

Senate Bill 402

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SUMMARY

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

Modifies definition of "previous conviction" and "prior conviction" for purposes of certain criminal statutes when person is under 18 years of age at time crime is committed.

Requires Oregon Criminal Justice Commission to modify method of calculating person's criminal history, for purposes of sentencing guidelines grid of commission, when person is under 18 years of age at time crime is committed.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 137.717, 165.803, 167.500, 475.933 and
3 475.935; and declaring an emergency.

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

5 **SECTION 1. The Oregon Criminal Justice Commission shall, no later than January 1,**
6 **2012, amend the rules of the commission relating to the criminal history scale of the sen-**
7 **tencing guidelines grid to provide that when an offender is sentenced for a crime committed**
8 **when the offender is under 18 years of age, the offender's criminal history is based on the**
9 **number of felony and Class A misdemeanor convictions and juvenile adjudications in the**
10 **offender's criminal history at the time the current crime of conviction is committed.**

11 **SECTION 2.** ORS 137.717 is amended to read:

12 137.717. (1) When a court sentences a person convicted of:

13 (a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under
14 ORS 164.225 or aggravated identity theft under ORS 165.803, the presumptive sentence is 19 months
15 of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
16 presumptive sentence, if the person has:

17 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
18 in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405, robbery in
19 the first degree under ORS 164.415 or aggravated identity theft under ORS 165.803; or

20 (B) Four or more previous convictions for any combination of the crimes listed in subsection (2)
21 of this section.

22 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
23 164.135, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under
24 ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013,
25 identity theft under ORS 165.800, possession of a stolen vehicle under ORS 819.300 or trafficking in
26 stolen vehicles under ORS 819.310, the presumptive sentence is 13 months of incarceration, unless
27 the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the
28 person has:

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 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
 2 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery
 3 in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession
 4 of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggra-
 5 vated identity theft under ORS 165.803; or

6 (B) Four or more previous convictions for any combination of the crimes listed in subsection (2)
 7 of this section.

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

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

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

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

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

13 (e) Burglary in the second degree under ORS 164.215;

14 (f) Burglary in the first degree under ORS 164.225;

15 (g) Criminal mischief in the second degree under ORS 164.354;

16 (h) Criminal mischief in the first degree under ORS 164.365;

17 (i) Computer crime under ORS 164.377;

18 (j) Forgery in the second degree under ORS 165.007;

19 (k) Forgery in the first degree under ORS 165.013;

20 (L) Criminal possession of a forged instrument in the second degree under ORS 165.017;

21 (m) Criminal possession of a forged instrument in the first degree under ORS 165.022;

22 (n) Fraudulent use of a credit card under ORS 165.055;

23 (o) Identity theft under ORS 165.800;

24 (p) Possession of a stolen vehicle under ORS 819.300; and

25 (q) Trafficking in stolen vehicles under ORS 819.310.

26 (3) The court may impose a sentence other than the sentence provided by subsection (1) of this
 27 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) of this section.

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

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

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

43 (6) As used in this section, "previous conviction":

44 (a) **Means a conviction entered before the defendant is sentenced for the current crime**
 45 **of conviction, if the current crime of conviction was committed when the defendant was 18**

1 years of age or older and the convictions arise out of separate criminal episodes as defined
 2 in ORS 131.505;

3 (b) Means a conviction entered before the commission of the current crime of conviction,
 4 if the current crime of conviction was committed when the defendant was under 18 years
 5 of age; and

6 (c) Includes[:]

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

8 [(b)] convictions entered in any other state or federal court for comparable offenses.

9 **SECTION 3.** ORS 137.717, as amended by section 11, chapter 660, Oregon Laws 2009, is
 10 amended to read:

11 137.717. (1) When a court sentences a person convicted of:

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

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

21 (B) Two or more previous convictions for any combination of the crimes listed in subsection (2)
 22 of this section; or

23 (C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime
 24 of conviction was committed while the defendant was on supervision for the previous conviction or
 25 less than three years after the date the defendant completed the period of supervision for the pre-
 26 vious conviction.

27 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
 28 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under
 29 ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS
 30 164.377, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument
 31 in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),
 32 possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310,
 33 the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal
 34 Justice Commission prescribe a longer presumptive sentence, if the person has:

35 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
 36 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery
 37 in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in
 38 the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in
 39 stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

40 (B) Two or more previous convictions for any combination of the crimes listed in subsection (2)
 41 of this section; or

42 (C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime
 43 of conviction was committed while the defendant was on supervision for the previous conviction or
 44 less than three years after the date the defendant completed the period of supervision for the pre-
 45 vious conviction.

- 1 (2) The crimes to which subsection (1) of this section applies are:
- 2 (a) Theft in the second degree under ORS 164.045;
- 3 (b) Theft in the first degree under ORS 164.055;
- 4 (c) Aggravated theft in the first degree under ORS 164.057;
- 5 (d) Unauthorized use of a vehicle under ORS 164.135;
- 6 (e) Mail theft or receipt of stolen mail under ORS 164.162;
- 7 (f) Burglary in the second degree under ORS 164.215;
- 8 (g) Burglary in the first degree under ORS 164.225;
- 9 (h) Criminal mischief in the second degree under ORS 164.354;
- 10 (i) Criminal mischief in the first degree under ORS 164.365;
- 11 (j) Computer crime under ORS 164.377;
- 12 (k) Forgery in the second degree under ORS 165.007;
- 13 (L) Forgery in the first degree under ORS 165.013;
- 14 (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- 15 (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- 16 (o) Fraudulent use of a credit card under ORS 165.055;
- 17 (p) Identity theft under ORS 165.800;
- 18 (q) Possession of a stolen vehicle under ORS 819.300;
- 19 (r) Trafficking in stolen vehicles under ORS 819.310; and
- 20 (s) Any attempt to commit a crime listed in this subsection.
- 21 (3)(a) A presumptive sentence described in subsection (1) of this section shall be increased by
- 22 two months for each previous conviction the person has that:
- 23 (A) Was for any of the crimes listed in subsection (1) or (2) of this section; and
- 24 (B) Was not used as a predicate for the presumptive sentence described in subsection (1) of this
- 25 section.
- 26 (b) Previous convictions may not increase a presumptive sentence described in subsection (1)
- 27 of this section by more than 12 months under this subsection.
- 28 (4) The court may impose a sentence other than the sentence provided by subsection (1) or (3)
- 29 of this section if the court imposes:
- 30 (a) A longer term of incarceration that is otherwise required or authorized by law; or
- 31 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
- 32 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
- 33 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
- 34 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
- 35 subsection (1) or (3) of this section.
- 36 (5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under
- 37 subsection (4) of this section to a term of incarceration that exceeds the period of time described
- 38 in ORS 161.605.
- 39 (6) The court shall sentence a person under this section to at least the presumptive sentence
- 40 described in subsection (1) or (3) of this section, unless the parties stipulate otherwise or the court
- 41 finds that:
- 42 (a) The person was not on probation, parole or post-prison supervision for a crime listed in
- 43 subsection (1) of this section at the time of the commission of the current crime of conviction;
- 44 (b) The person has not previously received a downward departure from a presumptive sentence
- 45 for a crime listed in subsection (1) of this section;

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

2 (d) In consideration of the nature of the offense and the harm to the victim, a downward de-
 3 parture will:

4 (A) Increase public safety;

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

6 (C) Not unduly reduce the appropriate punishment.

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

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

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

16 (9) As used in this section:

17 (a) "Downward departure" means a downward dispositional departure or a downward durational
 18 departure under the rules of the Oregon Criminal Justice Commission.

19 (b) "Previous conviction":

20 **(A) Means a conviction entered before the defendant is sentenced for the current crime**
 21 **of conviction, if the current crime of conviction was committed when the defendant was 18**
 22 **years of age or older and the convictions arise out of separate criminal episodes as defined**
 23 **in ORS 131.505;**

24 **(B) Means a conviction entered before the commission of the current crime of conviction,**
 25 **if the current crime of conviction was committed when the defendant was under 18 years**
 26 **of age; and**

27 (C) Includes[:]

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

29 [(B)] convictions entered in any other state or federal court for comparable offenses.

30 **SECTION 4.** ORS 165.803 is amended to read:

31 165.803. (1) A person commits the crime of aggravated identity theft if:

32 (a) The person violates ORS 165.800 in 10 or more separate incidents within a 180-day period;

33 (b) The person violates ORS 165.800 and the person has a previous conviction for aggravated
 34 identity theft;

35 (c) The person violates ORS 165.800 and the losses incurred in a single or aggregate transaction
 36 are \$10,000 or more within a 180-day period; or

37 (d) The person violates ORS 165.800 and has in the person's custody, possession or control 10
 38 or more pieces of personal identification from 10 or more different persons.

39 (2) Aggravated identity theft is a Class B felony.

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

41 **(a) Means a conviction entered before the defendant is sentenced for the current crime**
 42 **of conviction, if the current crime of conviction was committed when the defendant was 18**
 43 **years of age or older and the convictions arise out of separate criminal episodes as defined**
 44 **in ORS 131.505;**

45 **(b) Means a conviction entered before the commission of the current crime of conviction,**

1 **if the current crime of conviction was committed when the defendant was under 18 years**
 2 **of age; and**

3 (c) Includes[:]

4 [(a) *Convictions occurring before, on or after January 1, 2008; and*]

5 [(b)] convictions entered in any other state or federal court for comparable offenses.

6 (4) The state shall plead in the accusatory instrument and prove beyond a reasonable doubt, as
 7 an element of the offense, the previous conviction for aggravated identity theft.

8 **SECTION 5.** ORS 475.933 is amended to read:

9 475.933. (1) When a court sentences a person convicted of a crime listed in subsection (2) of this
 10 section, the court may not impose a sentence of optional probation or grant a downward disposi-
 11 tional departure or a downward durational departure under the rules of the Oregon Criminal Justice
 12 Commission if the person has a previous conviction for any of the crimes listed in subsection (2) of
 13 this section.

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

15 (a) Manufacture or delivery of a controlled substance, other than marijuana, under ORS 475.840
 16 (1);

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

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

19 (d) Manufacture or delivery of 3,4-methylenedioxymethamphetamine under ORS 475.866, 475.868,
 20 475.870 or 475.872;

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

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

23 (g) Manufacture or delivery of a controlled substance within 1,000 feet of a school under ORS
 24 475.904;

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

26 (i) Possession of a precursor substance with intent to manufacture a controlled substance under
 27 ORS 475.967.

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

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

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

37 (5) As used in this section, "previous conviction" [*means*]:

38 (a) **Means a conviction entered before the defendant is sentenced for the current crime**
 39 **of conviction, if the current crime of conviction was committed when the defendant was 18**
 40 **years of age or older and the convictions arise out of separate criminal episodes as defined**
 41 **in ORS 131.505;**

42 (b) **Means a conviction entered before the commission of the current crime of conviction,**
 43 **if the current crime of conviction was committed when the defendant was under 18 years**
 44 **of age; and**

45 (c) **Includes**

1 *[(a) Convictions occurring before, on or after July 1, 2009; and]*

2 *[(b)]* convictions entered in any other state or federal court for comparable offenses.

3 **SECTION 6.** ORS 475.935 is amended to read:

4 475.935. (1) Except as provided in ORS 475.900, 475.907 or 475.925, when a court sentences a
5 person convicted of:

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

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

11 (B) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS
12 475.888, 475.892 or 475.904; or

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

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

18 (A) The delivery involved a substantial quantity of methamphetamine as described in ORS
19 475.900; and

20 (B) The person has a previous conviction for:

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

22 (ii) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS
23 475.888, 475.892 or 475.904; or

24 (iii) Possession of a precursor substance with intent to manufacture a controlled substance un-
25 der ORS 475.967.

26 (c) Delivery of methamphetamine under ORS 475.890 or 475.892, the presumptive sentence is 19
27 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a
28 longer presumptive sentence, if the person has two or more previous convictions for any combina-
29 tion of the following crimes:

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

31 (B) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS
32 475.888, 475.892 or 475.904; or

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

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

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

38 (b) An upward or downward durational departure sentence that is authorized by law or the rules
39 of the Oregon Criminal Justice Commission based upon findings of substantial and compelling rea-
40 sons unless otherwise noted in subsection (1) of this section. Unless otherwise authorized by law
41 or rule of the Oregon Criminal Justice Commission, the maximum departure allowed for a person
42 sentenced under this subsection is double the presumptive sentence provided in subsection (1) of this
43 section.

44 (3) As used in this section, "previous conviction" *[means]*:

45 **(a) Means a conviction entered before the defendant is sentenced for the current crime**

1 **of conviction, if the current crime of conviction was committed when the defendant was 18**
 2 **years of age or older and the convictions arise out of separate criminal episodes as defined**
 3 **in ORS 131.505;**

4 **(b) Means a conviction entered before the commission of the current crime of conviction,**
 5 **if the current crime of conviction was committed when the defendant was under 18 years**
 6 **of age; and**

7 **(c) Includes**

8 *[(a) Convictions occurring before, on or after August 16, 2005; and]*

9 *[(b)] convictions entered in any other state or federal court for comparable offenses.*

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

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

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

19 **SECTION 7.** ORS 475.935, as amended by section 16, chapter 660, Oregon Laws 2009, is
 20 amended to read:

21 475.935. (1) Except as provided in ORS 475.900, 475.907 or 475.925, when the court sentences a
 22 person convicted of delivery of methamphetamine under ORS 475.890 or 475.892, the presumptive
 23 sentence is 19 months of incarceration, unless the rules of the Oregon Criminal Justice Commission
 24 prescribe a longer presumptive sentence, if the person has two or more previous convictions for any
 25 combination of the following crimes:

26 (a) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;

27 (b) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS
 28 475.888, 475.892 or 475.904; or

29 (c) Possession of a precursor substance with intent to manufacture a controlled substance under
 30 ORS 475.967.

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

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

34 (b) An upward durational departure sentence that is authorized by law or the rules of the
 35 Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons.
 36 Unless otherwise authorized by law or rule of the Oregon Criminal Justice Commission, the maxi-
 37 mum departure allowed for a person sentenced under this subsection is double the presumptive
 38 sentence provided in subsection (1) of this section.

39 (3) As used in this section, "previous conviction" *[means]*:

40 **(a) Means a conviction entered before the defendant is sentenced for the current crime**
 41 **of conviction, if the current crime of conviction was committed when the defendant was 18**
 42 **years of age or older and the convictions arise out of separate criminal episodes as defined**
 43 **in ORS 131.505;**

44 **(b) Means a conviction entered before the commission of the current crime of conviction,**
 45 **if the current crime of conviction was committed when the defendant was under 18 years**

1 **of age; and**

2 **(c) Includes**

3 *[(a) Convictions occurring before, on or after August 16, 2005; and]*

4 *[(b)] convictions entered in any other state or federal court for comparable offenses.*

5 (4)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have
6 occurred upon the pronouncement of sentence in open court. *[However, when sentences are imposed*
7 *for two or more convictions arising out of the same conduct or criminal episode, none of the convictions*
8 *is considered to have occurred prior to any of the other convictions arising out of the same conduct or*
9 *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 (5) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

14 **SECTION 8.** ORS 167.500 is amended to read:

15 167.500. As used in ORS 167.502, 167.506 and 167.508:

16 (1) “Baby food” or “infant formula” means food manufactured, packaged and labeled specifically
17 for sale for consumption by a child under the age of two years.

18 (2) “Medical device” means an object or substance that is:

19 (a) Required under federal law to bear the label “Caution: Federal law requires dispensing by
20 or on the order of a physician”; or

21 (b) Defined by federal law as a medical device and is intended:

22 (A) For use in the diagnosis of disease or other conditions in humans or animals;

23 (B) For use in the cure, mitigation, treatment or prevention of disease in humans or animals;
24 or

25 (C) To affect the structure or a function of the bodies of humans or animals without achieving
26 any of its principal intended purposes through metabolism or through chemical action within or on
27 the bodies of humans or animals.

28 (3) “New and unused property” means tangible personal property:

29 (a) That was acquired by a person directly from a producer, manufacturer, wholesaler or retailer
30 in the ordinary course of business and has not been used since its production or manufacture; or

31 (b) That was packaged when it was originally produced or manufactured and the property is in
32 its original and unopened package.

33 (4)(a) “Nonprescription drugs” means drugs that may be sold without a prescription and that,
34 in accordance with the requirements of the statutes and regulations of this state and the federal
35 government, are:

36 (A) Prepackaged for use by a consumer;

37 (B) Prepared by a manufacturer or producer for use by a consumer; and

38 (C) Labeled and unadulterated.

39 (b) “Nonprescription drugs” does not include herbal products, dietary supplements, botanical
40 extracts or vitamins.

41 (5) “Prior conviction”: *[means a conviction that was entered prior to imposing sentence on the*
42 *current crime, provided that the prior conviction is based on a crime committed in a separate criminal*
43 *episode.]*

44 **(a) Means a conviction entered before the defendant is sentenced for the current crime**
45 **of conviction, if the current crime of conviction was committed when the defendant was 18**

1 years of age or older and the convictions arise out of separate criminal episodes as defined
2 in ORS 131.505;

3 (b) Means a conviction entered before the commission of the current crime of conviction,
4 if the current crime of conviction was committed when the defendant was under 18 years
5 of age; and

6 (c) Includes convictions entered in any other state or federal court for comparable of-
7 fenses.

8 (6) "Unused property market" means an event:

9 (a) Where at least two persons offer new and unused property for sale or exchange and the
10 person organizing or conducting the event charges a fee upon the sale or exchange of the new and
11 unused property;

12 (b) Where at least two persons offer new and unused property for sale or exchange and a pro-
13 spective buyer must pay a fee for admission to an area where new and unused property is offered
14 for sale or exchange; or

15 (c) Where new and unused property is offered for sale or exchange for more than 12 days in one
16 12-month period.

17 **SECTION 9.** The amendments to ORS 137.717, 165.803, 167.500, 475.933 and 475.935 by
18 sections 2 to 8 of this 2011 Act apply to:

19 (1) Persons sentenced for a crime committed on or after the effective date of this 2011
20 Act; and

21 (2) Previous convictions entered before, on or after the effective date of this 2011 Act.

22 **SECTION 10.** This 2011 Act being necessary for the immediate preservation of the public
23 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
24 on its passage.

25 _____