

SENATE AMENDMENTS TO SENATE BILL 761

By COMMITTEE ON JUDICIARY

May 16

- 1 On page 1 of the printed bill, line 2, after “ORS” insert “137.751 and”.
- 2 Delete lines 5 through 31.
- 3 On page 2, delete lines 1 through 21 and insert:
- 4 “**SECTION 1.** ORS 421.508 is amended to read:
- 5 “421.508. (1)(a) The Department of Corrections is responsible for determining which offenders
- 6 are eligible to participate in, and which offenders are accepted for, a program. However, the de-
- 7 partment may not release an offender under subsection (4) of this section unless authorized to do
- 8 so as provided in ORS 137.751.
- 9 “(b) The department may not accept an offender into a program unless the offender submits a
- 10 written request to participate. The request must contain a signed statement providing that the
- 11 offender:
- 12 “(A) Is physically and mentally able to withstand the rigors of the program; and
- 13 “(B) Has reviewed the program description provided by the department and agrees to comply
- 14 with each of the requirements of the program.
- 15 “(c) The department may deny, for any reason, a request to participate in a program. The de-
- 16 partment shall make the final determination regarding an offender’s physical or mental ability to
- 17 withstand the rigors of the program.
- 18 “(d) If the department determines that an offender’s participation in a program is consistent with
- 19 the safety of the community, the welfare of the applicant, the program objectives and the rules of
- 20 the department, the department may, in its discretion, accept the offender into the program.
- 21 “(2) The department may suspend or remove an offender from a program for administrative or
- 22 disciplinary reasons.
- 23 “(3) The department may not accept an offender into a program if:
- 24 “(a) The department has removed the offender from a program during the term of incarceration
- 25 for which the offender is currently sentenced; or
- 26 “(b) The offender has a current detainer from any jurisdiction that will not expire prior to the
- 27 offender’s release from the custody of the department.
- 28 “(4) When an offender has successfully completed a program, the department may release the
- 29 offender on post-prison supervision [*if*].
- 30 “[*(a) The court has entered the order described in ORS 137.751; and*]
- 31 “[*(b) The offender has served a term of incarceration of at least one year.*]
- 32 “[*(5) An offender may not be released on post-prison supervision under subsection (4) of this section*
- 33 *if the release would reduce the term of incarceration the offender would otherwise be required to serve*
- 34 *by more than 20 percent.*]
- 35 “[*(6) For the purposes of calculating the term of incarceration served under subsection (4)(b) of this*

1 *section, the department shall include:]*

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

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

4 *“[(7)] (5) Successful completion of a program does not relieve [the] an offender from fulfilling*
5 *any other obligations imposed as part of the sentence including, but not limited to, the payment of*
6 *restitution and fines.*

7 **“SECTION 2.** ORS 137.751 is amended to read:

8 **“137.751.** (1) When a court sentences a defendant to a term of incarceration that exceeds one
9 year, the defendant may request a determination of the defendant’s eligibility for release on post-
10 prison supervision under ORS 421.508 (4). The court shall order in the judgment that the Department
11 of Corrections may release the defendant on post-prison supervision under ORS 421.508 (4) only if,
12 after a hearing, the court finds that:

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

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

16 *“(c) The defendant has not previously been released on post-prison supervision under ORS*
17 *421.508 (4);*

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

19 *“(e) The crime was not part of an organized criminal operation; and*

20 *“(f) After considering the nature of the offense and the harm to the victim, the defendant’s*
21 *successful completion of the program would:*

22 *“(A) Increase public safety;*

23 *“(B) Enhance the likelihood that the defendant would be rehabilitated; and*

24 *“(C) Not unduly reduce the appropriate punishment.*

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

28 *“(3) A defendant may not be released on post-prison supervision under ORS 421.508 (4) if the*
29 *defendant is being sentenced for a crime listed in ORS 137.700, 137.707 or 163.095 or a sex crime*
30 *as defined in ORS 181.594.*

31 *“(4) Notwithstanding subsection (1) of this section, the parties may stipulate to a defendant’s*
32 *eligibility for release on post-prison supervision under ORS 421.508 (4). If the court accepts the*
33 *stipulation, the court does not need to make explicit findings regarding the factors described in*
34 *subsection (1)(b) to (f) of this section. The parties may not stipulate to the defendant’s release on*
35 *post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime de-*
36 *scribed in subsection (3) of this section.*

37 *“(5) If the court makes the findings described in subsection (1) of this section or accepts the*
38 *stipulation of the parties under subsection (4) of this section, the court shall:*

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

41 *“(b) Include the order described in paragraph (a) of this subsection in the judgment.*

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

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

4 In line 22, delete “3” and insert “4”.

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