

(To Resolve Conflicts)

A-Engrossed House Bill 3508

Ordered by the House June 18
Including House Amendments dated June 18 to resolve conflicts

Sponsored by Representative HUNT, Senator COURTNEY

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.

Suspends certain provision of Ballot Measure 57 (2008) until January 1, 2012. Provides that moneys not expended as result of suspension are dedicated to public safety purposes.

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 July 1, 2013.

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 contents of board order.

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

Modifies law related to probation and post-prison supervision for persons under supervision by community corrections. Sunsets modifications on July 1, 2011.

Modifies procedures related to reprieves, commutations and pardons for certain inmates. Sunsets modification on July 1, 2011.

Punishes possession of controlled substances as Class A misdemeanor under certain circumstances. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Imposes special assessment of \$100 on person convicted of possession of controlled substance. Sunsets provisions on July 1, 2011.

Modifies crime of kidnapping in first degree.

Increases penalty for assault in third degree if defendant commits assault by means of motor vehicle and was driving while under influence of intoxicants.

Increases penalty for crime of strangulation under certain circumstances to maximum of five years' imprisonment, \$125,000 fine, or both.

Directs Department of State Police to create targeted enforcement program. Appropriates moneys for purposes of program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public safety; creating new provisions; amending ORS 131.125, 137.545, 137.717, 137.721,
3 144.125, 144.228, 144.232, 163.105, 163.115, 163.165, 163.187, 163.235, 164.162, 421.121, 475.840,
4 475.854, 475.874, 475.884 and 475.894; repealing sections 1, 6, 8 and 9, chapter 14, Oregon Laws
5 2008, and sections 8, 9 and 10, chapter 35, Oregon Laws 2008; appropriating money; declaring
6 an emergency; and providing for criminal sentence reduction that requires approval by a two-
7 thirds majority.

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

10 Whereas the 2008 Legislative Assembly referred Ballot Measure 57 to the voters; 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 Ballot Measure 57 was a comprehensive plan to reduce property crime through drug
2 and alcohol treatment combined with increased incarcerative sanctions; and

3 Whereas the voters approved Ballot Measure 57; and

4 Whereas more than 100 offenders have been incarcerated under Ballot Measure 57, and these
5 offenders will, along with other offenders sentenced under Ballot Measure 57, remain incarcerated;
6 and

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

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

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

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

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

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

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

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

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

29 **(2) If the board grants the prisoner a hearing that is more than two years from the date**
30 **a petition is denied, the prisoner may submit a request for an interim hearing not earlier**
31 **than the date that is two years from the date the petition is denied and at intervals of not**
32 **less than two years thereafter. If the board finds, based upon a request for an interim**
33 **hearing, that there is reasonable cause to believe that the prisoner may be granted a change**
34 **in the terms of confinement, the board shall conduct a hearing as soon as is reasonably**
35 **convenient.**

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

45 **SECTION 2. (1)(a) If the State Board of Parole and Post-Prison Supervision denies parole**

1 to a prisoner sentenced for a crime committed prior to November 1, 1989, the board may not
 2 grant the prisoner a subsequent hearing that is less than two years, or more than 10 years,
 3 from the date parole is denied, unless the two-year period would exceed the maximum sen-
 4 tence imposed by the court.

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

8 (c) The board shall determine the date of the subsequent hearing pursuant to rules
 9 adopted by the board. Rules adopted under this paragraph must be based on the foundation
 10 principles of criminal law described in section 15, Article I of the Oregon Constitution.

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

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

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

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

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

40 (3)(a) If the board finds the prisoner has a present severe emotional disturbance such as to
 41 constitute a danger to the health or safety of the community, the board may order the postponement
 42 of the scheduled parole release until a specified future date. **The board may not postpone a pris-
 43 oner's scheduled release date to a date that is less than two years, or more than 10 years,
 44 from the date of the hearing, unless the prisoner would be held beyond the maximum sen-
 45 tence. The board shall determine the scheduled release date, and the prisoner may petition**

1 **for interim review, in accordance with section 2 of this 2009 Act.**

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

7 (4) Each prisoner shall furnish the board with a parole plan prior to the scheduled release of
8 the prisoner on parole. The board shall adopt rules specifying the elements of an adequate parole
9 plan and may defer release of the prisoner for not more than three months if it finds that the parole
10 plan is inadequate. The Department of Corrections shall assist prisoners in preparing parole plans.

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

12 144.228. (1)(a) Within six months after commitment to the custody of the Department of Cor-
13 rections of any person sentenced under ORS 161.725 and 161.735 as a dangerous offender, the State
14 Board of Parole and Post-Prison Supervision shall set a date for a parole consideration hearing in-
15 stead of an initial release date as otherwise required under ORS 144.120 and 144.125. The parole
16 consideration hearing date shall be the time the prisoner would otherwise be eligible for parole
17 under the board's rules.

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

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

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

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

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

45 **(d) When the board grants a prisoner a review hearing that is more than two years from**

1 **the date of the previous hearing and when the board denies a petition for an interim hearing,**
2 **the board shall issue a final order. The order shall be accompanied by findings of fact and**
3 **conclusions of law. The findings of fact shall consist of a concise statement of the underlying**
4 **facts supporting the findings as to each contested issue of fact and as to each ultimate fact**
5 **required to support the board's order. Unless the prisoner bears the burden of persuasion,**
6 **the order shall include findings necessary to deny the prisoner a release date for any period**
7 **of time when the prisoner would be presumed to be eligible for a release date.**

8 (2) For the parole consideration hearing, the board shall cause to be brought before it and
9 consider all information regarding such person. The information shall include:

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

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

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

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

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

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

29 144.232. (1) A person sentenced under ORS 161.725 and 161.735 as a dangerous offender for fel-
30 onies committed on or after November 1, 1989, shall be considered for release to post-prison super-
31 vision. The offender is eligible for release to post-prison supervision after having served the required
32 incarceration term established under ORS 161.737.

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

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

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

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

1 violations.

2 (b) After release under this section, the board may at any time return the offender to prison and
 3 require the offender to submit to a psychiatric or psychological examination as provided for in ORS
 4 144.226. If the board finds that the offender's dangerousness has returned and cannot be adequately
 5 controlled with supervision and mental and physical health treatment, or that resources for super-
 6 vision and treatment are not available to the offender, the board may defer the offender's release
 7 from prison for an indefinite period of time. An offender returned to prison under this paragraph is
 8 entitled to periodic reviews [*once every two years*] for possible release to post-prison supervision as
 9 provided by subsection (3) of this section.

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

11 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

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

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

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

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

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

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

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

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

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

45 [(4)] (5) The board's final order shall be accompanied by findings of fact and conclusions of law.

1 The findings of fact shall consist of a concise statement of the underlying facts supporting the
2 findings as to each contested issue of fact and as to each ultimate fact required to support the
3 board's order.

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

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

8 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes mur-
9 der:

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

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

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

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

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

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

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

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

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

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

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

26 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
27 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
28 14 years of age; or

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

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

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

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

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

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

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

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

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

45 (e) Had no reasonable ground to believe that any other participant intended to engage in con-

1 duct likely to result in death.

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

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

7 (b) When a defendant is convicted of murder under this section, the court shall order that the
8 defendant shall be confined for a minimum of 25 years without possibility of parole, release to
9 post-prison supervision, release on work release or any form of temporary leave or employment at
10 a forest or work camp.

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

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

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

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

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

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

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

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

40 (6) As used in this section:

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

44 (b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545 or 163.547 or a failure
45 to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or

1 welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to
2 replace or affect the duty or standard of care required under ORS chapter 677.

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

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

6 **SECTION 8.** ORS 137.717, as amended by section 7, chapter 14, Oregon Laws 2008, is amended
7 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*] or
11 aggravated identity theft under ORS 165.803, the presumptive sentence is [24] **19** 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 in
16 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated
17 identity theft under ORS 165.803; **or**

18 (B) [*Two*] **Four** 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 current crime*
21 *of conviction was committed while the defendant was on supervision for the previous conviction or less*
22 *than three years after the date the defendant completed the period of supervision for the previous con-*
23 *viction.*]

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 under
26 ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS
27 164.377, forgery in the first degree under ORS 165.013, [*criminal possession of a forged instrument in*
28 *the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),*] **identity**
29 **theft under ORS 165.800**, possession of a stolen vehicle under ORS 819.300 or trafficking in stolen
30 vehicles under ORS 819.310, the presumptive sentence is [18] **13** months of incarceration, unless the
31 rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the
32 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, [*robbery*
35 *in the third degree under ORS 164.395,*] robbery in the second degree under ORS 164.405, robbery in
36 the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in
37 stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803; **or**

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

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

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

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

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

1 *will.;*

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

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

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

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

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

13 [(8)] **(5)** For purposes of this section, previous convictions must be proven pursuant to ORS
14 137.079.

15 [(9)] **(6)** As used in this section[.],

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

18 [(b)] “previous conviction” includes:

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

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

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

23 164.162. (1) A person commits the crime of mail theft or receipt of stolen mail if the person in-
24 tententionally:

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

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

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

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

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

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

34 **SECTION 10.** (1) **When a court sentences a person convicted of a crime listed in sub-**
35 **section (2) of this section, the court may not impose a sentence of optional probation or**
36 **grant a downward dispositional departure or a downward durational departure under the**
37 **rules of the Oregon Criminal Justice Commission if the person has a previous conviction for**
38 **any of the crimes listed in subsection (2) of this section.**

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

40 **(a) Manufacture or delivery of a controlled substance, other than marijuana, under ORS**
41 **475.840 (1);**

42 **(b) Creation or delivery of a counterfeit substance, other than marijuana, under ORS**
43 **475.840 (2);**

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

45 **(d) Manufacture or delivery of 3,4-methylenedioxymethamphetamine under ORS 475.866,**

1 475.868, 475.870 or 475.872;

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

3 (f) **Manufacture or delivery of methamphetamine under ORS 475.886, 475.888, 475.890 or**
4 **475.892;**

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

7 (h) **Delivery of a controlled substance to a person under 18 years of age under ORS**
8 **475.906; and**

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

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

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

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

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

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

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

24 **SECTION 11.** ORS 137.717, as amended by section 7, chapter 14, Oregon Laws 2008, and section
25 8 of this 2009 Act, is amended to read:

26 137.717. (1) When a court sentences a person convicted of:

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

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

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

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

42 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
43 164.135, **mail theft or receipt of stolen mail under ORS 164.162,** burglary in the second degree
44 under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under
45 ORS 164.377, forgery in the first degree under ORS 165.013, **criminal possession of a forged in-**

1 **strument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS**
 2 **165.055 (4)(b),** [*identity theft under ORS 165.800,*] possession of a stolen vehicle under ORS 819.300
 3 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is [*13*] **18** 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, unau-
 7 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, **rob-**
 8 **bery in the third degree under ORS 164.395,** robbery in the second degree under ORS 164.405,
 9 robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300,
 10 trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;
 11 [*or*]

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

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

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

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

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

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

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

23 **(e) Mail theft or receipt of stolen mail under ORS 164.162;**

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

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

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

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

28 [*i*] **(j)** Computer crime under ORS 164.377;

29 [*j*] **(k)** Forgery in the second degree under ORS 165.007;

30 [*k*] **(L)** Forgery in the first degree under ORS 165.013;

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

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

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

34 [*o*] **(p)** Identity theft under ORS 165.800;

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

36 [*q*] **(r)** Trafficking in stolen vehicles under ORS 819.310; **and**

37 **(s) Any attempt to commit a crime listed in this subsection.**

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

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

41 **(B) Was not used as a predicate for the presumptive sentence described in subsection (1)**
 42 **of this section.**

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

45 [*3*] **(4)** The court may impose a sentence other than the sentence provided by subsection (1)

1 **or (3)** of this section if the court imposes:

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

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

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

11 **(6) The court shall sentence a person under this section to at least the presumptive**
12 **sentence described in subsection (1) or (3) of this section, unless the parties stipulate oth-**
13 **erwise or the court finds that:**

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

17 (b) **The person has not previously received a downward departure from a presumptive**
18 **sentence for 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;**
20 **and**

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

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

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

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

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

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

34 [(5)] **(8)** For purposes of this section, previous convictions must be proven pursuant to ORS
35 137.079.

36 [(6)] **(9)** As used in this section[,]:

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

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

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

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

42 **SECTION 12. (1) The Department of Corrections shall:**

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

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

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

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

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

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

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

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

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

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

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

23 **(a) County boards of commissioners;**

24 **(b) County sheriffs;**

25 **(c) District attorneys;**

26 **(d) County community corrections;**

27 **(e) The Oregon Criminal Justice Commission;**

28 **(f) Presiding judges of the judicial districts of this state;**

29 **(g) Public defenders; and**

30 **(h) Treatment providers.**

31 **(7) In determining which grant proposals to fund within each county, the department**
32 **shall:**

33 **(a) Consult with the committee described in subsection (6) of this section;**

34 **(b) Give priority to those proposals that are best designed to reduce crime and drug ad-**
35 **dition; and**

36 **(c) Be guided by evidence-based practices, risk assessment tools or other research-based**
37 **considerations.**

38 **(8) Nothing in this section:**

39 **(a) Creates any claim, right of action or civil liability; or**

40 **(b) Requires a supervisory authority or the Department of Corrections to provide treat-**
41 **ment to any individual under the authority's supervision or in the custody of the department.**

42 **(9) As used in this section:**

43 **(a) "Drug-addicted person" means a person who has lost the ability to control the per-**
44 **sonal use of controlled substances or alcohol, or who uses controlled substances or alcohol**
45 **to the extent that the health of the person or that of others is substantially impaired or**

1 **endangered or the social or economic function of the person is substantially disrupted. A**
2 **drug-addicted person may be physically dependent, a condition in which the body requires a**
3 **continuing supply of a controlled substance or alcohol to avoid characteristic withdrawal**
4 **symptoms, or psychologically dependent, a condition characterized by an overwhelming**
5 **mental desire for continued use of a controlled substance or alcohol.**

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

10 **SECTION 13. If a person on probation, parole or post-prison supervision is required to**
11 **successfully complete a drug or alcohol treatment program as a condition of supervision and**
12 **the person refuses or otherwise fails to successfully complete the treatment program, the**
13 **court or the supervising authority shall impose swift and certain punishment, including**
14 **incarceration in jail.**

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

17 164.162. (1) A person commits the crime of mail theft or receipt of stolen mail if the person in-
18 tentiously:

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

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

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

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

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

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

28 **SECTION 15. If Senate Bill 389 becomes law, ORS 137.721, as amended by section 1, chapter**
29 **191, Oregon Laws 2009 (Enrolled Senate Bill 389), is amended to read:**

30 137.721. (1) **Except as provided in ORS 475.900 or section 2 or 3, chapter 14, Oregon Laws**
31 **2008, when a court sentences a person convicted of:**

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

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

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

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

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

45 **(A) The delivery involved a substantial quantity of methamphetamine as described in ORS**

1 **475.900; and**

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

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

4 **(ii) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS**
5 **475.888, 475.892 or 475.904; or**

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

8 *[(1)] (c) [Except as provided in ORS 475.900 or section 2 or 3, chapter 14, Oregon Laws 2008, when*
9 *the court sentences a person convicted of] Delivery of methamphetamine under ORS 475.890 or*
10 *475.892, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon*
11 *Criminal Justice Commission prescribe a longer presumptive sentence, if the person has two or more*
12 *previous convictions for any combination of the following crimes:*

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

14 *[(b)] (B) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS*
15 *475.888, 475.892 or 475.904; or*

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

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

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

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

27 (3) As used in this section, "previous conviction" means:

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

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

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

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

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

39 **SECTION 16.** If Senate Bill 389 becomes law, ORS 137.721, as amended by section 1, chapter
40 191, Oregon Laws 2009 (Enrolled Senate Bill 389), and section 15 of this 2009 Act, is amended to
41 read:

42 137.721. *[(1) Except as provided in ORS 475.900 or section 2 or 3, chapter 14, Oregon Laws 2008,*
43 *when a court sentences a person convicted of:]*

44 *[(a) Manufacture of methamphetamine under ORS 475.886 or 475.888, the court may not impose a*
45 *sentence of optional probation or grant a downward dispositional departure or a downward durational*

1 *departure of more than one-half of the presumptive prison sentence under the rules of the Oregon*
2 *Criminal Justice Commission if the person has a previous conviction for:]*

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

4 [(B) *Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888,*
5 *475.892 or 475.904; or]*

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

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

11 [(A) *The delivery involved a substantial quantity of methamphetamine as described in ORS*
12 *475.900; and]*

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

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

15 [(ii) *Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888,*
16 *475.892 or 475.904; or]*

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

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

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

25 [(B)] (b) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS
26 475.888, 475.892 or 475.904; or

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

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

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

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

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

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

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

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

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

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

5 **SECTION 17.** ORS 421.121 is amended to read:

6 421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the
7 Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a
8 reduction in the term of incarceration for appropriate institutional behavior, as defined by rule of
9 the Department of Corrections, and for participation in the adult basic skills development program
10 described in ORS 421.084.

11 (2)(a) The maximum amount of time credits earned for appropriate institutional behavior or for
12 participation in the adult basic skills development program described in ORS 421.084 may not exceed
13 [20] 30 percent of the total term of incarceration in a Department of Corrections institution.

14 (b) **Notwithstanding paragraph (a) of this subsection, the maximum amount of time**
15 **credits earned under this section may not exceed 20 percent of the total term of**
16 **incarceration in a Department of Corrections institution if the sentence is for conviction of:**

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

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

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

20 (D) **Criminally negligent homicide under ORS 163.145;**

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

22 (F) **Assault in the fourth degree under ORS 163.160 (3);**

23 (G) **A crime listed in ORS 137.700; or**

24 (H) **An attempt to commit a crime described in subparagraphs (A) to (G) of this para-**
25 **graph.**

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

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

31 **SECTION 18.** (1)(a) **Notwithstanding section 49 (6) of this 2009 Act and except as provided**
32 **in paragraph (b) of this subsection, if the court enters the supplemental judgment described**
33 **in subsection (5)(b) or (7)(b) of this section, the amendments to ORS 421.121 by section 17**
34 **of this 2009 Act apply to inmates:**

35 (A) **Sentenced before the effective date of this 2009 Act; and**

36 (B) **Who are not prohibited by any other provision of law from obtaining a reduction in**
37 **the term of incarceration under ORS 421.121.**

38 (b) **The amendments to ORS 421.121 by section 17 of this 2009 Act do not apply to inmates**
39 **who are released by the Department of Corrections on transitional leave under ORS 421.168**
40 **or on conditional release under ORS 420A.206, on or before the operative date specified in**
41 **section 48 (1)(a) of this 2009 Act.**

42 (2)(a) **If the Department of Corrections determines, pursuant to rules adopted by the**
43 **department, that an inmate sentenced before the effective date of this 2009 Act is eligible for**
44 **a reduction in the term of incarceration under ORS 421.121 that exceeds 20 percent of the**
45 **total term of incarceration in a department institution, the department shall notify:**

1 (A) The inmate; and

2 (B) The presiding judge, trial court administrator and district attorney, in the county in
3 which the inmate was convicted.

4 (b) The notice described in paragraph (a) of this section shall indicate the sentences and
5 counts for which the inmate is eligible for a reduction in the term of incarceration.

6 (c) In addition to the notice described in paragraph (a) of this subsection, the department
7 shall provide the presiding judge and trial court administrator with a supplemental judgment
8 described in subsection (14)(a) of this section for the identified inmate.

9 (3) Upon receipt of the notice, the trial court administrator shall file the notice with the
10 court and, if the inmate is serving a sentence for a crime for which there is a victim, the
11 district attorney shall make reasonable efforts to inform the victim:

12 (a) That the inmate may be eligible for a reduction in the term of incarceration under
13 ORS 421.121 that exceeds 20 percent of the total term of incarceration in a department in-
14 stitution;

15 (b) Of the victim's rights implicated by the inmate's eligibility for the reduction;

16 (c) That if the victim wishes to object to the inmate's eligibility for the reduction, the
17 victim must notify the district attorney within 20 days of the date the notice described in
18 subsection (2) of this section is filed with the court by the trial court administrator; and

19 (d) That if the victim fails to object in accordance with paragraph (c) of this subsection,
20 the sentencing court may authorize the department to consider the inmate for the reduction.

21 (4)(a) If the district attorney receives a timely notice of objection from a victim or if the
22 district attorney objects to the inmate's eligibility for a reduction in the term of
23 incarceration under ORS 421.121 that exceeds 20 percent of the total term of incarceration
24 in a department institution, the district attorney must file notice of the objection with the
25 court no later than:

26 (A) If the inmate is serving a sentence for a crime for which there is a victim, 21 days
27 after the date the notice described in subsection (2) of this section is filed with the court by
28 the trial court administrator.

29 (B) If the inmate is not serving a sentence for a crime for which there is a victim, 14
30 days after the date the notice described in subsection (2) of this section is filed with the
31 court by the trial court administrator.

32 (b) Unless the court has entered the judgment described in subsection (5)(b) of this sec-
33 tion, the court may, for good cause shown, allow the filing of a notice of objection on a date
34 later than the date described in paragraph (a) of this subsection.

35 (5)(a) If a notice of objection is filed with the court within the time period described in
36 subsection (4) of this section or if the sentencing court, on its own motion, determines that
37 a hearing is necessary, the court shall set a hearing within 35 days of the date the notice
38 described in subsection (2) of this section is filed with the court by the trial court adminis-
39 trator, unless the court finds good cause to hold the hearing at a later date.

40 (b) If a notice of objection is not filed with the court within the time period described in
41 subsection (4) of this section and the sentencing court determines that it is appropriate to
42 authorize the department to consider the inmate for a reduction in the term of incarceration
43 under ORS 421.121 that may not exceed 30 percent of the total term of incarceration in a
44 department institution, the court shall enter a supplemental judgment using the form of
45 judgement submitted by the department under subsection (14)(a) of this section.

1 **(6)(a) When the court sets a hearing under subsection (5)(a) of this section, the court**
2 **shall appoint counsel for the inmate and notify the inmate, the inmate's counsel, the de-**
3 **partment and the district attorney of the hearing date. Upon receipt of the notice, the dis-**
4 **trict attorney shall, if the inmate is serving a sentence for a crime for which there is a**
5 **victim, make reasonable efforts to inform the victim of:**

6 **(A) The hearing date; and**

7 **(B) The victim's rights implicated in the hearing.**

8 **(b) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall**
9 **provide for the representation of an inmate for whom counsel is appointed under this sub-**
10 **section.**

11 **(7)(a) At the hearing, the inmate, the district attorney and the victim may introduce**
12 **evidence relevant to the determination of whether, based on the information available to the**
13 **parties and the court at the time the sentence was originally imposed, a reduction in the**
14 **term of incarceration under ORS 421.121 that exceeds 20 percent of the total term of**
15 **incarceration is appropriate.**

16 **(b) Upon the conclusion of the hearing, the court shall order on the record in open court**
17 **that the department is authorized to consider the inmate for a reduction in the term of**
18 **incarceration under ORS 421.121 that may not exceed 30 percent of the total term of**
19 **incarceration in a department institution, unless the court finds, on the record and in open**
20 **court, substantial reasons to order that the inmate not be considered for the reduction. If**
21 **the court orders that the inmate may be considered for the reduction, the court shall enter**
22 **a supplemental judgement using the form of judgment submitted by the department under**
23 **subsection (14)(a) of this section.**

24 **(c) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply to a hearing conducted under**
25 **this section.**

26 **(d) The sentencing court has jurisdiction to modify its judgment and sentence to enter**
27 **the supplemental judgment described in subsection (5)(b) of this section or to reflect the re-**
28 **sults of a hearing described in this subsection.**

29 **(8) Unless the court orders otherwise, an inmate shall appear at a hearing described in**
30 **subsection (7) of this section by telephone, provided that the appearance allows for compli-**
31 **ance with the provisions of ORS 131.045 (1)(c)(A) to (D).**

32 **(9) Notwithstanding ORS 144.096 (1)(b) and (c) and (3), if the department grants the in-**
33 **mate a reduction in the term of incarceration that exceeds 20 percent of the total term of**
34 **incarceration in a department institution:**

35 **(a) The department shall submit a proposed release plan and, if the proposed release plan**
36 **is not approved by the State Board of Parole and Post-Prison Supervision, a revised release**
37 **plan, as soon as reasonably practicable prior to the inmate's release from prison; and**

38 **(b) The release plan and revised release plan prepared by the department under this**
39 **subsection may be abbreviated and need only contain information the department determines**
40 **by rule is appropriate.**

41 **(10) Notwithstanding that the department grants an inmate a reduction in the term of**
42 **incarceration under ORS 421.121 that exceeds 20 percent of the total term of incarceration**
43 **in a department institution, the department may defer the release of an inmate for no more**
44 **than 90 days when, in the judgment of the department, the deferral is necessary or advisable**
45 **in order for the department to provide for transitional planning or for the continuity of**

1 **medical or mental health care or treatment to the inmate.**

2 **(11) The post-prison supervision term of an inmate that is released from a department**
3 **institution after having been granted a reduction in the term of incarceration under ORS**
4 **421.121 that exceeds 20 percent of the total term of incarceration in a department institution**
5 **commences upon the inmate's physical release from the department institution.**

6 **(12)(a) Nothing in this section or the amendments to ORS 421.121 by section 17 of this**
7 **2009 Act:**

8 **(A) Creates any cause of action for compensation or damages;**

9 **(B) Entitles an inmate to a hearing before the date set by the court under subsection**
10 **(5)(a) of this section; or**

11 **(C) Entitles an inmate to a reduction in the term of incarceration, except as authorized**
12 **by the sentencing court and granted by the department in accordance with department rules.**

13 **(b) Notwithstanding ORS 30.265 or any other provision of law, the department and its**
14 **officers, employees and agents are immune from any claim or action arising from:**

15 **(A) The failure to identify an inmate who is eligible for a reduction in the term of**
16 **incarceration under ORS 421.121 that exceeds 20 percent of the total term of incarceration**
17 **in a department institution or to provide the notice described in subsection (2) of this sec-**
18 **tion;**

19 **(B) The failure to grant a reduction in the term of incarceration under ORS 421.121 after**
20 **the reduction has been authorized by the sentencing court under subsection (5)(b) or (7)(b)**
21 **of this section; or**

22 **(C) The deferral of an inmate's release under subsection (10) of this section.**

23 **(13) The Oregon Criminal Justice Commission shall conduct a study that includes an as-**
24 **essment of the effects of this section and the amendments to ORS 421.121 by section 17 of**
25 **this 2009 Act on reducing recidivism. The commission shall report the results of the study**
26 **to the Legislative Assembly in the manner provided in ORS 192.245 no later than February**
27 **1, 2013.**

28 **(14) The Department of Corrections:**

29 **(a) Shall, after consulting with the Judicial Department, prepare a form of supplemental**
30 **judgment that specifies the sentences and counts for which an inmate is eligible for a re-**
31 **duction in the term of incarceration under ORS 421.121 that exceeds 20 percent of the total**
32 **term of incarceration.**

33 **(b) May adopt rules to carry out the provisions of this section.**

34 **(15) As used in this section:**

35 **(a) "Reasonable efforts to inform the victim" has the meaning given that phrase in sec-**
36 **tion 1, chapter 178, Oregon Laws 2009.**

37 **(b) "Victim" has the meaning given that term in section 1, chapter 178, Oregon Laws**
38 **2009.**

39 **SECTION 19. ORS 421.121, as amended by section 17 of this 2009 Act, is amended to read:**

40 **421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the**
41 **Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a**
42 **reduction in the term of incarceration for appropriate institutional behavior, as defined by rule of**
43 **the Department of Corrections, and for participation in the adult basic skills development program**
44 **described in ORS 421.084.**

45 **(2)[(a)] The maximum amount of time credits earned for appropriate institutional behavior or for**

1 participation in the adult basic skills development program described in ORS 421.084 may not exceed
2 [30] 20 percent of the total term of incarceration in a Department of Corrections institution.

3 *[(b) Notwithstanding paragraph (a) of this subsection, the maximum amount of time credits earned*
4 *under this section may not exceed 20 percent of the total term of incarceration in a Department of*
5 *Corrections institution if the sentence is for conviction of:]*

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

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

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

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

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

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

12 *[(G) A crime listed in ORS 137.700; or]*

13 *[(H) An attempt to commit a crime described in subparagraphs (A) to (G) of this paragraph.]*

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

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

19 **SECTION 20.** ORS 137.545 is amended to read:

20 137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice
21 Commission for felonies committed on or after November 1, 1989:

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

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

25 (2) At any time during the probation period, the court may issue a warrant and cause a de-
26 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
27 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
28 rant for violating any condition of probation, and a statement by the parole and probation officer
29 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
30 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
31 detention of the probationer in the county jail until the probationer can be brought before the court
32 or until the parole and probation officer or supervisory personnel impose and the offender agrees
33 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
34 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
35 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
36 personnel, the disposition shall take place in no more than five judicial days. If the offender does
37 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
38 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
39 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
40 tention to the court that imposed the probation. The parole and probation officer shall promptly
41 submit to the court a report showing in what manner the probationer has violated the conditions
42 of probation.

43 (3) Except for good cause shown or at the request of the probationer, the probationer shall be
44 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
45 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a

1 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
2 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
3 the probationer upon the condition that the probationer appear in court at a later date for a pro-
4 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
5 the magistrate may order the probationer released subject to an additional order to the probationer
6 that the probationer report within seven calendar days to the court that imposed the probation.

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

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

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

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

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

19 (B) If no other sentence has been imposed, the court may impose any other sentence which or-
20 iginally could have been imposed.

21 (b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that
22 imposed the probationary sentence may revoke probation supervision and impose a sanction as
23 provided by rules of the Oregon Criminal Justice Commission. **If the defendant was sentenced to**
24 **a presumptive period of probation, the court may not impose a term of incarceration that**
25 **exceeds 60 days as a revocation sanction unless the revocation is the result of the defend-**
26 **ant's conviction for a new crime.**

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

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

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

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

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

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

45 (A) Upon request made within the time period prescribed in the notice required by ORS 147.417,

1 to be notified by the district attorney of any hearing before the court that may result in the revo-
2 cation of the defendant's probation;

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

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

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

7 **SECTION 21. (1) Each person convicted of a felony and sentenced to probation under the**
8 **rules of the Oregon Criminal Justice Commission is eligible for a reduction in the period of**
9 **active probation for compliance with the conditions of probation and the person's supervision**
10 **plan, as defined by rule of the Department of Corrections.**

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

13 **(3) The department shall adopt rules to carry out the provisions of this section. The rules**
14 **must include a description of the manner in which persons may be placed on inactive pro-**
15 **bation and returned to active probation. A community corrections agency shall comply with**
16 **the rules adopted under this section.**

17 **SECTION 22. Section 23 of this 2009 Act is added to and made a part of ORS chapter 144.**

18 **SECTION 23. (1) All persons sentenced to the legal and physical custody of the supervi-**
19 **sory authority under ORS 137.124 (2) shall serve active periods of post-prison supervision as**
20 **follows:**

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

22 **(b) Twelve months of active post-prison supervision for crimes in crime categories 4 to**
23 **10.**

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

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

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

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

38 **(c) The offender's employment status;**

39 **(d) The offender's address;**

40 **(e) Treatment program outcome;**

41 **(f) Any new criminal activity; and**

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

44 **(4) After reviewing the report submitted under subsection (3) of this section, the super-**
45 **visory authority may extend the active post-prison supervision period or return the offender**

1 to active supervision status, not to exceed the supervision term imposed by the sentencing
2 court under the rules of the Oregon Criminal Justice Commission and applicable laws, if the
3 supervisory authority finds that the offender has not substantially fulfilled the supervision
4 conditions or has failed to complete payment of restitution.

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

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

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

13 **SECTION 24.** (1) The provisions of ORS 144.650 and 144.660 do not apply to a reprieve,
14 commutation or pardon granted by the Governor to a person:

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

18 (b) Who has six months or less left to serve of the sentence imposed;

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

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

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

24 (2) The Governor may:

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

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

33 **SECTION 25.** ORS 475.854 is amended to read:

34 475.854. (1) It is unlawful for any person knowingly or intentionally to possess heroin.

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

36 (b) Notwithstanding paragraph (a) of this subsection, unlawful possession of heroin is a
37 Class A misdemeanor if:

38 (A) The amount possessed is one gram or less of a mixture or substance containing a
39 detectable amount of heroin; and

40 (B) The person has not previously been convicted of the unlawful possession, delivery or
41 manufacture of a controlled substance.

42 **SECTION 26.** ORS 475.874 is amended to read:

43 475.874. (1) It is unlawful for any person knowingly or intentionally to possess
44 3,4-methylenedioxymethamphetamine.

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

1 **(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of**
2 **3,4-methylenedioxymethamphetamine is a Class A misdemeanor if:**

3 **(A) The amount possessed is one gram or less of a mixture or substance containing a**
4 **detectable amount of 3,4-methylenedioxymethamphetamine; and**

5 **(B) The person has not previously been convicted of the unlawful possession, delivery or**
6 **manufacture of a controlled substance.**

7 **SECTION 27.** ORS 475.884 is amended to read:

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

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

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

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

17 **(B) The person has not previously been convicted of the unlawful possession, delivery or**
18 **manufacture of a controlled substance.**

19 **SECTION 28.** ORS 475.894 is amended to read:

20 475.894. (1) It is unlawful for any person knowingly or intentionally to possess methamphetamine
21 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
22 practitioner while acting in the course of professional practice, or except as otherwise authorized
23 by ORS 475.005 to 475.285 and 475.840 to 475.980.

24 (2)(a) Unlawful possession of methamphetamine is a Class C felony.

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

27 **(A) The amount possessed is one gram or less of a mixture or substance containing a**
28 **detectable amount of methamphetamine; and**

29 **(B) The person has not previously been convicted of the unlawful possession, delivery or**
30 **manufacture of a controlled substance.**

31 **SECTION 29.** ORS 475.840 is amended to read:

32 475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful
33 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
34 section with respect to:

35 (a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise pro-
36 vided in ORS 475.860.

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

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

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

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

43 (2) Except as authorized in ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any
44 person to create or deliver a counterfeit substance. Any person who violates this subsection with
45 respect to:

- 1 (a) A counterfeit substance in Schedule I, is guilty of a Class A felony.
- 2 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.
- 3 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.
- 4 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.
- 5 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

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

11 (a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise pro-
12 vided in ORS 475.864.

- 13 (b) A controlled substance in Schedule II, is guilty of a Class C felony.
- 14 (c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.
- 15 (d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.
- 16 (e) A controlled substance in Schedule V, is guilty of a violation.

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

20 **(a) The amount possessed is one gram or less of a mixture or substance containing a**
21 **detectable amount of the controlled substance; and**

22 **(b) The person has not previously been convicted of the unlawful possession, delivery or**
23 **manufacture of a controlled substance.**

24 [(4)] (5) In any prosecution under this section for manufacture, possession or delivery of that
25 plant of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the
26 peyote is being used or is intended for use:

- 27 (a) In connection with the good faith practice of a religious belief;
- 28 (b) As directly associated with a religious practice; and
- 29 (c) In a manner that is not dangerous to the health of the user or others who are in the prox-
30 imity of the user.

31 [(5)] (6) The affirmative defense created in subsection [(4)] (5) of this section is not available to
32 any person who has possessed or delivered the peyote while incarcerated in a correctional facility
33 in this state.

34 **SECTION 30. When a person is convicted of violating ORS 475.840 (3), 475.854, 475.874,**
35 **475.884 or 475.894, the court shall impose upon the person, in addition to any other monetary**
36 **obligation imposed, a special assessment in the amount of \$100. The special assessment shall**
37 **be deposited in the Oregon Criminal Justice Commission Account established under ORS**
38 **137.662 for disbursement to drug court programs described in ORS 3.450.**

39 **SECTION 31. (1) Notwithstanding ORS 137.717, when a court sentences a person con-**
40 **vinced of aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months**
41 **of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a**
42 **longer presumptive sentence, if:**

43 **(a) A victim of the aggravated identity theft is 65 years of age or older at the time of the**
44 **commission of the offense; and**

45 **(b) The person has:**

1 (A) A previous conviction for a crime listed in ORS 137.717 (1)(a)(A);

2 (B) Two or more previous convictions for any combination of the crimes listed in ORS
3 137.717 (2); or

4 (C) A previous conviction for a crime listed in ORS 137.717 (2), if the current crime of
5 conviction was committed while the defendant was on supervision for the previous conviction
6 or less than three years after the date the defendant completed the period of supervision for
7 the previous conviction.

8 (2)(a) A presumptive sentence described in subsection (1) of this section shall be in-
9 creased by two months for each previous conviction the person has that:

10 (A) Was for any of the crimes listed in ORS 137.717 (1) or (2); and

11 (B) Was not used as a predicate for the presumptive sentence described in subsection (1)
12 of this section.

13 (b) Previous convictions may not increase a presumptive sentence described in subsection
14 (1) of this section by more than 12 months under this subsection.

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

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

18 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Com-
19 mission based upon findings of substantial and compelling reasons. Unless the law or the
20 rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence,
21 the maximum departure allowed for a person sentenced under this subsection is double the
22 presumptive sentence provided in subsection (1) or (2) of this section.

23 (4) The court shall sentence a person under this section to at least the presumptive
24 sentence described in subsection (1) or (2) of this section, unless the parties stipulate oth-
25 erwise or the court finds that:

26 (a) The person was not on probation, parole or post-prison supervision for a crime listed
27 in ORS 137.717 (1) 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
29 sentence for a crime listed in ORS 137.717 (1);

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

32 (d) In consideration of the nature of the offense and the harm to the victim, a downward
33 departure will:

34 (A) Increase public safety;

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

36 (C) Not unduly reduce the appropriate punishment.

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

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

45 (6) For purposes of this section, previous convictions must be proven pursuant to ORS

1 **137.079.**

2 **(7) As used in this section:**

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

5 **(b) “Previous conviction” has the meaning given that term in ORS 137.717.**

6 **SECTION 32.** ORS 137.545, as amended by section 20 of this 2009 Act, is amended to read:

7 137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice
8 Commission for felonies committed on or after November 1, 1989:

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

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

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

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

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

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

45 (b) Upon the court’s own motion.

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

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

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

8 (b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that
9 imposed the probationary sentence may revoke probation supervision and impose a sanction as
10 provided by rules of the Oregon Criminal Justice Commission. *[If the defendant was sentenced to a*
11 *presumptive period of probation, the court may not impose a term of incarceration that exceeds 60 days*
12 *as a revocation sanction unless the revocation is the result of the defendant's conviction for a new*
13 *crime.]*

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

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

21 (8) In the case of any defendant whose sentence has been suspended but who has not been sen-
22 tenced to probation, the court may issue a warrant and cause the defendant to be arrested and
23 brought before the court at any time within the maximum period for which the defendant might ori-
24 ginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
25 pension of sentence and cause the sentence imposed to be executed.

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

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

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

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

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

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

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

39 **SECTION 33.** ORS 475.854, as amended by section 25 of this 2009 Act, is amended to read:

40 475.854. (1) It is unlawful for any person knowingly or intentionally to possess heroin.

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

42 [(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of heroin is a Class A
43 misdemeanor if:]

44 [(A) The amount possessed is one gram or less of a mixture or substance containing a detectable
45 amount of heroin; and]

1 *[(B) The person has not previously been convicted of the unlawful possession, delivery or manu-*
2 *facture of a controlled substance.]*

3 **SECTION 34.** ORS 475.874, as amended by section 26 of this 2009 Act, is amended to read:

4 475.874. (1) It is unlawful for any person knowingly or intentionally to possess
5 3,4-methylenedioxyamphetamine.

6 (2)*[(a)]* Unlawful possession of 3,4-methylenedioxyamphetamine is a Class B felony.

7 *[(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of*
8 *3,4-methylenedioxyamphetamine is a Class A misdemeanor if:]*

9 *[(A) The amount possessed is one gram or less of a mixture or substance containing a detectable*
10 *amount of 3,4-methylenedioxyamphetamine; and]*

11 *[(B) The person has not previously been convicted of the unlawful possession, delivery or manu-*
12 *facture of a controlled substance.]*

13 **SECTION 35.** ORS 475.884, as amended by section 27 of this 2009 Act, is amended to read:

14 475.884. (1) It is unlawful for any person knowingly or intentionally to possess cocaine unless
15 the substance was obtained directly from, or pursuant to, a valid prescription or order of a practi-
16 tioner while acting in the course of professional practice, or except as otherwise authorized by ORS
17 475.005 to 475.285 and 475.840 to 475.980.

18 (2)*[(a)]* Unlawful possession of cocaine is a Class C felony.

19 *[(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of cocaine is a Class*
20 *A misdemeanor if:]*

21 *[(A) The amount possessed is one gram or less of a mixture or substance containing a detectable*
22 *amount of cocaine; and]*

23 *[(B) The person has not previously been convicted of the unlawful possession, delivery or manu-*
24 *facture of a controlled substance.]*

25 **SECTION 36.** ORS 475.894, as amended by section 28 of this 2009 Act, is amended to read:

26 475.894. (1) It is unlawful for any person knowingly or intentionally to possess methamphetamine
27 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
28 practitioner while acting in the course of professional practice, or except as otherwise authorized
29 by ORS 475.005 to 475.285 and 475.840 to 475.980.

30 (2)*[(a)]* Unlawful possession of methamphetamine is a Class C felony.

31 *[(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of methamphetamine is*
32 *a Class A misdemeanor if:]*

33 *[(A) The amount possessed is one gram or less of a mixture or substance containing a detectable*
34 *amount of methamphetamine; and]*

35 *[(B) The person has not previously been convicted of the unlawful possession, delivery or manu-*
36 *facture of a controlled substance.]*

37 **SECTION 37.** ORS 475.840, as amended by section 29 of this 2009 Act, is amended to read:

38 475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful
39 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
40 section with respect to:

41 (a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise pro-
42 vided in ORS 475.860.

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

45 (c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise

1 provided in ORS 475.904 and 475.906.

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

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

4 (2) Except as authorized in ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any
5 person to create or deliver a counterfeit substance. Any person who violates this subsection with
6 respect to:

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

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

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

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

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

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

17 (a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise pro-
18 vided in ORS 475.864.

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

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

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

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

23 *[(4) Notwithstanding subsection (3)(a) or (b) of this section, a person who violates subsection (3)*
24 *of this section with respect to a controlled substance in Schedule I or II, is guilty of a Class A*
25 *misdemeanor if:]*

26 *[(a) The amount possessed is one gram or less of a mixture or substance containing a detectable*
27 *amount of the controlled substance; and]*

28 *[(b) The person has not previously been convicted of the unlawful possession, delivery or manu-*
29 *facture of a controlled substance.]*

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

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

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

35 (c) In a manner that is not dangerous to the health of the user or others who are in the prox-
36 imity of the user.

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

40 **NOTE:** Section 38 was deleted. Subsequent sections were not renumbered.

41 **SECTION 39.** ORS 163.165 is amended to read:

42 163.165. (1) A person commits the crime of assault in the third degree if the person:

43 (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous
44 weapon;

45 (b) Recklessly causes serious physical injury to another under circumstances manifesting ex-

1 treme indifference to the value of human life;

2 (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon un-
3 der circumstances manifesting extreme indifference to the value of human life;

4 (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical
5 injury to the operator of a public transit vehicle while the operator is in control of or operating the
6 vehicle. As used in this paragraph, "public transit vehicle" has the meaning given that term in ORS
7 166.116;

8 (e) While being aided by another person actually present, intentionally or knowingly causes
9 physical injury to another;

10 (f) While committed to a youth correction facility, intentionally or knowingly causes physical
11 injury to another knowing the other person is a staff member of a youth correction facility while
12 the other person is acting in the course of official duty;

13 (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical tech-
14 nician or paramedic, as those terms are defined in ORS 682.025, while the technician or paramedic
15 is performing official duties;

16 (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child
17 10 years of age or younger;

18 (i) Knowing the other person is a staff member, intentionally or knowingly propels any danger-
19 ous substance at the staff member while the staff member is acting in the course of official duty or
20 as a result of the staff member's official duties; or

21 (j) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical
22 injury to the operator of a taxi while the operator is in control of the taxi.

23 [(2)] **(2)(a)** Assault in the third degree is a Class C felony. When a person is convicted of vio-
24 lating subsection (1)(i) of this section, in addition to any other sentence it may impose, the court
25 shall impose a term of incarceration in a state correction facility.

26 **(b) Notwithstanding paragraph (a) of this subsection, assault in the third degree under**
27 **subsection (1)(a) or (b) of this section is a Class B felony if:**

28 **(A) The assault resulted from the operation of a motor vehicle; and**

29 **(B) The defendant was the driver of the motor vehicle and was driving while under the**
30 **influence of intoxicants.**

31 (3) As used in this section:

32 (a) "Dangerous substance" includes, but is not limited to, blood, urine, saliva, semen and feces.

33 (b) "Staff member" means:

34 (A) A corrections officer as defined in ORS 181.610, a youth correction officer, a Department
35 of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a con-
36 tract with the department or youth authority to work with, or in the vicinity of, inmates or youth
37 offenders; and

38 (B) A volunteer authorized by the department, youth authority or other entity in charge of a
39 corrections facility to work with, or in the vicinity of, inmates or youth offenders.

40 (c) "Youth correction facility" has the meaning given that term in ORS 162.135.

41 **SECTION 40. The Oregon Criminal Justice Commission shall classify assault in the third**
42 **degree that is committed under the circumstances described in ORS 163.165 (2)(b) as crime**
43 **category 8 of the sentencing guidelines grid of the commission.**

44 **SECTION 41.** ORS 163.187 is amended to read:

45 163.187. (1) A person commits the crime of strangulation if the person knowingly impedes the

1 normal breathing or circulation of the blood of another person by:

2 (a) Applying pressure on the throat or neck of the other person; or

3 (b) Blocking the nose or mouth of the other person.

4 (2) Subsection (1) of this section does not apply to legitimate medical or dental procedures or
5 good faith practices of a religious belief.

6 (3) Strangulation is a Class A misdemeanor.

7 **(4) Notwithstanding subsection (3) of this section, strangulation is a Class C felony if:**

8 **(a) The crime is committed in the immediate presence of, or is witnessed by, the person's**
9 **or the victim's minor child or stepchild or a minor child residing within the household of the**
10 **person or victim;**

11 **(b) The victim is under 10 years of age;**

12 **(c) During the commission of the crime, the person used, attempted to use or threatened**
13 **to use a dangerous or deadly weapon, as those terms are defined in ORS 161.015, unlawfully**
14 **against another;**

15 **(d) The person has been previously convicted of violating this section or of committing**
16 **an equivalent crime in another jurisdiction;**

17 **(e) The person has been previously convicted of violating ORS 163.160, 163.165, 163.175,**
18 **163.185 or 163.190 or of committing an equivalent crime in another jurisdiction, and the vic-**
19 **tim in the previous conviction is the same person who is the victim of the current con-**
20 **viction; or**

21 **(f) The person has at least three previous convictions of any combination of ORS 163.160,**
22 **163.165, 163.175, 163.185 or 163.190 or of equivalent crimes in other jurisdictions.**

23 **(5) For purposes of subsection (4) of this section, a strangulation is witnessed if the**
24 **strangulation is seen or directly perceived in any other manner by the child.**

25 **(6) The Oregon Criminal Justice Commission shall classify felony strangulation as crime**
26 **category 5 of the sentencing guidelines grid of the commission.**

27 **SECTION 42.** ORS 131.125 is amended to read:

28 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
29 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
30 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
31 solicitation to commit aggravated murder or murder, or the death of the person killed.

32 (2) A prosecution for any of the following felonies may be commenced within six years after the
33 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
34 before the victim attains 30 years of age or within 12 years after the offense is reported to a law
35 enforcement agency or the Department of Human Services, whichever occurs first:

36 (a) Criminal mistreatment in the first degree under ORS 163.205.

37 **(b) Strangulation under ORS 163.187 (4).**

38 [(b)] (c) Rape in the third degree under ORS 163.355.

39 [(c)] (d) Rape in the second degree under ORS 163.365.

40 [(d)] (e) Rape in the first degree under ORS 163.375.

41 [(e)] (f) Sodomy in the third degree under ORS 163.385.

42 [(f)] (g) Sodomy in the second degree under ORS 163.395.

43 [(g)] (h) Sodomy in the first degree under ORS 163.405.

44 [(h)] (i) Unlawful sexual penetration in the second degree under ORS 163.408.

45 [(i)] (j) Unlawful sexual penetration in the first degree under ORS 163.411.

1 [(j)] **(k)** Sexual abuse in the second degree under ORS 163.425.

2 [(k)] **(L)** Sexual abuse in the first degree under ORS 163.427.

3 [(L)] **(m)** Using a child in a display of sexual conduct under ORS 163.670.

4 [(m)] **(n)** Encouraging child sexual abuse in the first degree under ORS 163.684.

5 [(n)] **(o)** Incest under ORS 163.525.

6 [(o)] **(p)** Promoting prostitution under ORS 167.012.

7 [(p)] **(q)** Compelling prostitution under ORS 167.017.

8 [(q)] **(r)** Luring a minor under ORS 167.057.

9 (3) A prosecution for any of the following misdemeanors may be commenced within four years
10 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
11 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
12 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

13 **(a) Strangulation under ORS 163.187.**

14 [(a)] **(b)** Sexual abuse in the third degree under ORS 163.415.

15 [(b)] **(c)** Furnishing sexually explicit material to a child under ORS 167.054.

16 [(c)] **(d)** Exhibiting an obscene performance to a minor under ORS 167.075.

17 [(d)] **(e)** Displaying obscene materials to minors under ORS 167.080.

18 (4) In the case of crimes described in subsection [(2)(L)] **(2)(m)** of this section, the victim is the
19 child engaged in sexual conduct. In the case of the crime described in subsection [(2)(n)] **(2)(o)** of
20 this section, the victim is the party to the incest other than the party being prosecuted. In the case
21 of crimes described in subsection [(2)(o) and (p)] **(2)(p) and (q)** of this section, the victim is the child
22 whose acts of prostitution are promoted or compelled.

23 (5) A prosecution for arson in any degree may be commenced within six years after the com-
24 mission of the crime.

25 (6) Except as provided in subsection (7) of this section or as otherwise expressly provided by
26 law, prosecutions for other offenses must be commenced within the following periods of limitations
27 after their commission:

28 (a) For any other felony, three years.

29 (b) For any misdemeanor, two years.

30 (c) For a violation, six months.

31 (7) If the period prescribed in subsection (6) of this section has expired, a prosecution never-
32 theless may be commenced as follows:

33 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,
34 prosecution may be commenced within one year after discovery of the offense by an aggrieved party
35 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the
36 offense, but in no case shall the period of limitation otherwise applicable be extended by more than
37 three years;

38 (b) If the offense is based upon misconduct in office by a public officer or employee, prosecution
39 may be commenced at any time while the defendant is in public office or employment or within two
40 years thereafter, but in no case shall the period of limitation otherwise applicable be extended by
41 more than three years; or

42 (c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be
43 commenced within one year after discovery of the offense by the person aggrieved by the offense,
44 by a person who has a legal duty to represent the person aggrieved by the offense or by a law
45 enforcement agency, but in no case shall the period of limitation otherwise applicable be extended

1 by more than three years.

2 (8) Notwithstanding subsection (2) of this section, a prosecution for rape in the first or second
3 degree, sodomy in the first or second degree, unlawful sexual penetration in the first or second de-
4 gree or sexual abuse in the first degree may be commenced within 25 years after the commission
5 of the crime if the defendant is identified after the period described in subsection (2) of this section
6 on the basis of DNA (deoxyribonucleic acid) sample comparisons.

7 (9) Notwithstanding subsection (8) of this section, if a prosecution for a felony listed in sub-
8 section (8) of this section would otherwise be barred by subsection (2) of this section, the prose-
9 cution must be commenced within two years of the DNA-based identification of the defendant.

10 **SECTION 43.** ORS 163.235 is amended to read:

11 163.235. (1) A person commits the crime of kidnapping in the first degree if the person violates
12 ORS 163.225 with any of the following purposes:

13 (a) To compel any person to pay or deliver money or property as ransom;

14 (b) To hold the victim as a shield or hostage;

15 (c) To cause physical injury to the victim; [or]

16 (d) To terrorize the victim or another person; **or**

17 (e) **To further the commission or attempted commission of any of the following crimes**
18 **against the victim:**

19 (A) **Rape in the first degree, as defined in ORS 163.375 (1)(b);**

20 (B) **Sodomy in the first degree, as defined in ORS 163.405 (1)(b); or**

21 (C) **Unlawful sexual penetration in the first degree, as defined in ORS 163.411 (1)(b).**

22 (2) Kidnapping in the first degree is a Class A felony.

23 **SECTION 44.** (1) **The Department of State Police shall develop a targeted enforcement**
24 **program for the purpose of improving public safety. The program shall be designed to reduce**
25 **fatalities, physical injury and property damage by allocating patrol resources based on motor**
26 **vehicle accident data compiled by the Department of Transportation.**

27 (2) **The Department of Transportation shall provide motor vehicle accident data to the**
28 **Department of State Police for use in the targeted enforcement program.**

29 (3) **The Department of State Police may adopt rules to carry out the provisions of this**
30 **section.**

31 **SECTION 45.** **There is appropriated to the Department of State Police, out of the General**
32 **Fund, the amount of \$8,088,305 for the purpose of carrying out the provisions of section 44**
33 **of this 2009 Act.**

34 **SECTION 46.** **Moneys not expended as the result of section 47 (1) of this 2009 Act and the**
35 **amendments to ORS 137.717 and 164.162 by sections 8 and 9 of this 2009 Act are dedicated to**
36 **public safety operations conducted by the Department of State Police, the Department of**
37 **Corrections, the Oregon Youth Authority and other public safety purposes.**

38 **SECTION 47.** (1) **Sections 1, 6, 8 and 9, chapter 14, Oregon Laws 2008, and sections 8, 9**
39 **and 10, chapter 35, Oregon Laws 2008, are repealed.**

40 (2) **Sections 21 to 24 and 30 of this 2009 Act are repealed on July 1, 2011.**

41 (3) **Section 31 of this 2009 Act is repealed on January 1, 2012.**

42 (4) **Section 18 of this 2009 Act is repealed on July 1, 2013.**

43 **SECTION 48.** (1)(a) **Section 18 of this 2009 Act becomes operative on the date that is 60**
44 **days after the effective date of this 2009 Act.**

45 (b) **The Department of Corrections, the Judicial Department, the State Board of Parole**

1 and Post-Prison Supervision and the district attorneys of this state may take any action
2 before the operative date specified in paragraph (a) of this subsection that is necessary to
3 enable the departments, board or district attorneys to exercise, on or after the operative
4 date specified in paragraph (a) of this subsection, all the duties, functions and powers con-
5 ferred on the departments, board or district attorneys by this 2009 Act.

6 (2) The amendments to ORS 137.545, 475.840, 475.854, 475.874, 475.884 and 475.894 by
7 sections 32 to 37 of this 2009 Act become operative on July 1, 2011.

8 (3) Sections 10, 12 and 13 of this 2009 Act and the amendments to ORS 137.717, 137.721
9 and 164.162 by sections 11, 14 and 16 of this 2009 Act become operative on January 1, 2012.

10 (4) The amendments to ORS 421.121 by section 19 of this 2009 Act become operative on
11 July 1, 2013.

12 **SECTION 49.** (1) Section 1 of this 2009 Act applies to prisoners convicted of aggravated
13 murder or murder that was committed before, on or after the effective date of this 2009 Act
14 and whose petition for a change in the terms of confinement is denied on or after January
15 1, 2010.

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

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

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

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

23 (4) The amendments to ORS 137.717, 137.721 and 164.162 by sections 8, 9 and 15 of this 2009
24 Act apply to sentences imposed:

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

26 (b) For crimes committed on or after January 1, 2009, and before January 1, 2012.

27 (5) Section 10 of this 2009 Act and the amendments to ORS 137.717, 137.721 and 164.162
28 by sections 11, 14 and 16 of this 2009 Act apply to sentences imposed for crimes committed
29 on or after January 1, 2012.

30 (6) The amendments to ORS 421.121 by section 17 of this 2009 Act apply to inmates who:

31 (a) Are sentenced on or after the effective date of this 2009 Act for crimes committed
32 before July 1, 2013; and

33 (b) Are not prohibited by any other provision of law from obtaining a reduction in the
34 term of incarceration under ORS 421.121.

35 (7) The amendments to ORS 421.121 by section 19 of this 2009 Act apply to inmates who:

36 (a) Are sentenced for a crime committed on or after July 1, 2013; and

37 (b) Are not prohibited by any other provision of law from obtaining a reduction in the
38 term of incarceration under ORS 421.121.

39 (8) The amendments to ORS 137.545 by section 20 of this 2009 Act apply to crimes com-
40 mitted before July 1, 2011.

41 (9) Section 21 of this 2009 Act applies to persons:

42 (a) Convicted of a crime committed before July 1, 2011; and

43 (b) Who are on probation on or after the effective date of the rules adopted by the De-
44 partment of Corrections under section 21 (3) of this 2009 Act.

45 (10) Section 30 of this 2009 Act and the amendments to ORS 475.840, 475.854, 475.874,

1 475.884 and 475.894 by sections 25 to 29 of this 2009 Act apply to crimes committed:

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

3 (b) Before July 1, 2011.

4 (11) Section 31 of this 2009 Act applies to crimes committed:

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

6 (b) Before January 1, 2012.

7 (12) The amendments to ORS 137.545, 475.840, 475.854, 475.874, 475.884 and 475.894 by
8 sections 32 to 37 of this 2009 Act apply to crimes committed on or after July 1, 2011.

9 (13) Section 40 of this 2009 Act and the amendments to ORS 163.165, 163.187 and 163.235
10 by sections 39, 41 and 43 of this 2009 Act apply to conduct occurring on or after the effective
11 date of this 2009 Act.

12 (14) The amendments to ORS 131.125 by section 42 of this 2009 Act apply to offenses
13 committed before, on or after the effective date of this 2009 Act, but do not operate to revive
14 a prosecution barred by the operation of ORS 131.125 before the effective date of this 2009
15 Act.

16 (15) Except as provided in subsection (16) of this section, section 23 of this 2009 Act ap-
17 plies to persons:

18 (a) Convicted of a crime committed before July 1, 2011; and

19 (b) Sentenced to the legal and physical custody of the supervisory authority under ORS
20 137.124 (2).

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

24 (A) Four months or more of active post-prison supervision for crimes in crime categories
25 1 to 3; or

26 (B) Ten months or more of active post-prison supervision for crimes in crime categories
27 4 to 10.

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

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

33 (A) The parole and probation officer responsible for supervising an offender described in
34 paragraph (a) of this subsection may send a report described in section 23 (3) of this 2009
35 Act to the supervisory authority for review; and

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

38 (d) Section 23 of this 2009 Act and the provisions of this subsection and subsection (15)
39 of this section do not apply to a person sentenced to the legal and physical custody of a su-
40 pervisory authority under ORS 137.124 (2) whose term of active post-prison supervision im-
41 posed by the sentencing court expires on or before the date that is two months after the
42 effective date of this 2009 Act.

43 **SECTION 50.** This 2009 Act being necessary for the immediate preservation of the public
44 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
45 on its passage.

