

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2335

By COMMITTEE ON JUDICIARY

June 8

1 On page 1 of printed A-engrossed bill, line 2, after the second semicolon delete the rest of the
2 line and delete line 3 and insert “amending ORS 137.545, 137.717, 137.721, 144.125, 144.228, 144.232,
3 163.105, 163.115, 164.162 and 421.121 and sections 5 and 11, chapter 14, Oregon Laws 2008; repealing
4 sections 1, 3, 6, 8 and 9, chapter 14, Oregon Laws 2008, and sections 8, 9 and 10, chapter 35, Oregon
5 Laws 2008; declaring an emergency; and providing for criminal sentence reduction that requires
6 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
17 back into the community; and

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

20 “Whereas evidence-based treatment programs are effective in reducing drug and alcohol ad-
21 diction and the accompanying criminal behavior; and

22 “Whereas evidence-based treatment programs need time to be implemented and adequate funding
23 in order to be effective; and

24 “Whereas the State of Oregon needs to phase in the implementation of Ballot Measure 57 in
25 order to achieve the goal of reducing property crime in Oregon; now, therefore,”.

26 On page 8, delete lines 16 through 28 and insert:

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

29 “137.717. (1) When a court sentences a person convicted of:

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

35 “(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary

1 in the first degree under ORS 164.225, [robbery in the third degree under ORS 164.395,] robbery in
2 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated
3 identity theft under ORS 165.803; **or**

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

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

10 “(b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
11 164.135, [mail theft or receipt of stolen mail under ORS 164.162,] burglary in the second degree under
12 ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS
13 164.377, forgery in the first degree under ORS 165.013, [criminal possession of a forged instrument in
14 the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),] **identity**
15 **theft under ORS 165.800**, possession of a stolen vehicle under ORS 819.300 or trafficking in stolen
16 vehicles under ORS 819.310, the presumptive sentence is [18] **13** months of incarceration, unless the
17 rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the
18 person has:

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

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

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

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

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

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

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

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

35 “[e] Mail theft or receipt of stolen mail under ORS 164.162;]

36 “[f] (e) Burglary in the second degree under ORS 164.215;

37 “[g] (f) Burglary in the first degree under ORS 164.225;

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

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

40 “[j] (i) Computer crime under ORS 164.377;

41 “[k] (j) Forgery in the second degree under ORS 165.007;

42 “[L] (k) Forgery in the first degree under ORS 165.013;

43 “[m] (L) Criminal possession of a forged instrument in the second degree under ORS 165.017;

44 “[n] (m) Criminal possession of a forged instrument in the first degree under ORS 165.022;

45 “[o] (n) Fraudulent use of a credit card under ORS 165.055;

1 “[(p)] (o) Identity theft under ORS 165.800;

2 “[(q)] (p) Possession of a stolen vehicle under ORS 819.300; **and**

3 “[(r)] (q) Trafficking in stolen vehicles under ORS 819.310[; and]

4 “[(s) Any attempt to commit a crime listed in this subsection].

5 “[(3)(a) A presumptive sentence described in subsection (1) of this section shall be increased by two

6 months for each previous conviction the person has that:]

7 “[(A) Was for any of the crimes listed in subsection (1) or (2) of this section; and]

8 “[(B) Was not used as a predicate for the presumptive sentence under subsection (1) of this

9 section.]

10 “[(b) Previous convictions may not increase a presumptive sentence described in subsection (1) of

11 this section by more than 12 months under this subsection.]

12 “[(4)] (3) The court may impose a sentence other than the sentence provided by subsection (1)

13 [or (3)] of this section if the court imposes:

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

15 “(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission

16 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon

17 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-

18 lowed for a person sentenced under this subsection is double the presumptive sentence provided in

19 subsection (1) [or (3)] of this section.

20 “[(5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under

21 subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS

22 161.605.]

23 “[(6) The court shall sentence a person under this section to at least the presumptive sentence de-

24 scribed in subsection (1) or (3) of this section, unless the parties stipulate otherwise or the court finds

25 that:]

26 “[(a) The person was not on probation, parole or post-prison supervision for a crime listed in

27 subsection (1) of this section at the time of the commission of the current crime of conviction;]

28 “[(b) The person has not previously received a downward departure from a presumptive sentence

29 for a crime listed in subsection (1) of this section;]

30 “[(c) The harm or loss caused by the crime is not greater than usual for that type of crime; and]

31 “[(d) In consideration of the nature of the offense and the harm to the victim, a downward depar-

32 ture will:]

33 “[(A) Increase public safety;]

34 “[(B) Enhance the likelihood that the person will be rehabilitated; and]

35 “[(C) Not unduly reduce the appropriate punishment.]

36 “[(7)(a)] (4)(a) For a crime committed on or after November 1, 1989, a conviction is considered

37 to have occurred upon the pronouncement of sentence in open court. However, when sentences are

38 imposed for two or more convictions arising out of the same conduct or criminal episode, none of

39 the convictions is considered to have occurred prior to any of the other convictions arising out of

40 the same conduct or criminal episode.

41 “(b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-

42 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open

43 court of the suspended imposition of a sentence.

44 “[(8)] (5) For purposes of this section, previous convictions must be proven pursuant to ORS

45 137.079.

1 “[9] (6) As used in this section[.],
2 “[(a) ‘Downward departure’ means a downward dispositional departure or a downward durational
3 departure under the rules of the Oregon Criminal Justice Commission.]
4 “[(b)] ‘previous conviction’ includes:
5 “[(A)] (a) Convictions occurring before, on or after July 1, 2003; and
6 “[(B)] (b) Convictions entered in any other state or federal court for comparable offenses.
7 “**SECTION 9.** ORS 164.162, as amended by section 10, chapter 14, Oregon Laws 2008, is
8 amended to read:
9 “164.162. (1) A person commits the crime of mail theft or receipt of stolen mail if the person
10 intentionally:
11 “(a) Takes or, by fraud or deception, obtains mail from a post office, postal station, mail recep-
12 tacle, authorized depository or mail carrier;
13 “(b) Takes from mail any article contained therein;
14 “(c) Secretes, embezzles or destroys mail or any article contained therein;
15 “(d) Takes or, by fraud or deception, obtains mail that has been delivered to or left for collection
16 on or adjacent to a mail receptacle or authorized depository; or
17 “(e) Buys, receives, conceals or possesses mail or any article contained therein knowing that the
18 mail or article has been unlawfully taken or obtained.
19 “(2) Mail theft or receipt of stolen mail is a Class [C felony] **A misdemeanor.**
20 “**SECTION 10.** Section 5, chapter 14, Oregon Laws 2008, is amended to read:
21 “**Sec. 5.** As used in [sections 2 to 5 of this 2008 Act] **this section and section 2, chapter 14,**
22 **Oregon Laws 2008:**
23 “(1) ‘Controlled substance’ means:
24 “(a) Cocaine;
25 “(b) Methamphetamine;
26 “(c) Heroin; or
27 “(d) Ecstasy.
28 “(2) ‘Ecstasy’ means:
29 “(a) 3,4-methylenedioxyamphetamine;
30 “(b) 3,4-methylenedioxyamphetamine; or
31 “(c) 3,4-methylenedioxy-N-ethylamphetamine.
32 “(3) ‘Mixture or substance’ means any mixture or substance, whether or not the mixture or
33 substance is in an ingestible or marketable form at the time of the offense.
34 “**SECTION 11.** Section 11, chapter 14, Oregon Laws 2008, is amended to read:
35 “**Sec. 11.** (1) When a court sentences a person under [sections 2 to 5 of this 2008 Act] **section**
36 **2 or 4, chapter 14, Oregon Laws 2008:**
37 “(a) The court shall use the criminal history scale of the sentencing guidelines grid of the
38 Oregon Criminal Justice Commission to determine the sentence to impose. The sentence described
39 in:
40 “(A) Section 2 (1), **chapter 14, Oregon Laws 2008,** [of this 2008 Act] shall be determined uti-
41 lizing crime category 10 of the sentencing guidelines grid.
42 “(B) [Sections] **Section 2 (2), chapter 14, Oregon Laws 2008,** [and 3 (1) of this 2008 Act] shall
43 be determined utilizing crime category 9 of the sentencing guidelines grid.
44 “(C) Section 4, **chapter 14, Oregon Laws 2008,** [of this 2008 Act] shall be determined utilizing
45 crime category 8 of the sentencing guidelines grid.

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

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

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

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

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

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

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

23 “(1) ‘Controlled substance’ means:

24 “(a) Cocaine;

25 “(b) Methamphetamine;

26 “(c) Heroin; or

27 “(d) Ecstasy.

28 “(2) ‘Ecstasy’ means:

29 “(a) 3,4-methylenedioxyamphetamine;

30 “(b) 3,4-methylenedioxyamphetamine; or

31 “(c) 3,4-methylenedioxy-N-ethylamphetamine.

32 “(3) ‘Mixture or substance’ means any mixture or substance, whether or not the mixture or
33 substance is in an ingestible or marketable form at the time of the offense.

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

36 “**Sec. 11. (1) When a court sentences a person under section 2 or 4, chapter 14, Oregon Laws**
37 **2008, or section 12 of this 2009 Act:**

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

41 “(A) Section 2 (1), chapter 14, Oregon Laws 2008, shall be determined utilizing crime category
42 10 of the sentencing guidelines grid.

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

45 “(C) Section 4, chapter 14, Oregon Laws 2008, shall be determined utilizing crime category 8 of

1 the sentencing guidelines grid.

2 “(b)(A) Notwithstanding ORS 161.605, the court shall impose the sentence described in section
3 2 or 4, chapter 14, Oregon Laws 2008, **or section 12 of this 2009 Act** and may not impose a sen-
4 tence of optional probation or grant a downward dispositional departure or a downward durational
5 departure under the rules of the commission.

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

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

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

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

18 “(a) **Manufacture or delivery of a controlled substance, other than marijuana, under ORS**
19 **475.840 (1);**

20 “(b) **Creation or delivery of a counterfeit substance, other than marijuana, under ORS**
21 **475.840 (2);**

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

23 “(d) **Manufacture or delivery of 3,4-methylenedioxymethamphetamine under ORS 475.866,**
24 **475.868, 475.870 or 475.872;**

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

26 “(f) **Manufacture or delivery of methamphetamine under ORS 475.886, 475.888, 475.890 or**
27 **475.892;**

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

30 “(h) **Delivery of a controlled substance to a person under 18 years of age under ORS**
31 **475.906; and**

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

34 “(3)(a) **For a crime committed on or after November 1, 1989, a conviction is considered**
35 **to have occurred upon the pronouncement in open court of sentence. However, when sen-**
36 **tences are imposed for two or more convictions arising out of the same conduct or criminal**
37 **episode, none of the convictions is considered to have occurred prior to any of the other**
38 **convictions arising out of the same conduct or criminal episode.**

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

42 “(4) **For purposes of this section, previous convictions must be proven pursuant to ORS**
43 **137.079.**

44 “(5) **As used in this section, ‘previous conviction’ means:**

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

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

2 **“SECTION 16.** ORS 137.717, as amended by section 7, chapter 14, Oregon Laws 2008, and sec-
3 tion 8 of this 2009 Act, is amended to read:

4 “137.717. (1) When a court sentences a person convicted of:

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

10 “(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
11 in the first degree under ORS 164.225, **robbery in the third degree under ORS 164.395**, robbery
12 in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggra-
13 vated identity theft under ORS 165.803; [or]

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

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

20 “(b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
21 164.135, **mail theft or receipt of stolen mail under ORS 164.162**, burglary in the second degree
22 under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under
23 ORS 164.377, forgery in the first degree under ORS 165.013, **criminal possession of a forged in-
24 strument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS
25 165.055 (4)(b)**, [identity theft under ORS 165.800,] possession of a stolen vehicle under ORS 819.300
26 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is [13] **18** months of
27 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
28 presumptive sentence, if the person has:

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

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

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

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

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

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

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

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

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

1 **“(A) Increase public safety;**

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

3 **“(C) Not unduly reduce the appropriate punishment.**

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

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

12 **“[(5)] (8)** For purposes of this section, previous convictions must be proven pursuant to ORS
13 137.079.

14 **“[(6)] (9)** As used in this section[,]:

15 **“(a) ‘Downward departure’ means a downward dispositional departure or a downward**
16 **durational departure under the rules of the Oregon Criminal Justice Commission.**

17 **“(b) ‘Previous conviction’ includes:**

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

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

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

21 **“(a) Provide appropriate treatment services to drug-addicted persons in the custody of**
22 **the department who are at a high or medium risk of reoffending and who have moderate to**
23 **severe treatment needs; and**

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

25 **“(A) The operation of local jails;**

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

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

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

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

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

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

42 **“(5) The department shall adopt rules to administer the grant program described in**
43 **subsection (1)(b) of this section.**

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

1 “(a) County boards of commissioners;
2 “(b) County sheriffs;
3 “(c) District attorneys;
4 “(d) County community corrections;
5 “(e) The Oregon Criminal Justice Commission;
6 “(f) Presiding judges of the judicial districts of this state;
7 “(g) Public defenders; and
8 “(h) Treatment providers.
9 “(7) In determining which grant proposals to fund within each county, the department
10 shall:
11 “(a) Consult with the committee described in subsection (6) of this section;
12 “(b) Give priority to those proposals that are best designed to reduce crime and drug
13 addiction; and
14 “(c) Be guided by evidence-based practices, risk assessment tools or other research-based
15 considerations.
16 “(8) Nothing in this section:
17 “(a) Creates any claim, right of action or civil liability; or
18 “(b) Requires a supervisory authority or the Department of Corrections to provide
19 treatment to any individual under the authority’s supervision or in the custody of the de-
20 partment.
21 “(9) As used in this section:
22 “(a) ‘Drug-addicted person’ means a person who has lost the ability to control the per-
23 sonal use of controlled substances or alcohol, or who uses controlled substances or alcohol
24 to the extent that the health of the person or that of others is substantially impaired or
25 endangered or the social or economic function of the person is substantially disrupted. A
26 drug-addicted person may be physically dependent, a condition in which the body requires a
27 continuing supply of a controlled substance or alcohol to avoid characteristic withdrawal
28 symptoms, or psychologically dependent, a condition characterized by an overwhelming
29 mental desire for continued use of a controlled substance or alcohol.
30 “(b) ‘Intensive supervision’ means the active monitoring of a person’s performance in a
31 treatment program by a parole and probation officer and the imposition of sanctions, or re-
32 quest to a court for sanctions, if the person fails to abide by the terms and conditions of a
33 treatment program.
34 “**SECTION 18.** If a person on probation, parole or post-prison supervision is required to
35 successfully complete a drug or alcohol treatment program as a condition of supervision and
36 the person refuses or otherwise fails to successfully complete the treatment program, the
37 court or the supervising authority shall impose swift and certain punishment, including
38 incarceration in jail.
39 “**SECTION 19.** ORS 164.162, as amended by section 10, chapter 14, Oregon Laws 2008, and
40 section 9 of this 2009 Act, is amended to read:
41 “164.162. (1) A person commits the crime of mail theft or receipt of stolen mail if the person
42 intentionally:
43 “(a) Takes or, by fraud or deception, obtains mail from a post office, postal station, mail recep-
44 tacle, authorized depository or mail carrier;
45 “(b) Takes from mail any article contained therein;

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

2 “(d) Takes or, by fraud or deception, obtains mail that has been delivered to or left for collection

3 on or adjacent to a mail receptacle or authorized depository; or

4 “(e) Buys, receives, conceals or possesses mail or any article contained therein knowing that the

5 mail or article has been unlawfully taken or obtained.

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

7 “**SECTION 20.** If Senate Bill 389 becomes law, ORS 137.721, as amended by section 1, chapter

8 191, Oregon Laws 2009 (Enrolled Senate Bill 389), is amended to read:

9 “137.721. (1) **Except as provided in ORS 475.900 or section 2, chapter 14, Oregon Laws 2008,**

10 **when a court sentences a person convicted of:**

11 “(a) **Manufacture of methamphetamine under ORS 475.886 or 475.888, the court may not**

12 **impose a sentence of optional probation or grant a downward dispositional departure or a**

13 **downward durational departure of more than one-half of the presumptive prison sentence**

14 **under the rules of the Oregon Criminal Justice Commission if the person has a previous**

15 **conviction for:**

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

17 “(B) **Delivery or manufacture of methamphetamine within 1,000 feet of a school under**

18 **ORS 475.888, 475.892 or 475.904; or**

19 “(C) **Possession of a precursor substance with intent to manufacture a controlled sub-**

20 **stance under ORS 475.967.**

21 “(b) **Delivery of methamphetamine under ORS 475.890 or 475.892, the court may not im-**

22 **pose a sentence of optional probation or grant a downward dispositional departure under the**

23 **rules of the Oregon Criminal Justice Commission if:**

24 “(A) **The delivery involved a substantial quantity of methamphetamine as described in**

25 **ORS 475.900; and**

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

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

28 “(ii) **Delivery or manufacture of methamphetamine within 1,000 feet of a school under**

29 **ORS 475.888, 475.892 or 475.904; or**

30 “(iii) **Possession of a precursor substance with intent to manufacture a controlled sub-**

31 **stance under ORS 475.967.**

32 “[(1)] (c) [*Except as provided in ORS 475.900 or section 2 or 3, chapter 14, Oregon Laws 2008,*

33 *when the court sentences a person convicted of*] Delivery of methamphetamine under ORS 475.890 or

34 475.892, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon

35 Criminal Justice Commission prescribe a longer presumptive sentence, if the person has two or more

36 previous convictions for any combination of the following crimes:

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

38 “[(b)] (B) **Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS**

39 **475.888, 475.892 or 475.904; or**

40 “[(c)] (C) **Possession of a precursor substance with intent to manufacture a controlled substance**

41 **under ORS 475.967.**

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

43 section if the court imposes:

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

45 “(b) An upward **or downward** durational departure sentence that is authorized by law or the

1 rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling
2 reasons **unless otherwise noted in subsection (1) of this section**. Unless otherwise authorized by
3 law or rule of the Oregon Criminal Justice Commission, the maximum departure allowed for a per-
4 son sentenced under this subsection is double the presumptive sentence provided in subsection (1)
5 of this section.

6 “(3) As used in this section, ‘previous conviction’ means:

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

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

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

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

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

18 “**SECTION 21.** If Senate Bill 389 becomes law, ORS 137.721, as amended by section 1, chapter
19 191, Oregon Laws 2009 (Enrolled Senate Bill 389), and section 20 of this 2009 Act, is amended to
20 read:

21 “137.721. [(1) *Except as provided in ORS 475.900 or section 2, chapter 14, Oregon Laws 2008, when*
22 *a court sentences a person convicted of:*]

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

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

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

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

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

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

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

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

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

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

43 “[*(c) (1) Except as provided in ORS 475.900 or section 2, chapter 14, Oregon Laws 2008,*
44 **or section 12 of this 2009 Act, when the court sentences a person convicted of delivery of**
45 **methamphetamine under ORS 475.890 or 475.892, the presumptive sentence is 19 months of**

1 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
2 presumptive sentence, if the person has two or more previous convictions for any combination of the
3 following crimes:

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

5 “(b) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS
6 475.888, 475.892 or 475.904; or

7 “(c) Possession of a precursor substance with intent to manufacture a controlled substance un-
8 der ORS 475.967.

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

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

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

18 “(3) As used in this section, ‘previous conviction’ means:

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

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

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

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

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

30 “**SECTION 22.** ORS 421.121 is amended to read:

31 “421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the
32 Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a
33 reduction in the term of incarceration for appropriate institutional behavior, as defined by rule of
34 the Department of Corrections, and for participation in the adult basic skills development program
35 described in ORS 421.084.

36 “(2)(a) The maximum amount of time credits earned for appropriate institutional behavior or for
37 participation in the adult basic skills development program described in ORS 421.084 may not exceed
38 [20] **30** percent of the total term of incarceration in a Department of Corrections institution.

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

44 “(A) **Rape in the third degree under ORS 163.355;**

45 “(B) **Sodomy in the third degree under ORS 163.385;**

- 1 **“(C) Sexual abuse in the second degree under ORS 163.425;**
2 **“(D) Criminally negligent homicide under ORS 163.145;**
3 **“(E) Assault in the third degree under ORS 163.165;**
4 **“(F) Assault in the fourth degree under ORS 163.160 (3); or**
5 **“(G) An attempt to commit any crime listed in ORS 137.700 or subparagraphs (A) to (F)**
6 **of this paragraph.**

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

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

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

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

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

33 **“(4) Notwithstanding ORS 137.030, the inmate may appear at the hearing described in**
34 **subsection (3) of this section by simultaneous electronic transmission in accordance with**
35 **ORS 131.045.**

36 **“(5)(a) The sentencing court retains authority to modify its judgment and sentence to**
37 **reflect the results of a resentencing hearing described in this section.**

38 **“(b) Notwithstanding that the sentencing court originally found substantial and compel-**
39 **ling reasons to order that the inmate not be considered for the leave, release or program**
40 **described in ORS 137.750, an inmate who otherwise meets the requirements of this section**
41 **may be considered by the department and the sentencing court for a reduction in the term**
42 **of incarceration that exceeds 20 percent of the total term of incarceration in a department**
43 **institution.**

44 **“(6) Nothing in this section:**

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

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

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

5 “(7) The Oregon Criminal Justice Commission shall conduct a study that includes an as-
6 sessment of the effects of this section and the amendments to ORS 421.121 by section 22 of
7 this 2009 Act on reducing recidivism. The commission shall report the results of the study
8 to the Legislative Assembly in the manner provided in ORS 192.245 no later than February
9 1, 2013.

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

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

12 “421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the
13 Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a
14 reduction in the term of incarceration for appropriate institutional behavior, as defined by rule of
15 the Department of Corrections, and for participation in the adult basic skills development program
16 described in ORS 421.084.

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

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

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

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

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

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

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

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

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

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

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

37 “**SECTION 25.** ORS 137.545 is amended to read:

38 “137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Jus-
39 tice Commission for felonies committed on or after November 1, 1989:

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

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

43 “(2) At any time during the probation period, the court may issue a warrant and cause a de-
44 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
45 officer, police officer or other officer with power of arrest may arrest a probationer without a war-

1 rant for violating any condition of probation, and a statement by the parole and probation officer
2 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
3 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
4 detention of the probationer in the county jail until the probationer can be brought before the court
5 or until the parole and probation officer or supervisory personnel impose and the offender agrees
6 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
7 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
8 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
9 personnel, the disposition shall take place in no more than five judicial days. If the offender does
10 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
11 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
12 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
13 tention to the court that imposed the probation. The parole and probation officer shall promptly
14 submit to the court a report showing in what manner the probationer has violated the conditions
15 of probation.

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

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

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

31 “(b) Upon the court’s own motion.

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

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

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

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

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

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

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

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

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

18 “(11)(a) The victim has the right:

19 “(A) Upon request made within the time period prescribed in the notice required by ORS
20 147.417, to be notified by the district attorney of any hearing before the court that may result in the
21 revocation of the defendant’s probation;

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

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

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

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

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

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

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

36 “**SECTION 28. (1) All persons sentenced to the legal and physical custody of the super-**
37 **visory authority under ORS 137.124 (2) shall serve active periods of post-prison supervision**
38 **as follows:**

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

41 “**(b) Twelve months of active post-prison supervision for crimes in crime categories 4 to**
42 **10.**

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

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

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

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

12 “(c) The offender’s employment status;

13 “(d) The offender’s address;

14 “(e) Treatment program outcome;

15 “(f) Any new criminal activity; and

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

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

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

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

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

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

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

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

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

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

43 “(b) For whom the State Board of Parole and Post-Prison Supervision is unable to set a
44 release date under ORS 144.228 or 144.232 on or after January 1, 2010.

45 “(4) The amendments to ORS 137.717 and 164.162 and sections 5 and 11, chapter 14,

1 Oregon Laws 2008, by sections 8 to 11 of this 2009 Act apply to sentences imposed for crimes
2 committed:

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

4 “(b) Before January 1, 2012.

5 “(5)(a) Sections 12, 15, 17 and 18 of this 2009 Act and the amendments to ORS 137.717 and
6 164.162 and sections 5 and 11, chapter 14, Oregon Laws 2008, by sections 13, 14, 16 and 19 of
7 this 2009 Act become operative on January 1, 2012.

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

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

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

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

14 “(B) Before January 1, 2012.

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

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

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

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

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

24 “(b) The amendments to ORS 421.121 by section 24 of this 2009 Act become operative June
25 30, 2013.

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

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

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

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

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

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

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

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

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

45 “(B) Ten months or more of active post-prison supervision for crimes in crime categories

1 4 to 10.

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

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

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

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

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

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

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