

# Senate Bill 416

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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**.

Authorizes court to impose probation with intensive supervision under certain circumstances when person convicted of certain drug or property crimes.

Authorizes Oregon Criminal Justice Commission to make grants to counties in order to provide services to offenders sentenced to intensive probation or offenders on parole or post-prison supervision determined to be at high risk to reoffend.

Appropriates moneys from General Fund to commission for grants.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; amending ORS 137.717 and 475.933; and appropriating  
3 money.

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

5 **SECTION 1. (1) When a court sentences a person who is otherwise subject to a sentence**  
6 **described in subsection (2) of this section, the court may impose a downward dispositional**  
7 **departure in accordance with the rules of the Oregon Criminal Justice Commission if the**  
8 **court finds:**

9 (a) **That a sentence of probation with intensive supervision would better serve the foun-**  
10 **dational principles of criminal law described in section 15, Article I of the Oregon Constitu-**  
11 **tion; and**

12 (b) **Substantial and compelling reasons to impose a sentence of probation.**

13 (2) **Subsection (1) of this section applies to:**

14 (a) **A person who is subject to a presumptive sentence described in ORS 137.717 or**  
15 **475.933; and**

16 (b) **A person who is subject to a presumptive sentence of more than 12 months under the**  
17 **sentencing guidelines grid of the commission, if the offense for which the person is sentenced**  
18 **is classified as a level 8 or lower on the crime seriousness scale of the sentencing guidelines**  
19 **grid.**

20 (3) **When the court imposes a downward dispositional departure sentence under this**  
21 **section, the supervisory authority as defined in ORS 144.087 shall subject the person to in-**  
22 **tensive supervision for the full period of the person's probation.**

23 (4) **The Department of Corrections, in consultation with local supervisory authorities,**  
24 **shall adopt rules establishing methods of intensive supervision for persons sentenced to**  
25 **probation under this section.**

26 **SECTION 2. (1) The Oregon Criminal Justice Commission shall make grants to counties**  
27 **for the purpose of providing the services described in subsection (2) of this section to persons**  
28 **who:**

**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) Are sentenced to probation under section 1 of this 2011 Act; and

2 (b) Who are on post-prison supervision and are at a high risk to reoffend, as determined  
3 by a risk assessment tool adopted by the commission by rule.

4 (2) A county is eligible for a grant under this section if the county is able to demonstrate  
5 a current or future ability to provide, at a readily accessible location or by streamlined re-  
6 ferral, assistance to persons described in subsection (1) of this section who have any of the  
7 following needs:

8 (a) Alcohol and drug assessment and treatment;

9 (b) Case management;

10 (c) Food and clothing;

11 (d) Housing;

12 (e) Employment;

13 (f) State identification;

14 (g) Transportation;

15 (h) Benefits application;

16 (i) Parole and probation officer contacts;

17 (j) Family and community support;

18 (k) Medical, dental and mental health evaluation and referral;

19 (L) Cognitive behavioral therapy;

20 (m) Financial and computer literacy;

21 (n) Referral for faith-based mentoring;

22 (o) Legal consultation; or

23 (p) Education and training programs.

24 (3) Grants described in this section shall be made from funds appropriated to the com-  
25 mission for that purpose. An award of grant moneys under this section must be used to pay  
26 the cost of a service described in subsection (2) of this section or to reimburse a service  
27 provider for the provision of the service.

28 **SECTION 3.** The Oregon Criminal Justice Commission shall contract with a qualified in-  
29 dependent person or organization to conduct a scientifically valid evaluation of the grant  
30 program described in section 2 of this 2011 Act. All state agencies and persons participating  
31 in the programs shall cooperate fully in conducting the evaluation. The evaluation shall de-  
32 termine whether the grant program is effective in reducing recidivism. The evaluation shall  
33 begin no later than January 1, 2012, and regular progress reports shall be provided to the  
34 commission every six months. A final report shall be provided by the commission to the  
35 Legislative Assembly not later than January 1, 2013.

36 **SECTION 4.** There is appropriated to the Oregon Criminal Justice Commission for the  
37 biennium beginning July 1, 2011, out of the General Fund, the amount of \$\_\_\_\_\_ for the  
38 purpose of carrying out the provisions of section 2 of this 2011 Act.

39 **SECTION 5.** ORS 137.717, as amended by section 11, chapter 660, Oregon Laws 2009, is  
40 amended to read:

41 137.717. (1) When a court sentences a person convicted of:

42 (a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under  
43 ORS 164.225, robbery in the third degree under ORS 164.395, identity theft under ORS 165.800 or  
44 aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of  
45 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer

1 presumptive sentence, if the person has:

2 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary  
 3 in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in  
 4 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated  
 5 identity theft under ORS 165.803;

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

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

12 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS  
 13 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under  
 14 ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS  
 15 164.377, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument  
 16 in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),  
 17 possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310,  
 18 the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal  
 19 Justice Commission prescribe a longer presumptive sentence, if the person has:

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

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

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

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

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

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

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

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

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

37 (f) Burglary in the second degree under ORS 164.215;

38 (g) Burglary in the first degree under ORS 164.225;

39 (h) Criminal mischief in the second degree under ORS 164.354;

40 (i) Criminal mischief in the first degree under ORS 164.365;

41 (j) Computer crime under ORS 164.377;

42 (k) Forgery in the second degree under ORS 165.007;

43 (L) Forgery in the first degree under ORS 165.013;

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

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

- 1 (o) Fraudulent use of a credit card under ORS 165.055;
- 2 (p) Identity theft under ORS 165.800;
- 3 (q) Possession of a stolen vehicle under ORS 819.300;
- 4 (r) Trafficking in stolen vehicles under ORS 819.310; and
- 5 (s) Any attempt to commit a crime listed in this subsection.
- 6 (3)(a) A presumptive sentence described in subsection (1) of this section shall be increased by
- 7 two months for each previous conviction the person has that:
  - 8 (A) Was for any of the crimes listed in subsection (1) or (2) of this section; and
  - 9 (B) Was not used as a predicate for the presumptive sentence described in subsection (1) of this
  - 10 section.
- 11 (b) Previous convictions may not increase a presumptive sentence described in subsection (1)
- 12 of this section by more than 12 months under this subsection.
- 13 (4) The court may impose a sentence other than the sentence provided by subsection (1) or (3)
- 14 of this section if the court imposes:
  - 15 (a) A longer term of incarceration that is otherwise required or authorized by law; or
  - 16 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
  - 17 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
  - 18 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
  - 19 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
  - 20 subsection (1) or (3) of this section.
- 21 (5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under
- 22 subsection (4) of this section to a term of incarceration that exceeds the period of time described
- 23 in ORS 161.605.
- 24 (6) The court shall sentence a person under this section to at least the presumptive sentence
- 25 described in subsection (1) or (3) of this section, unless the parties stipulate otherwise, **the court**
- 26 **imposes a sentence under the provisions of section 1 of this 2011 Act** or the court finds that:
  - 27 (a) The person was not on probation, parole or post-prison supervision for a crime listed in
  - 28 subsection (1) of this section at the time of the commission of the current crime of conviction;
  - 29 (b) The person has not previously received a downward departure from a presumptive sentence
  - 30 for a crime listed in subsection (1) of this section;
  - 31 (c) The harm or loss caused by the crime is not greater than usual for that type of crime; and
  - 32 (d) In consideration of the nature of the offense and the harm to the victim, a downward de-
  - 33 parture 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 (7)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have
- 38 occurred upon the pronouncement of sentence in open court. However, when sentences are imposed
- 39 for two or more convictions arising out of the same conduct or criminal episode, none of the con-
- 40 victions is considered to have occurred prior to any of the other convictions arising out of the same
- 41 conduct or criminal episode.
- 42 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
- 43 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open
- 44 court of the suspended imposition of a sentence.
- 45 (8) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(9) As used in this section:

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

(b) “Previous conviction” includes:

(A) Convictions occurring before, on or after July 1, 2003; and

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

**SECTION 6.** ORS 475.933 is amended to read:

475.933. (1) **Except as otherwise provided in section 1 of this 2011 Act**, when a court sentences a person convicted of a crime listed in subsection (2) of this section, the court may not impose a sentence of optional probation or grant a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission if the person has a previous conviction for any of the crimes listed in subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

(3)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of sentence. 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.

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

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

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

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

**SECTION 7. Section 1 of this 2011 Act and the amendments to ORS 137.717 and 475.933 by sections 5 and 6 of this 2011 Act apply to crimes committed on or after the effective date of this 2011 Act.**