

Enrolled
Senate Bill 99

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CHAPTER

AN ACT

Relating to conditions of probation; amending ORS 137.540.

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

SECTION 1. ORS 137.540 is amended to read:

137.540. (1) The court may sentence the defendant to probation subject to the following general conditions unless specifically deleted by the court. The probationer shall:

- (a) Pay supervision fees, fines, restitution or other fees ordered by the court.
- (b) Not use or possess controlled substances except pursuant to a medical prescription.
- (c) Submit to testing [*of breath or urine*] for controlled substance or alcohol use if the probationer has a history of substance abuse or if there is a reasonable suspicion that the probationer has illegally used controlled substances.
- (d) Participate in a substance abuse evaluation as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.
- (e) Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency.
- (f) If physically able, find and maintain gainful full-time employment, approved schooling, or a full-time combination of both. Any waiver of this requirement must be based on a finding by the court stating the reasons for the waiver.
- (g) Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.
- (h) Permit the parole and probation officer to visit the probationer or the probationer's work site or residence and to conduct a walk-through of the common areas and of the rooms in the residence occupied by or under the control of the probationer.
- (i) Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.
- (j) Obey all laws, municipal, county, state and federal.
- (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.
- (L) Not possess weapons, firearms or dangerous animals.

(m) If recommended by the supervising officer, successfully complete a sex offender treatment program approved by the supervising officer and submit to polygraph examinations at the direction of the supervising officer if the probationer:

(A) Is under supervision for a sex offense under ORS 163.305 to 163.467;

(B) Was previously convicted of a sex offense under ORS 163.305 to 163.467; or

(C) Was previously convicted in another jurisdiction of an offense that would constitute a sex offense under ORS 163.305 to 163.467 if committed in this state.

(n) Participate in a mental health evaluation as directed by the supervising officer and follow the recommendation of the evaluator.

(o) Report as required and abide by the direction of the supervising officer.

(p) If required to report as a sex offender under ORS 181.596, report with the Department of State Police, a chief of police, a county sheriff or the supervising agency:

(A) When supervision begins;

(B) Within 10 days of a change in residence;

(C) Once each year within 10 days of the probationer's date of birth;

(D) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

(E) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

(2) In addition to the general conditions, the court may impose any special conditions of probation that are reasonably related to the crime of conviction or the needs of the probationer for the protection of the public or reformation of the probationer, or both, including, but not limited to, that the probationer shall:

(a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence or to the premises thereof, or be subject to any combination of such confinement and restriction, such confinement or restriction or combination thereof to be for a period not to exceed one year or one-half of the maximum period of confinement that could be imposed for the offense for which the defendant is convicted, whichever is the lesser.

(b) For felonies committed on or after November 1, 1989, be confined in the county jail, or be subject to other custodial sanctions under community supervision, or both, as provided by rules of the Oregon Criminal Justice Commission.

(c) For crimes committed on or after December 5, 1996, sell any assets of the probationer as specifically ordered by the court in order to pay restitution.

(3) When a person who is a sex offender is released on probation, the court shall impose as a special condition of probation that the person not reside in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides, without the approval of the person's supervising parole and probation officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides, without the approval of the director of the probation agency that is supervising the person or of the county manager of the Department of Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole and probation officer of a person subject to the requirements of this subsection shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subsection:

(a) "Dwelling" has the meaning given that term in ORS 469.160.

(b) "Dwelling" does not include a residential treatment facility or a halfway house.

(c) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(d) "Sex offender" has the meaning given that term in ORS 181.594.

(4)(a) If the person is released on probation following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years

of age, the court, if requested by the victim, shall include as a special condition of the person's probation that the person not reside within three miles of the victim unless:

(A) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county;

(B) The person demonstrates to the court by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(C) The person demonstrates to the court by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the probation; or

(D) The person resides in a halfway house. As used in this subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(b) A victim may request imposition of the special condition of probation described in this subsection at the time of sentencing in person or through the prosecuting attorney.

(c) If the court imposes the special condition of probation described in this subsection and if at any time during the period of probation the victim moves to within three miles of the probationer's residence, the court may not require the probationer to change the probationer's residence in order to comply with the special condition of probation.

(5) When a person who is a sex offender, as defined in ORS 181.594, is released on probation, the Department of Corrections or the county community corrections agency, whichever is appropriate, shall notify the chief of police, if the person is going to reside within a city, and the county sheriff of the county in which the person is going to reside of the person's release and the conditions of the person's release.

(6) Failure to abide by all general and special conditions imposed by the court and supervised by the Department of Corrections or a county community corrections agency may result in arrest, modification of conditions, revocation of probation or imposition of structured, intermediate sanctions in accordance with rules adopted under ORS 137.595.

(7) The court may at any time modify the conditions of probation.

(8) A court may not order revocation of probation as a result of the probationer's failure to pay restitution unless the court determines from the totality of the circumstances that the purposes of the probation are not being served.

(9) It is not a cause for revocation of probation that the probationer failed to apply for or accept employment at any workplace where there is a labor dispute in progress. As used in this subsection, "labor dispute" has the meaning for that term provided in ORS 662.010.

(10) As used in this section, "attends," "institution of higher education," "works" and "carries on a vocation" have the meanings given those terms in ORS 181.594.

Passed by Senate February 16, 2009

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Secretary of Senate

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President of Senate

Passed by House May 11, 2009

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Speaker of House

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Approved:

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

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Governor

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

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Secretary of State