

House Bill 2842

Sponsored by COMMITTEE ON RULES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Repeals Ballot Measure 57 (2008) and related provisions.
Declares emergency, effective on passage.

A BILL FOR AN ACT

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

Whereas Ballot Measure 57 (2008) (chapter 14, Oregon Laws 2008) imposes significant costs on the State of Oregon; and

Whereas Ballot Measure 57 (2008) did not identify a source of funding to cover these costs; and

Whereas this 2009 Act repeals Ballot Measure 57 (2008) and House Bill 2843 re-refers the provisions of Ballot Measure 57 (2008) to the people of Oregon with a funding source; now, therefore,

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

SECTION 1. ORS 137.717, as amended by section 7, chapter 14, Oregon Laws 2008, is amended to read:

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

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

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

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

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

(b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS 164.135, [*mail theft or receipt of stolen mail under ORS 164.162,*] burglary in the second degree under

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 ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS
 2 164.377, forgery in the first degree under ORS 165.013, [*criminal possession of a forged instrument in*
 3 *the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),*] **identity**
 4 **theft under ORS 165.800**, possession of a stolen vehicle under ORS 819.300 or trafficking in stolen
 5 vehicles under ORS 819.310, the presumptive sentence is [18] **13** months of incarceration, unless the
 6 rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the
 7 person has:

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

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

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

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

- 20 (a) Theft in the second degree under ORS 164.045;
- 21 (b) Theft in the first degree under ORS 164.055;
- 22 (c) Aggravated theft in the first degree under ORS 164.057;
- 23 (d) Unauthorized use of a vehicle under ORS 164.135;
- 24 [(e) *Mail theft or receipt of stolen mail under ORS 164.162;*]
- 25 [(f)] (e) Burglary in the second degree under ORS 164.215;
- 26 [(g)] (f) Burglary in the first degree under ORS 164.225;
- 27 [(h)] (g) Criminal mischief in the second degree under ORS 164.354;
- 28 [(i)] (h) Criminal mischief in the first degree under ORS 164.365;
- 29 [(j)] (i) Computer crime under ORS 164.377;
- 30 [(k)] (j) Forgery in the second degree under ORS 165.007;
- 31 [(L)] (k) Forgery in the first degree under ORS 165.013;
- 32 [(m)] (L) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- 33 [(n)] (m) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- 34 [(o)] (n) Fraudulent use of a credit card under ORS 165.055;
- 35 [(p)] (o) Identity theft under ORS 165.800;
- 36 [(q)] (p) Possession of a stolen vehicle under ORS 819.300; **and**
- 37 [(r)] (q) Trafficking in stolen vehicles under ORS 819.310[; *and*]
- 38 [(s) *Any attempt to commit a crime listed in this subsection.*]

39 [(3)(a) *A presumptive sentence described in subsection (1) of this section shall be increased by two*
 40 *months for each previous conviction the person has that:*]

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

42 [(B) *Was not used as a predicate for the presumptive sentence under subsection (1) of this*
 43 *section.*]

44 [(b) *Previous convictions may not increase a presumptive sentence described in subsection (1) of this*
 45 *section by more than 12 months under this subsection.*]

1 [(4) (3) The court may impose a sentence other than the sentence provided by subsection (1)
 2 *or* (3)] of this section if the court imposes:

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

4 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
 5 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
 6 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
 7 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
 8 subsection (1) *or* (3)] of this section.

9 [(5) *Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under*
 10 *subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS*
 11 *161.605.*]

12 [(6) *The court shall sentence a person under this section to at least the presumptive sentence de-*
 13 *scribed in subsection (1) or (3) of this section, unless the parties stipulate otherwise or the court finds*
 14 *that:*]

15 [(a) *The person was not on probation, parole or post-prison supervision for a crime listed in sub-*
 16 *section (1) of this section at the time of the commission of the current crime of conviction;*]

17 [(b) *The person has not previously received a downward departure from a presumptive sentence for*
 18 *a crime listed in subsection (1) of this section;*]

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

20 [(d) *In consideration of the nature of the offense and the harm to the victim, a downward departure*
 21 *will:*]

22 [(A) *Increase public safety;*]

23 [(B) *Enhance the likelihood that the person will be rehabilitated; and]*

24 [(C) *Not unduly reduce the appropriate punishment.*]

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

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

33 [(8) (5) For purposes of this section, previous convictions must be proven pursuant to ORS
 34 137.079.

35 [(9) (6) As used in this section, [.]

36 [(a) *“Downward departure” means a downward dispositional departure or a downward durational*
 37 *departure under the rules of the Oregon Criminal Justice Commission.*]

38 [(b) *“previous conviction” includes:*

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

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

41 **SECTION 2.** ORS 164.162, as amended by section 10, chapter 14, Oregon Laws 2008, is amended
 42 to read:

43 164.162. (1) A person commits the crime of mail theft or receipt of stolen mail if the person in-
 44 tentiously:

45 (a) Takes or, by fraud or deception, obtains mail from a post office, postal station, mail recep-

1 tacle, authorized depository or mail carrier;

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

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

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

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

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

9 **SECTION 3. Sections 1, 2, 3, 4, 5, 6, 8, 9 and 11, chapter 14, Oregon Laws 2008, and**
10 **sections 8, 9 and 10, chapter 35, Oregon Laws 2008, are repealed.**

11 **SECTION 4. The amendments to ORS 137.717 and 164.162 by sections 1 and 2 of this 2009**
12 **Act apply to sentences imposed for crimes committed on or after the effective date of this**
13 **2009 Act.**

14 **SECTION 5. This 2009 Act being necessary for the immediate preservation of the public**
15 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
16 **on its passage.**

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