

A-Engrossed
Senate Bill 761

Ordered by the Senate May 16
Including Senate Amendments dated May 16

Sponsored by COMMITTEE ON JUDICIARY

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.

Modifies statutory provision authorizing release of inmates who successfully complete alternative incarceration program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to alternative incarceration programs; creating new provisions; amending ORS 137.751 and
3 421.508; and declaring an emergency.

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

5 **SECTION 1.** ORS 421.508 is amended to read:

6 421.508. (1)(a) The Department of Corrections is responsible for determining which offenders are
7 eligible to participate in, and which offenders are accepted for, a program. However, the department
8 may not release an offender under subsection (4) of this section unless authorized to do so as pro-
9 vided in ORS 137.751.

10 (b) The department may not accept an offender into a program unless the offender submits a
11 written request to participate. The request must contain a signed statement providing that the
12 offender:

13 (A) Is physically and mentally able to withstand the rigors of the program; and

14 (B) Has reviewed the program description provided by the department and agrees to comply with
15 each of the requirements of the program.

16 (c) The department may deny, for any reason, a request to participate in a program. The de-
17 partment shall make the final determination regarding an offender's physical or mental ability to
18 withstand the rigors of the program.

19 (d) If the department determines that an offender's participation in a program is consistent with
20 the safety of the community, the welfare of the applicant, the program objectives and the rules of
21 the department, the department may, in its discretion, accept the offender into the program.

22 (2) The department may suspend or remove an offender from a program for administrative or
23 disciplinary reasons.

24 (3) The department may not accept an offender into a program if:

25 (a) The department has removed the offender from a program during the term of incarceration
26 for which the offender is currently sentenced; or

27 (b) The offender has a current detainer from any jurisdiction that will not expire prior to the
28 offender's release from the custody of the department.

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 (4) When an offender has successfully completed a program, the department may release the
2 offender on post-prison supervision [*if*].

3 [(a) *The court has entered the order described in ORS 137.751; and*]

4 [(b) *The offender has served a term of incarceration of at least one year.*]

5 [(5) *An offender may not be released on post-prison supervision under subsection (4) of this section*
6 *if the release would reduce the term of incarceration the offender would otherwise be required to serve*
7 *by more than 20 percent.*]

8 [(6) *For the purposes of calculating the term of incarceration served under subsection (4)(b) of this*
9 *section, the department shall include:*]

10 [(a) *The time that an offender is confined under ORS 137.370 (2)(a); and*]

11 [(b) *The time for which an offender is granted nonprison leave under ORS 421.510.*]

12 [(7)] (5) Successful completion of a program does not relieve [*the*] **an** offender from fulfilling any
13 other obligations imposed as part of the sentence including, but not limited to, the payment of
14 restitution and fines.

15 **SECTION 2.** ORS 137.751 is amended to read:

16 137.751. (1) When a court sentences a defendant to a term of incarceration that exceeds one
17 year, the defendant may request a determination of the defendant's eligibility for release on post-
18 prison supervision under ORS 421.508 (4). The court shall order in the judgment that the Department
19 of Corrections may release the defendant on post-prison supervision under ORS 421.508 (4) only if,
20 after a hearing, the court finds that:

21 (a) The defendant meets the eligibility requirements of subsections (2) and (3) of this section;

22 (b) The defendant was not on probation, parole or post-prison supervision for an offense listed
23 in ORS 137.712 (4) or 811.705 (2)(b) at the time of the commission of the current crime of conviction;

24 (c) The defendant has not previously been released on post-prison supervision under ORS 421.508
25 (4);

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

27 (e) The crime was not part of an organized criminal operation; and

28 (f) After considering the nature of the offense and the harm to the victim, the defendant's suc-
29 cessful completion of the program would:

30 (A) Increase public safety;

31 (B) Enhance the likelihood that the defendant would be rehabilitated; and

32 (C) Not unduly reduce the appropriate punishment.

33 (2) Except as provided in subsection (4) of this section, a defendant may not be released on
34 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime under
35 ORS 163.145, 163.165 (1)(a) or (b), 163.525 or 811.705 (2)(b).

36 (3) A defendant may not be released on post-prison supervision under ORS 421.508 (4) if the de-
37 fendant is being sentenced for a crime listed in ORS 137.700, 137.707 or 163.095 or a sex crime as
38 defined in ORS 181.594.

39 (4) Notwithstanding subsection (1) of this section, the parties may stipulate to a defendant's el-
40 igibility for release on post-prison supervision under ORS 421.508 (4). If the court accepts the stip-
41 ulation, the court does not need to make explicit findings regarding the factors described in
42 subsection (1)(b) to (f) of this section. The parties may not stipulate to the defendant's release on
43 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime de-
44 scribed in subsection (3) of this section.

45 (5) If the court makes the findings described in subsection (1) of this section or accepts the

1 stipulation of the parties under subsection (4) of this section, the court shall:

2 (a) Order on the record in open court as part of the sentence imposed that the defendant may
3 be considered by the department for release on post-prison supervision under ORS 421.508 (4); and

4 (b) Include the order described in paragraph (a) of this subsection in the judgment.

5 (6) Subject to the requirements of this section, the court may order that the defendant serve a
6 minimum period of incarceration before the defendant is released on post-prison supervision under
7 ORS 421.508 (4). [*Nothing in this section authorizes the release of the defendant on post-prison super-*
8 *vision before the defendant has served the period of time described in ORS 421.508 (4)(b).]*

9 **SECTION 3. The amendments to ORS 137.751 and 421.508 by sections 1 and 2 of this 2011**
10 **Act apply to persons sentenced for a crime that is committed on or after the effective date**
11 **of this 2011 Act.**

12 **SECTION 4. This 2011 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
14 **on its passage.**

15 _____