

# House Bill 3478

Sponsored by Representative GARRARD (at the request of Oregon Anti-Crime Alliance)

## 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**.

Prohibits reduction in sentence or release from custody that would cause person to serve less than 80 percent of original term of imprisonment.

Makes terms of imprisonment consecutive unless expressly made concurrent by sentencing court.

Makes sentencing guidelines advisory.

Requires State Court Administrator to compile and make public, with regard to each judge imposing sentences for felonies, defendants' criminal records and sentences.

Requires state to reimburse county for costs of incarceration of felons in county jails.

## A BILL FOR AN ACT

1  
2 Relating to criminal sentencing; creating new provisions; amending ORS 137.010, 137.120, 137.123  
3 and 137.669; and repealing ORS 137.671.

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

5 **SECTION 1. (1) A person sentenced to a determinate term of imprisonment as the result**  
6 **of a felony conviction is not eligible for a reduction in sentence or release from custody un-**  
7 **der any provision of law if the reduction in sentence or release from custody will cause the**  
8 **person to serve less than 80 percent of the original term of imprisonment imposed by the**  
9 **sentencing court.**

10 **(2) Nothing in this section authorizes the reduction of a mandatory minimum term of**  
11 **imprisonment.**

12 **SECTION 2.** ORS 137.123 is amended to read:

13 137.123. (1) A sentence imposed by the court may be made concurrent or consecutive to any  
14 other sentence [*which*] **that** has been previously imposed or is simultaneously imposed upon the  
15 same defendant. [*The court may provide for consecutive sentences only in accordance with the pro-*  
16 *visions of this section.*] A sentence [*shall be deemed to be a concurrent*] **is a consecutive** term unless  
17 the judgment expressly provides for [*consecutive*] **concurrent** sentences.

18 [*(2) If a defendant is simultaneously sentenced for criminal offenses that do not arise from the same*  
19 *continuous and uninterrupted course of conduct, or if the defendant previously was sentenced by any*  
20 *other court within the United States to a sentence which the defendant has not yet completed, the court*  
21 *may impose a sentence concurrent with or consecutive to the other sentence or sentences.]*

22 [(3)] **(2)** When a defendant is sentenced for a crime committed while the defendant was  
23 incarcerated after sentencing for the commission of a previous crime, the court shall provide that  
24 the sentence for the new crime be consecutive to the sentence for the previous crime.

25 [(4) *When a defendant has been found guilty of more than one criminal offense arising out of a*  
26 *continuous and uninterrupted course of conduct, the sentences imposed for each resulting conviction*  
27 *shall be concurrent unless the court complies with the procedures set forth in subsection (5) of this*  
28 *section.*]

**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        [(5) *The court has discretion to impose consecutive terms of imprisonment for separate convictions*  
 2 *arising out of a continuous and uninterrupted course of conduct only if the court finds:*]

3        [(a) *That the criminal offense for which a consecutive sentence is contemplated was not merely an*  
 4 *incidental violation of a separate statutory provision in the course of the commission of a more serious*  
 5 *crime but rather was an indication of defendant's willingness to commit more than one criminal offense;*  
 6 *or]*

7        [(b) *The criminal offense for which a consecutive sentence is contemplated caused or created a risk*  
 8 *of causing greater or qualitatively different loss, injury or harm to the victim or caused or created a*  
 9 *risk of causing loss, injury or harm to a different victim than was caused or threatened by the other*  
 10 *offense or offenses committed during a continuous and uninterrupted course of conduct.*]

11        **SECTION 3.** ORS 137.669 is amended to read:

12        137.669. (1) **Except as otherwise provided by statute,** the guidelines adopted under ORS  
 13 137.667, together with any amendments, supplements or repealing provisions, [*shall control the sen-*  
 14 *tences for all crimes*] **are advisory for a court imposing sentence on a person convicted of a**  
 15 **felony** committed after the effective date of [*such*] **the** guidelines. [*Except as provided in ORS*  
 16 *137.637 and 137.671, the incarcerative guidelines and any other guidelines so designated by the Oregon*  
 17 *Criminal Justice Commission shall be mandatory and constitute presumptive sentences.*]

18        **(2) Notwithstanding subsection (1) of this section:**

19        **(a) In order to impose a sentence that is less than a presumptive sentence, the court**  
 20 **shall comply with the rules of the Oregon Criminal Justice Commission.**

21        **(b) The court shall impose a term of probation or post-prison supervision in accordance**  
 22 **with the rules of the commission.**

23        **SECTION 4.** ORS 137.010 is amended to read:

24        137.010. (1) The statutes that define offenses impose a duty upon the court having jurisdiction  
 25 to pass sentence in accordance with this section or, for felonies committed on or after November  
 26 1, 1989, **and before the effective date of this 2009 Act,** in accordance with rules of the Oregon  
 27 Criminal Justice Commission unless otherwise specifically provided by law. **For felonies committed**  
 28 **on or after the effective date of this 2009 Act, the rules of the commission are advisory for**  
 29 **a court passing sentence.**

30        (2)(a) If it cannot be determined whether the felony was committed on or after November 1,  
 31 1989, the defendant shall be sentenced as if the felony had been committed prior to November 1,  
 32 1989.

33        **(b) If it cannot be determined whether the felony was committed on or after the effective**  
 34 **date of this 2009 Act, the defendant shall be sentenced as if the felony had been committed**  
 35 **on or after November 1, 1989, and prior to the effective date of this 2009 Act.**

36        (3) Except when a person is convicted of a felony committed on or after November 1, 1989, if  
 37 the court is of the opinion that it is in the best interests of the public as well as of the defendant,  
 38 the court may suspend the imposition or execution of any part of a sentence for any period of not  
 39 more than five years. The court may extend the period of suspension beyond five years in accord-  
 40 ance with subsection (4) of this section.

41        (4) If the court suspends the imposition or execution of a part of a sentence for an offense other  
 42 than a felony committed on or after November 1, 1989, the court may also impose and execute a  
 43 sentence of probation on the defendant for a definite or indefinite period of not more than five years.  
 44 However, upon a later finding that a defendant sentenced to probation for a felony has violated a  
 45 condition of the probation and in lieu of revocation, the court may order the period of both the

1 suspended sentence and the sentence of probation extended until a date not more than six years  
 2 from the date of original imposition of sentence. Time during which the probationer has absconded  
 3 from supervision and a bench warrant has been issued for the probationer's arrest shall not be  
 4 counted in determining the time elapsed since imposition of the sentence of probation.

5 (5) If the court announces that it intends to suspend imposition or execution of any part of a  
 6 sentence, the defendant may, at that time, object and request imposition of the full sentence. In no  
 7 case, however, does the defendant have a right to refuse the court's order, and the court may sus-  
 8 pend imposition or execution of a part of the sentence despite the defendant's objection or request.  
 9 If the court further announces that it intends to sentence the defendant to a period of probation, the  
 10 defendant may, at that time, object and request that a sentence of probation or its conditions not  
 11 be imposed or that different conditions be imposed. In no case, however, does the defendant have  
 12 the right to refuse a sentence of probation or any of the conditions of the probation, and the court  
 13 may sentence the defendant to probation subject to conditions despite the defendant's objection or  
 14 request.

15 (6) The power of the judge of any court to suspend execution of any part of a sentence or to  
 16 sentence any person convicted of a crime to probation shall continue until the person is delivered  
 17 to the custody of the Department of Corrections.

18 (7) When a person is convicted of an offense and the court does not suspend the imposition or  
 19 execution of any part of a sentence or when a suspended sentence or sentence of probation is re-  
 20 voked, the court shall impose the following sentence:

- 21 (a) A term of imprisonment;
- 22 (b) A fine;
- 23 (c) Both imprisonment and a fine; or
- 24 (d) Discharge of the defendant.

25 (8) This section does not deprive the court of any authority conferred by law to enter a judg-  
 26 ment for the forfeiture of property, suspend or cancel a license, remove a person from office or im-  
 27 pose any other civil penalty. An order exercising that authority may be included as part of the  
 28 judgment of conviction.

29 (9) When imposing sentence for a felony committed on or after November 1, 1989, the court shall  
 30 submit sentencing information to the commission in accordance with rules of the commission.

31 (10) A judgment of conviction that includes a term of imprisonment for a felony committed on  
 32 or after November 1, 1989, shall state the length of incarceration and the length of post-prison  
 33 supervision. The judgment of conviction shall also provide that if the defendant violates the condi-  
 34 tions of post-prison supervision, the defendant shall be subject to sanctions including the possibility  
 35 of additional imprisonment in accordance with rules of the commission.

36 **SECTION 5.** ORS 137.120 is amended to read:

37 137.120. (1) Whenever any person is convicted of a felony committed prior to November 1, 1989,  
 38 the court shall, unless it imposes other than a sentence to serve a term of imprisonment in the  
 39 custody of the Department of Corrections, sentence such person to imprisonment for an indetermi-  
 40 nate period of time, but stating and fixing in the judgment and sentence a maximum term for the  
 41 crime, which shall not exceed the maximum term of imprisonment provided by law therefor; and  
 42 judgment shall be given accordingly. Such a sentence shall be known as an indeterminate sentence.  
 43 The court shall state on the record the reasons for the sentence imposed.

44 (2) Whenever any person is convicted of a felony committed on or after November 1, 1989, **and**  
 45 **before the effective date of this 2009 Act**, the court shall impose sentence in accordance with

1 rules of the Oregon Criminal Justice Commission.

2 **(3) Whenever any person is convicted of a felony committed on or after the effective date**  
3 **of this 2009 Act, the court shall impose sentence as provided under ORS 137.669.**

4 [(3)] (4) This section does not affect the indictment, prosecution, trial, verdict, judgment or  
5 punishment of any felony committed before June 14, 1939, and all laws now and before that date in  
6 effect relating to such a felony are continued in full force and effect as to such a felony.

7 **SECTION 6. (1) Each court shall report to the State Court Administrator the following**  
8 **information regarding each order imposing a sentence for a felony crime if available:**

9 **(a) The defendant's criminal record;**

10 **(b) The sentence imposed; and**

11 **(c) The crimes for which the sentence was imposed.**

12 **(2)(a) The administrator shall compile the information reported under subsection (1) of**  
13 **this section as to each judge imposing sentence.**

14 **(b) The administrator shall maintain the records compiled pursuant to paragraph (a) of**  
15 **this subsection and make the records available for public inspection.**

16 **SECTION 7. (1) The state shall reimburse a county on a timely basis for the actual cost**  
17 **of presentencing incarceration of a person convicted of a felony.**

18 **(2)(a) After sentencing for a felony conviction, the term of incarceration must be served**  
19 **in facilities provided or funded by the Department of Corrections.**

20 **(b) The department may rent jail space from the county, as needed, to hold persons**  
21 **convicted of felonies.**

22 **(c) The department and the county shall negotiate the rent under paragraph (b) of this**  
23 **subsection in an amount sufficient to reimburse the county for the actual costs of**  
24 **incarceration.**

25 **SECTION 8. ORS 137.671 is repealed.**

26 **SECTION 9. (1) Section 1 of this 2009 Act applies to terms of imprisonment imposed for**  
27 **acts committed on or after the effective date of this 2009 Act.**

28 **(2) The amendments to ORS 137.010, 137.120, 137.123 and 137.669 by sections 2 to 5 of this**  
29 **2009 Act and the repeal of ORS 137.671 by section 8 of this 2009 Act apply to sentences im-**  
30 **posed for acts committed on or after the effective date of this 2009 Act.**

31 **(3) Section 6 of this 2009 Act applies to information regarding orders imposing sentence**  
32 **for felony crimes committed on or after July 1, 2011.**

33 **(4) Section 7 of this 2009 Act applies to terms of incarceration beginning on or after July**  
34 **1, 2011.**

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