

Enrolled
Senate Bill 389

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to criminal sentencing; amending ORS 137.721.

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

SECTION 1. ORS 137.721 is amended to read:

137.721. [(1) When a court sentences a person convicted of:]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by Senate April 23, 2009

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Secretary of Senate

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President of Senate

Passed by House May 15, 2009

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Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State