421.121 by section 24 of this 2009 Act become operative June
27 30, 2013.

28 (c) The amendments to ORS 421.121 by section 24 of this 2009 Act apply to inmates who:

29 (A) Are sentenced for a crime committed on or after June 30, 2013; and

30 (B) Are not prohibited by any other provision of law from obtaining a reduction in the
31 term of incarceration under ORS 421.121.

32 (d) Section 23 of this 2009 Act is repealed June 30, 2013.

33 (8) The amendments to ORS 137.545 by section 25 of this 2009 Act apply to revocations
34 of probation that occur on or after the effective date of this 2009 Act.

35 (9) Section 26 of this 2009 Act applies to persons convicted before, on or after the effec-
36 tive date of this 2009 Act and who are on probation on or after the effective date of the rules
37 adopted by the Department of Corrections under section 26 (3) of this 2009 Act.

38 (10) Except as provided in subsection (11) of this section, section 28 of this 2009 Act ap-
39 plies to persons sentenced to the legal and physical custody of a supervisory authority under
40 ORS 137.124 (2) who are released on post-prison supervision before, on or after the effective
41 date of this 2009 Act.

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

45 (A) Four months or more of active post-prison supervision for crimes in crime categories

1 1 to 3; or

2 (B) Ten months or more of active post-prison supervision for crimes in crime categories
3 4 to 10.

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

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

9 (A) The parole and probation officer responsible for supervising an offender described in
10 paragraph (a) of this subsection may send a report described in section 28 (3) of this 2009
11 Act to the supervisory authority for review; and

12 (B) After reviewing the report, the supervisory authority may extend the active post-
13 prison supervision period in accordance with section 28 (4) of this 2009 Act.

14 (d) Section 28 of this 2009 Act and the provisions of this subsection and subsection (10)
15 of this section do not apply to a person sentenced to the legal and physical custody of a su-
16 pervisory authority under ORS 137.124 (2) whose term of active post-prison supervision im-
17 posed by the sentencing court expires on or before the date that is two months after the
18 effective date of this 2009 Act.

19 SECTION 31. This 2009 Act being necessary for the immediate preservation of the public
20 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
21 on its passage.

22 _____