

Senate Bill 410

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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**.

Prohibits trial court from imposing sentence on remand that exceeds sentence imposed before appeal, unless longer sentence required by law.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to criminal appeals; creating new provisions; amending ORS 138.222; and declaring an
3 emergency.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 138.010 to**
6 **138.310.**

7 **SECTION 2. When a defendant appeals from a misdemeanor or felony conviction in a**
8 **court of record and the appellate court remands the case for proceedings that include or**
9 **result in a new sentencing, the trial court may not impose a sentence on remand that ex-**
10 **ceeds the sentence in the judgment that was appealed, unless otherwise required by law.**

11 **SECTION 3. ORS 138.222 is amended to read:**

12 138.222. (1) Notwithstanding the provisions of ORS 138.040 and 138.050, a sentence imposed for
13 a judgment of conviction entered for a felony committed on or after November 1, 1989, may be re-
14 viewed only as provided by this section.

15 (2) Except as otherwise provided in subsection (4)(c) of this section, on appeal from a judgment
16 of conviction entered for a felony committed on or after November 1, 1989, the appellate court may
17 not review:

18 (a) Any sentence that is within the presumptive sentence prescribed by the rules of the Oregon
19 Criminal Justice Commission.

20 (b) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe
21 a presumptive sentence of imprisonment but allow a sentence of probation without departure.

22 (c) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission pre-
23 scribe a presumptive sentence of imprisonment but allow a sentence of probation without departure.

24 (d) Any sentence resulting from a stipulated sentencing agreement between the state and the
25 defendant which the sentencing court approves on the record.

26 (e) Except as authorized in subsections (3) and (4) of this section, any other issue related to
27 sentencing.

28 (3) In any appeal from a judgment of conviction imposing a sentence that departs from the
29 presumptive sentence prescribed by the rules of the Oregon Criminal Justice Commission, sentence
30 review is limited to whether the sentencing court's findings of fact and reasons justifying a depar-

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 ture from the sentence prescribed by the rules of the Oregon Criminal Justice Commission:

2 (a) Are supported by the evidence in the record; and

3 (b) Constitute substantial and compelling reasons for departure.

4 (4) In any appeal, the appellate court may review a claim that:

5 (a) The sentencing court failed to comply with requirements of law in imposing or failing to
6 impose a sentence;

7 (b) The sentencing court erred in ranking the crime seriousness classification of the current
8 crime or in determining the appropriate classification of a prior conviction or juvenile adjudication
9 for criminal history purposes; or

10 (c) The sentencing court erred in failing to impose a minimum sentence that is prescribed by
11 ORS 137.700 or 137.707.

12 (5)(a) The appellate court may reverse or affirm the sentence. If the appellate court concludes
13 that the trial court's factual findings are not supported by evidence in the record or do not establish
14 substantial and compelling reasons for a departure, it shall remand the case to the trial court for
15 resentencing. If the appellate court determines that the sentencing court, in imposing a sentence in
16 the case, committed an error that requires resentencing, the appellate court shall remand the entire
17 case for resentencing. The sentencing court may impose a new sentence for any conviction in the
18 remanded case.

19 (b) If the appellate court, in a case involving multiple counts of which at least one is a felony,
20 reverses the judgment of conviction on any count and affirms other counts, the appellate court shall
21 remand the case to the trial court for resentencing on the affirmed count or counts.

22 (c) **When the appellate court remands a case to the trial court under this subsection, the**
23 **sentence imposed by the trial court must comply with the provisions of section 2 of this 2011**
24 **Act.**

25 (6) The appellate court shall issue a written opinion whenever the judgment of the sentencing
26 court is reversed and may issue a written opinion in any other case when the appellate court be-
27 lieves that a written opinion will provide guidance to sentencing judges and others in implementing
28 the sentencing guidelines adopted by the Oregon Criminal Justice Commission provided that the
29 appellate courts may provide by rule for summary disposition of cases arising under this section
30 when no substantial question is presented by the appeal.

31 (7) Either the state or the defendant may appeal a judgment of conviction based on the sentence
32 for a felony committed on or after November 1, 1989, to the Court of Appeals subject to the limita-
33 tions of chapter 790, Oregon Laws 1989. The defendant may appeal under this subsection only upon
34 showing a colorable claim of error in a proceeding if the appeal is from a proceeding in which:

35 (a) A sentence was entered subsequent to a plea of guilty or no contest;

36 (b) Probation was revoked, the period of probation was extended, a new condition of probation
37 was imposed, an existing condition of probation was modified or a sentence suspension was revoked;
38 or

39 (c) A sentence was entered subsequent to a resentencing ordered by an appellate court or a
40 post-conviction relief court.

41 **SECTION 4. Sections 1 and 2 of this 2011 Act and the amendments to ORS 138.222 by**
42 **section 3 of this 2011 Act apply to cases remanded to a trial court on or after the effective**
43 **date of this 2011 Act.**

44 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
45 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**

1 **on its passage.**

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