

## SENATE AMENDMENTS TO SENATE BILL 416

By COMMITTEE ON JUDICIARY

April 29

1 On page 1 of the printed bill, line 2, delete “137.717” and insert “137.656, 137.717, 423.150”.

2 Delete lines 5 through 28 and delete pages 2 through 5 and insert:

3 “**SECTION 1.** ORS 137.717, as amended by section 11, chapter 660, Oregon Laws 2009, is  
4 amended to read:

5 “137.717. (1) When a court sentences a person convicted of:

6 “(a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under  
7 ORS 164.225, robbery in the third degree under ORS 164.395, identity theft under ORS 165.800 or  
8 aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of  
9 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer  
10 presumptive sentence, if the person has:

11 “(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary  
12 in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in  
13 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated  
14 identity theft under ORS 165.803;

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

17 “(C) A previous conviction for a crime listed in subsection (2) of this section, if the current  
18 crime of conviction was committed while the defendant was on supervision for the previous con-  
19 viction or less than three years after the date the defendant completed the period of supervision for  
20 the previous conviction.

21 “(b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS  
22 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under  
23 ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS  
24 164.377, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument  
25 in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),  
26 possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310,  
27 the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal  
28 Justice Commission prescribe a longer presumptive sentence, if the person has:

29 “(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-  
30 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery  
31 in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in  
32 the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in  
33 stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

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

1 “(C) A previous conviction for a crime listed in subsection (2) of this section, if the current  
2 crime of conviction was committed while the defendant was on supervision for the previous con-  
3 viction or less than three years after the date the defendant completed the period of supervision for  
4 the previous conviction.

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

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

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

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

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

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

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

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

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

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

15 “(j) Computer crime under ORS 164.377;

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

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

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

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

20 “(o) Fraudulent use of a credit card under ORS 165.055;

21 “(p) Identity theft under ORS 165.800;

22 “(q) Possession of a stolen vehicle under ORS 819.300;

23 “(r) Trafficking in stolen vehicles under ORS 819.310; and

24 “(s) Any attempt to commit a crime listed in this subsection.

25 “(3)(a) A presumptive sentence described in subsection (1) of this section shall be increased by  
26 two months for each previous conviction the person has that:

27 “(A) Was for any of the crimes listed in subsection (1) or (2) of this section; and

28 “(B) Was not used as a predicate for the presumptive sentence described in subsection (1) of this  
29 section.

30 “(b) Previous convictions may not increase a presumptive sentence described in subsection (1)  
31 of this section by more than 12 months under this subsection.

32 “(4)(a) **The court may not impose a sentence described in this section if a longer term  
33 of incarceration is otherwise required by law.**

34 “[4] (b) The court may impose a sentence other than [*the sentence provided by subsection (1)*  
35 *or (3) of*] **a sentence described in** this section if the court imposes[:]

36 “[a] *A longer term of incarceration that is otherwise required or authorized by law; or*]

37 “[b] *A departure sentence authorized by the rules of the Oregon Criminal Justice Commission*  
38 *based upon findings of substantial and compelling reasons.*] **a longer term of incarceration that is**  
39 **otherwise authorized by law.** Unless the law or the rules of the Oregon Criminal Justice Com-  
40 mission allow for imposition of a longer sentence, the maximum departure allowed for a person  
41 sentenced under this [*subsection*] **paragraph** is double the presumptive sentence provided in sub-  
42 section (1) or (3) of this section.

43 “[5] *Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under*  
44 *subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS*  
45 *161.605.*]

1       “(5)(a) The court shall sentence a person under this section to at least the presumptive  
2 sentence described in subsection (1) or (3) of this section, unless the parties stipulate oth-  
3 erwise or the court finds:

4       “(A) That the person was not on probation for a felony, parole or post-prison supervision  
5 at the time the current crime of conviction was committed;

6       “(B) That the person has not been sentenced to probation as a downward dispositional  
7 departure for any crime in the five-year period immediately preceding the commission of the  
8 current crime of conviction;

9       “(C) That a sentence of probation with a high level of supervision would better serve the  
10 foundation principles of criminal law described in section 15, Article I of the Oregon Consti-  
11 tution; and

12       “(D) Substantial and compelling reasons exist to impose a sentence of probation with a  
13 high level of supervision.

14       “(b) When the court imposes a sentence of probation under this subsection, the super-  
15 visory authority shall subject the person to a high level of supervision for at least 12 months.  
16 The supervisory authority may extend the period of high-level supervision for all or part of  
17 the remaining supervision term.

18       “(c) This subsection does not apply to sentences imposed for:

19       “(A) Burglary in the first degree as defined in ORS 164.225, if the offense is classified as  
20 crime category 9 of the sentencing guidelines grid of the commission.

21       “(B) Aggravated theft in the first degree, if the offense is committed under the circum-  
22 stances described in ORS 164.061.

23       “(C) Aggravated identity theft as defined in ORS 165.803, if a victim of the offense is 65  
24 years of age or older at the time of the commission of the offense.

25       “(6) When a person is sentenced for an offense described in subsection (5)(c) of this sec-  
26 tion, the court shall sentence [*a person under this section*] **the person** to at least the presumptive  
27 sentence described in subsection (1) or (3) of this section, unless the parties stipulate otherwise or  
28 the court finds that:

29       “(a) The person was not on probation, parole or post-prison supervision for a crime listed in  
30 subsection (1) of this section at the time [*of the commission of*] the current crime of conviction **was**  
31 **committed**;

32       “(b) The person has not previously received a downward departure from a presumptive sentence  
33 for a crime listed in subsection (1) of this section;

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

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

37       “(A) Increase public safety;

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

39       “(C) Not unduly reduce the appropriate punishment.

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

45       “(b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-

1 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open  
2 court of the suspended imposition of a sentence.

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

4 “(9) **The court may not impose a sentence under this section that exceeds the period of**  
5 **time described in ORS 161.605.**

6 “[9] (10) As used in this section:

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

9 “(b) ‘Previous conviction’ includes:

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

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

12 “**SECTION 2.** ORS 475.933 is amended to read:

13 “475.933. (1) When a court sentences a person convicted of a crime listed in subsection [(2)] (4)  
14 of this section **who has a previous conviction for a crime listed in subsection (4) of this**  
15 **section**, the court may not impose a sentence of optional probation or grant a downward disposi-  
16 tional departure or a downward durational departure under the rules of the Oregon Criminal Justice  
17 Commission [*if the person has a previous conviction for any of the crimes listed in subsection (2) of this*  
18 *section.*] **unless the court finds:**

19 “(a) **That the person was not on probation for a felony, parole or post-prison supervision**  
20 **at the time the current crime of conviction was committed;**

21 “(b) **That the person has not been sentenced to probation as a downward dispositional**  
22 **departure for any crime in the five-year period immediately preceding the commission of the**  
23 **current crime of conviction;**

24 “(c) **That a sentence of probation with a high level of supervision would better serve the**  
25 **foundation principles of criminal law described in section 15, Article I of the Oregon Consti-**  
26 **tution; and**

27 “(d) **Substantial and compelling reasons exist to impose a sentence of probation with a**  
28 **high level of supervision.**

29 “(2) **When the court imposes a sentence of probation under subsection (1) of this section,**  
30 **the supervisory authority shall subject the person to a high level of supervision for at least**  
31 **12 months. The supervisory authority may extend the period of high-level supervision for all**  
32 **or part of the remaining supervision term.**

33 “(3) **Notwithstanding subsection (1) of this section, the court shall impose at least the**  
34 **presumptive sentence provided for by law when a person is sentenced for:**

35 “(a) **The unlawful delivery of methamphetamine to a minor under ORS 475.890 (3) or**  
36 **475.907; or**

37 “(b) **The unlawful delivery or manufacture of a controlled substance in an amount de-**  
38 **scribed in ORS 475.925.**

39 “[2] (4) The crimes to which subsection (1) of this section applies are:

40 “(a) **Manufacture or delivery of a controlled substance, other than marijuana, under ORS 475.840**  
41 **(1);**

42 “(b) **Creation or delivery of a counterfeit substance, other than marijuana, under ORS 475.840**  
43 **(2);**

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

45 “(d) **Manufacture or delivery of 3,4-methylenedioxyamphetamine under ORS 475.866, 475.868,**

1 475.870 or 475.872;

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

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

4 “(g) Manufacture or delivery of a controlled substance within 1,000 feet of a school under ORS  
5 475.904;

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

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

10 “[3)(a)] (5)(a) For a crime committed on or after November 1, 1989, a conviction is considered  
11 to have occurred upon the pronouncement in open court of sentence. However, when sentences are  
12 imposed for two or more convictions arising out of the same conduct or criminal episode, none of  
13 the convictions is considered to have occurred prior to any of the other convictions arising out of  
14 the same conduct or 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 “[4)] (6) For purposes of this section, previous convictions must be proven pursuant to ORS  
19 137.079.

20 “[5)] (7) As used in this section, ‘previous conviction’ means:

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

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

23 **“SECTION 3. There is appropriated to the Oregon Criminal Justice Commission for the  
24 biennium beginning July 1, 2011, out of the General Fund, the amount of \$\_\_\_\_\_ for the  
25 purpose of carrying out the provisions of section 4 of this 2011 Act.**

26 **“SECTION 4. (1) A county is eligible for a grant under ORS 137.656 (5)(b) if the county,  
27 in accordance with rules adopted by the Oregon Criminal Justice Commission, is able to  
28 demonstrate a current or future ability to provide, at a readily accessible location or by  
29 streamlined referral, assistance to offenders who have supervision-related service needs and  
30 are serving a term of:**

31 **“(a) Probation imposed under ORS 137.717 (5) or 475.933 (1);**

32 **“(b) Probation imposed for an eligible offense, provided that the sentence was imposed  
33 as a sentence of optional probation or a downward dispositional departure from a  
34 presumptive sentence, under the rules of the Oregon Criminal Justice Commission; or**

35 **“(c) Post-prison supervision imposed for an eligible offense.**

36 **“(2) An award of grant moneys under this section must be used to pay the cost of a  
37 supervision-related service or to reimburse a service provider for the provision of the  
38 supervision-related service.**

39 **“(3)(a) The Oregon Criminal Justice Commission shall annually:**

40 **“(A) Contract with a qualified independent person or organization to conduct a scientif-  
41 ically valid evaluation of the grant program described in this section to determine whether  
42 the grant program is effective in reducing recidivism; and**

43 **“(B) Conduct an audit of the grant program described in this section to ensure that the  
44 grant moneys are awarded solely for the purposes described in this section.**

45 **“(b) All state agencies and persons providing or receiving supervision-related services**

1 shall cooperate fully in the evaluation and audit described in this subsection.

2 “(c) No later than January 31 of each year, the commission shall report to the Legislative  
3 Assembly on the results of the evaluation and audit.

4 “(4) As used in this section:

5 “(a) ‘Eligible offense’ means:

6 “(A) Felon in possession of a firearm or felon in possession of a restricted weapon, under  
7 ORS 166.270.

8 “(B) Assault in the third degree under ORS 163.165.

9 “(C) Criminal driving while suspended or revoked under ORS 811.182.

10 “(D) Failure to report as a sex offender under ORS 181.599.

11 “(E) Failure to appear in the first degree under ORS 162.205.

12 “(F) Escape in the second degree under ORS 162.155.

13 “(G) Fleeing or attempting to elude a police officer under ORS 811.540.

14 “(H) Perjury under ORS 162.065.

15 “(I) Aggravated harassment under ORS 166.070.

16 “(J) Laundering a monetary instrument under ORS 164.170.

17 “(K) Making a false claim for health care payment under ORS 165.692.

18 “(L) The possession, delivery or manufacture of a controlled substance, for which the law  
19 authorizes a sentence of probation.

20 “(b) ‘Supervision-related service’ means any of the following:

21 “(A) Alcohol and drug assessment and treatment;

22 “(B) Obtaining food and clothing, appropriate housing or state identification;

23 “(C) Obtaining employment;

24 “(D) Transportation;

25 “(E) Benefits application assistance;

26 “(F) Case management, including obtaining parole and probation officer contacts;

27 “(G) Family and community support;

28 “(H) Medical, dental and mental health evaluation and referral;

29 “(I) Cognitive behavioral therapy;

30 “(J) Financial and computer training;

31 “(K) Referrals for faith-based mentoring or self-improvement;

32 “(L) Legal consultation; or

33 “(M) Education and training programs.

34 “**SECTION 5.** ORS 137.656 is amended to read:

35 “137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effec-  
36 tiveness and efficiency of state and local criminal justice systems by providing a centralized and  
37 impartial forum for statewide policy development and planning.

38 “(2) The primary duty of the commission is to develop and maintain a state criminal justice  
39 policy and comprehensive, long-range plan for a coordinated state criminal justice system that en-  
40 compasses public safety, offender accountability, crime reduction and prevention and offender  
41 treatment and rehabilitation. The plan must include, but need not be limited to, recommendations  
42 regarding:

43 “(a) Capacity, utilization and type of state and local prison and jail facilities;

44 “(b) Implementation of community corrections programs;

45 “(c) Alternatives to the use of prison and jail facilities;

1 “(d) Appropriate use of existing facilities and programs;

2 “(e) Whether additional or different facilities and programs are necessary;

3 “(f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices

4 and sanctions in reducing future criminal conduct by juvenile and adult offenders;

5 “(g) Methods of reducing the risk of future criminal conduct; and

6 “(h) The effective utilization of local public safety coordinating councils.

7 “(3) Other duties of the commission are:

8 “(a) To conduct joint studies by agreement with other state agencies, boards or commissions on

9 any matter within the jurisdiction of the commission.

10 “(b) To provide Oregon criminal justice analytical and statistical information to federal agencies

11 and serve as a clearinghouse and information center for the collection, preparation, analysis and

12 dissemination of information on state and local sentencing practices.

13 “(c) To provide technical assistance and support to local public safety coordinating councils.

14 “(d) To receive grant applications to start or expand drug court programs as defined in ORS

15 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

16 “(4) The commission shall establish by rule the information that must be submitted under ORS

17 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection

18 must be approved by the Chief Justice of the Supreme Court before it takes effect.

19 “(5) **The commission shall, from funds appropriated to the commission for that purpose,**

20 **make grants to counties for the purpose of:**

21 “(a) **Providing supplemental funding for drug courts for drug-addicted persons, as defined**

22 **in ORS 423.150, including the costs of appropriate treatment services and the incarceration**

23 **of persons who have violated the terms and conditions of a drug court; and**

24 “(b) **Providing offenders with supervision-related services as defined in section 4 of this**

25 **2011 Act.**

26 “[5] (6) The commission may:

27 “(a) Apply for and receive gifts and grants from any public or private source.

28 “(b) Award grants from funds appropriated by the Legislative Assembly to the commission or

29 from funds otherwise available from any other source, for the purpose of carrying out the duties of

30 the commission.

31 “(c) Adopt rules to carry out the provisions of this subsection.

32 “**SECTION 6.** ORS 423.150 is amended to read:

33 “423.150. (1) The Department of Corrections shall:

34 “(a) Provide appropriate treatment services to drug-addicted persons in the custody of the de-

35 partment who are at a high or medium risk of reoffending and who have moderate to severe treat-

36 ment needs; and

37 “(b) Make grants to counties in order to provide supplemental funding for:

38 “(A) The operation of local jails;

39 “(B) Appropriate treatment services for drug-addicted persons on probation, parole or post-

40 prison supervision; or

41 “(C) The intensive supervision of drug-addicted persons on probation, parole or post-prison

42 supervision, including the incarceration of drug-addicted persons who have violated the terms and

43 conditions of probation, parole or post-prison supervision.

44 “[2] *The Oregon Criminal Justice Commission shall make grants to counties in order to provide*

45 *supplemental funding for drug courts for drug-addicted persons, including the costs of appropriate*

1 *treatment services and the incarceration of persons who have violated the terms and conditions of a*  
2 *drug court.]*

3 “[3)(a)] (2)(a) The appropriate legislative committee shall periodically conduct oversight  
4 hearings on the effectiveness of this section.

5 “(b) The Oregon Criminal Justice Commission shall periodically conduct independent evaluations  
6 of the programs funded by this section for their effectiveness in reducing criminal behavior in a  
7 cost-effective manner.

8 “[4)] (3) The Department of Corrections shall determine which persons are eligible for treat-  
9 ment under subsection (1)(a) of this section using an actuarial risk assessment tool.

10 “[5)] (4) The department shall adopt rules to administer the grant program described in sub-  
11 section (1)(b) of this section.

12 “[6)] (5) Prior to adopting the rules described in subsection [(5)] (4) of this section, the depart-  
13 ment shall consult with a broad-based committee that includes representatives of:

14 “(a) County boards of commissioners;

15 “(b) County sheriffs;

16 “(c) District attorneys;

17 “(d) County community corrections;

18 “(e) The Oregon Criminal Justice Commission;

19 “(f) Presiding judges of the judicial districts of this state;

20 “(g) Public defenders; and

21 “(h) Treatment providers.

22 “[7)] (6) In determining which grant proposals to fund within each county, the department shall:

23 “(a) Consult with the committee described in subsection [(6)] (5) of this section;

24 “(b) Give priority to those proposals that are best designed to reduce crime and drug addiction;  
25 and

26 “(c) Be guided by evidence-based practices, risk assessment tools or other research-based con-  
27 siderations.

28 “[8)] (7) Nothing in this section:

29 “(a) Creates any claim, right of action or civil liability; or

30 “(b) Requires a supervisory authority or the Department of Corrections to provide treatment to  
31 any individual under the authority’s supervision or in the custody of the department.

32 “[9)] (8) As used in this section:

33 “(a) ‘Drug-addicted person’ means a person who has lost the ability to control the personal use  
34 of controlled substances or alcohol, or who uses controlled substances or alcohol to the extent that  
35 the health of the person or that of others is substantially impaired or endangered or the social or  
36 economic function of the person is substantially disrupted. A drug-addicted person may be physically  
37 dependent, a condition in which the body requires a continuing supply of a controlled substance or  
38 alcohol to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition  
39 characterized by an overwhelming mental desire for continued use of a controlled substance or al-  
40 cohol.

41 “(b) ‘Intensive supervision’ means the active monitoring of a person’s performance in a treat-  
42 ment program by a parole and probation officer and the imposition of sanctions, or request to a  
43 court for sanctions, if the person fails to abide by the terms and conditions of a treatment program.

44 “**SECTION 7. The amendments to ORS 137.717 and 475.933 by sections 1 and 2 of this 2011**  
45 **Act apply to crimes committed on or after the effective date of this 2011 Act.”.**



