

# House Bill 3259

Sponsored by Representative HICKS; Representative WHISNANT

## 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**.

Gives sentencing court authority to set conditions and sanction persons on post-prison supervision.

Requires Department of Corrections to prepare inmate release plan 90 days before release and allows department to base transitional leave on release plan.

Directs Department of Corrections to establish Recidivism Reduction Program.

Appropriates moneys to department for program and for distribution to counties through program based on total number of months of prison sentences within county.

Reduces penalties for possession, distribution and manufacture of marijuana and for felony criminal driving while suspended or revoked.

Allows person on probation or post-prison supervision to earn reductions in term of supervision.

Allows parole and probation officers to modify probation conditions imposed by sentencing court based on risk and needs assessment.

Requires supervisory authorities to report recidivism rates to Oregon Criminal Justice Commission.

Requires Oregon Department of Administrative Services to publish additional information relating to prison population forecasts.

Requires Legislative Fiscal Officer to calculate fiscal impact of legislation relating to corrections or crime for next 10 years.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to crime; creating new provisions; amending ORS 137.540, 137.630, 144.087, 144.096, 144.101, 173.029, 182.515, 182.525, 184.351, 421.168, 475.900 and 811.182; repealing ORS 144.085; appropriating money; and declaring an emergency.

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

### POST-PRISON SUPERVISION BY SENTENCING COURT

**SECTION 1.** (1) **Notwithstanding ORS 137.124 or 423.478 or any other provision of law, but subject to subsection (2) of this section, the court that enters a judgment of conviction in a criminal action retains authority after entry of the judgment:**

(a) **To impose conditions of post-prison supervision in addition to the conditions imposed pursuant to ORS 144.102;**

(b) **Subject to section 2 of this 2013 Act, to issue a warrant and cause a defendant to be arrested for violating any of the conditions of post-prison supervision;**

(c) **To determine whether conditions of post-prison supervision have been violated, and to impose sanctions for the violations consistent with ORS 144.106 and 144.407; and**

(d) **To cause a defendant to be brought before the court for a hearing upon the court's own motion before the imposition of any administrative sanctions under ORS 144.106, or within four judicial days after receiving notice that an administrative sanction has been imposed, and to impose such other or additional sanctions or modify the conditions of post-**

**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 **prison supervision as authorized by law.**

2 (2) **A sentencing court may not cause a defendant to be brought before the court for vi-**  
 3 **olating a condition of post-prison supervision and impose other or additional sanctions if**  
 4 **administrative sanctions for the violation have been imposed pursuant to ORS 144.106 and**  
 5 **the defendant has complied with all conditions of those sanctions.**

6 (3)(a) **If the county in which the defendant is serving the term of post-prison supervision**  
 7 **is different from the county in which the defendant was convicted, the sentencing court shall**  
 8 **transfer the authority retained under subsection (1) of this section to the presiding judge of**  
 9 **the circuit court of the judicial district in the county in which the defendant is serving the**  
 10 **term of post-prison supervision.**

11 (b) **The presiding judge of the circuit court of the judicial district in the county in which**  
 12 **the defendant is serving the term of post-prison supervision shall assign the supervision of**  
 13 **the defendant to a judge within that court. The new supervising judge may impose conditions**  
 14 **of post-prison supervision and determine violations and sanctions as provided in subsection**  
 15 **(1) of this section.**

16 (c) **The sentencing court shall send to the new supervising judge all of the records of the**  
 17 **court as to the offense and criminal record of the defendant and a copy of the release plan**  
 18 **prepared pursuant to ORS 144.096.**

19 **SECTION 2. (1) Whenever a court issues a warrant and causes a defendant to be arrested**  
 20 **for violating the conditions of post-prison supervision, and the defendant is taken into cus-**  
 21 **tody, the defendant shall be brought before a magistrate during the first 36 hours in custody,**  
 22 **excluding Saturdays, Sundays and holidays. The magistrate may order the defendant held**  
 23 **until a violation hearing is held, or may release the defendant upon the condition that the**  
 24 **defendant appear in court at a later date for a hearing.**

25 (2) **Except for good cause shown, if the defendant is held in custody and the violation**  
 26 **hearing is not conducted within 14 calendar days following the defendant's arrest, the de-**  
 27 **fendant shall be released from custody.**

28 (3) **The defendant may admit or deny the violation and may present evidence at the**  
 29 **hearing.**

30 (4) **If the court finds by a preponderance of the evidence that the defendant has violated**  
 31 **the conditions of post-prison supervision, the court may sanction the defendant subject to**  
 32 **the rules adopted pursuant to ORS 144.407.**

33 **SECTION 3. Sections 1 and 2 of this 2013 Act apply to defendants who are convicted of**  
 34 **crimes committed on or after the effective date of this 2013 Act.**

35 **SECTION 4. ORS 144.096 is amended to read:**

36 144.096. (1)(a) **The Department of Corrections shall prepare a proposed release plan for an in-**  
 37 **mate prior to the inmate's release from prison.**

38 (b) **The department shall submit the proposed release plan to the State Board of Parole and**  
 39 **Post-Prison Supervision not less than [60] 90 days prior to the inmate's release.**

40 (c) **If the proposed release plan is not approved by the board, the board shall return the plan**  
 41 **to the department with its recommended modifications. The department shall submit a revised plan**  
 42 **to the board not less than [10] 60 days prior to the inmate's release.**

43 (d) **If the revised plan is not acceptable to the board, the board shall determine the provisions**  
 44 **of the final plan prior to the inmate's release.**

45 (e) **The board shall provide a copy of the release plan prepared under this subsection to**

1 **the sentencing court.**

2 (2) The local supervisory authority that is responsible for correctional services for an inmate  
 3 shall prepare a proposed release plan for the inmate prior to the inmate's release from jail. The local  
 4 supervisory authority shall approve the release plan under its rules **and shall provide a copy of**  
 5 **the release plan prepared under this subsection to the sentencing court.**

6 (3) A release plan prepared under subsection (1) or (2) of this section must include:

7 (a) A description of support services and program opportunities available to the inmate;

8 (b) The recommended conditions of post-prison supervision;

9 (c) The level of supervision that shall be consistent with the inmate's risk assessment classi-  
 10 fication;

11 (d) Any other conditions and requirements as may be necessary to promote public safety;

12 (e) For all inmates whose sentence to make restitution under ORS 137.106 has been suspended  
 13 for the term of imprisonment, a restitution payment schedule; and

14 (f) Any conditions necessary to assist the reformation of the inmate.

15 **SECTION 5.** ORS 144.101 is amended to read:

16 144.101. (1) The State Board of Parole and Post-Prison Supervision has jurisdiction over imposi-  
 17 tion of conditions of post-prison supervision and sanctioning for violations of those conditions for a  
 18 person convicted of a felony if:

19 (a) The term of imprisonment imposed on the person is more than 12 months;

20 (b) The felony is classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid of  
 21 the Oregon Criminal Justice Commission;

22 (c) The person is subject to a sentence under ORS 137.700 or 137.707;

23 (d) The person is sentenced as a dangerous offender under ORS 161.725 and 161.737;

24 (e) The person is subject to a term of post-prison supervision under ORS 144.103;

25 (f) The person is committed to the custody of the Department of Corrections under ORS 137.124;

26 (g) The responsibility for correctional services for the person has reverted to the department  
 27 under ORS 423.483; or

28 (h) No local supervisory authority is responsible for correctional services for the person under  
 29 the laws of this state.

30 (2) Except as provided in subsection (1) of this section, a local supervisory authority has juris-  
 31 diction over imposition of conditions of post-prison supervision and sanctions for violations of those  
 32 conditions for a person sentenced to a term of imprisonment of 12 months or less.

33 (3) If a local supervisory authority imposes conditions of post-prison supervision or sanctions for  
 34 violations of those conditions, the person may request the board to review the conditions or sanc-  
 35 tions. The board shall review the request and may, at its discretion, review the conditions and  
 36 sanctions, under rules adopted by the board.

37 (4) Nothing in this section affects the jurisdiction of the board over imposition of conditions of  
 38 parole and sanctioning for violations of those conditions.

39 **(5) Nothing in this section affects the authority that the sentencing court retains as**  
 40 **provided in section 1 of this 2013 Act.**

41  
 42 **TRANSITIONAL LEAVE**

43  
 44 **SECTION 6.** ORS 421.168 is amended to read:

45 421.168. (1) The Director of the Department of Corrections shall establish by rule a short-term

1 transitional leave program. The program shall provide inmates with an opportunity to secure ap-  
 2 propriate transitional support when necessary for successful reintegration into the community prior  
 3 to the inmate's discharge to post-prison supervision.

4 (2) An inmate may submit a transition plan to the Department of Corrections. The plan shall  
 5 indicate that the inmate has secured an employment, educational or other transitional opportunity  
 6 in the community to which the offender will be released and that a leave of up to 30 days is an es-  
 7 sential part of the offender's successful reintegration into the community.

8 (3) Upon verification of the inmate's transition plan **or upon completion of the final release**  
 9 **plan required by ORS 144.096 (1)**, the department may grant a transitional leave no more than 30  
 10 days prior to the inmate's discharge date.

11 (4) No inmate shall be eligible for transitional leave before having served six months of prison  
 12 incarceration.

13 (5) The department shall establish by rule a set of release conditions for offenders released on  
 14 transitional leave status. An offender on transitional leave status shall be subject to immediate re-  
 15 turn to prison for any violation of the conditions of release.

16 (6) The provisions of this section do not apply to inmates whose sentences were imposed under  
 17 ORS 137.635.

18  
 19 **RECIDIVISM REDUCTION PROGRAM**  
 20

21 **SECTION 7. (1) As used in this section, "supervisory authority" has the meaning given**  
 22 **that term in ORS 144.087.**

23 (2)(a) **Subject to available funds, every county shall establish an evidence-based program**  
 24 **for reducing recidivism for inmates within the county that were released from the legal and**  
 25 **physical custody of the Department of Corrections.**

26 (b) **Counties may enter into intergovernmental agreements pursuant to ORS 190.010 for**  
 27 **the purpose of establishing a program for reducing recidivism.**

28 (3)(a) **Every county shall keep a record of the sentences of defendants committed to the**  
 29 **legal and physical custody of the department during each calendar year.**

30 (b) **Beginning July 1, 2014, and each year thereafter, every county shall calculate the total**  
 31 **number of months of the sentences of all defendants committed to the legal and physical**  
 32 **custody of the department during the preceding year and report that total to the depart-**  
 33 **ment.**

34 (c) **Before July 1, 2014, every county shall calculate the total number of months of the**  
 35 **sentences of all defendants sentenced to the legal and physical custody of the department**  
 36 **during the calendar years 2010, 2011 and 2012 and provide that total to the department.**

37 (4) **The department shall establish the Recidivism Reduction Program. The department**  
 38 **shall adopt rules under this section including but not limited to:**

39 (a) **Minimum requirements for county recidivism reduction programs in order to qualify**  
 40 **for funds under the program.**

41 (b) **Guidelines for payment of funds to counties, subject to the following conditions:**

42 (A) **Funds shall be initially proportioned among the counties according to population;**

43 (B) **Forty-five percent of the funds appropriated to the department for the Recidivism**  
 44 **Reduction Program shall be distributed to counties before June 30, 2014; and**

45 (C) **Beginning July 1, 2014, funds shall be distributed pursuant to subsection (5) of this**

1 **section.**

2 **(5) The department shall base payment of funds to counties on the reports of the total**  
 3 **number of months of the sentences of all defendants committed to the legal and physical**  
 4 **custody of the department during the preceding year provided by counties under subsection**  
 5 **(3) of this section as follows:**

6 **(a) If a county's sentence month total is less than the average of the sentence month**  
 7 **total for the years 2010, 2011 and 2012, the county shall receive a two percent increase in**  
 8 **funds for each one percent decrease in sentence month total, up to a 10 percent increase in**  
 9 **funds.**

10 **(b) There will be no decrease in funds for counties if the sentence month total is the**  
 11 **same as or higher than the average of the sentence month total for the years 2010, 2011 and**  
 12 **2012.**

13 **SECTION 8. In addition to and not in lieu of any other appropriation, there is appropri-**  
 14 **ated to the Department of Corrections, for the biennium beginning July 1, 2013, out of the**  
 15 **General Fund, the amount of \$\_\_\_\_, which may be used only for the purpose of implementing**  
 16 **the Recidivism Reduction Program established under section 7 of this 2013 Act and distrib-**  
 17 **ution of funds to counties under that program.**

18  
 19 **SENTENCING MODIFICATIONS**

20  
 21 **SECTION 9. ORS 475.900 is amended to read:**

22 **475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified**  
 23 **as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:**

24 **(a) The violation constitutes delivery or manufacture of a controlled substance and involves**  
 25 **substantial quantities of a controlled substance. For purposes of this paragraph, the following**  
 26 **amounts constitute substantial quantities of the following controlled substances:**

27 **(A) Five grams or more of a mixture or substance containing a detectable amount of heroin;**

28 **(B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;**

29 **(C) Ten grams or more of a mixture or substance containing a detectable amount of metham-**  
 30 **phetamine, its salts, isomers or salts of its isomers;**

31 **(D) One hundred grams or more of a mixture or substance containing a detectable amount of**  
 32 **hashish;**

33 ***[(E) One hundred and fifty grams or more of a mixture or substance containing a detectable***  
 34 ***amount of marijuana;]***

35 ***[(F)] (E) Two hundred or more user units of a mixture or substance containing a detectable***  
 36 ***amount of lysergic acid diethylamide;***

37 ***[(G)] (F) Sixty grams or more of a mixture or substance containing a detectable amount of***  
 38 ***psilocybin or psilocin; or***

39 ***[(H)] (G) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance***  
 40 ***containing a detectable amount of:***

41 ***(i) 3,4-methylenedioxyamphetamine;***

42 ***(ii) 3,4-methylenedioxymethamphetamine; or***

43 ***(iii) 3,4-methylenedioxy-N-ethylamphetamine.***

44 **(b) The violation constitutes possession, delivery or manufacture of a controlled substance and**  
 45 **the possession, delivery or manufacture is a commercial drug offense. A possession, delivery or**

1 manufacture is a commercial drug offense for purposes of this subsection if it is accompanied by at  
 2 least three of the following factors:

3 (A) The delivery was of heroin, cocaine, hashish, [*marijuana,*] methamphetamine, lysergic acid  
 4 diethylamide, psilocybin or psilocin and was for consideration;

5 (B) The offender was in possession of \$300 or more in cash;

6 (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS  
 7 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous  
 8 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly  
 9 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a  
 10 controlled substance offense;

11 (D) The offender was in possession of materials being used for the packaging of controlled sub-  
 12 stances such as scales, wrapping or foil, other than the material being used to contain the substance  
 13 that is the subject of the offense;

14 (E) The offender was in possession of drug transaction records or customer lists;

15 (F) The offender was in possession of stolen property;

16 (G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled  
 17 substance offense;

18 (H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor  
 19 chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

20 (I) The offender was using public lands for the manufacture of controlled substances;

21 (J) The offender had constructed fortifications or had taken security measures with the potential  
 22 of injuring persons; or

23 (K) The offender was in possession of controlled substances in an amount greater than:

24 (i) Three grams or more of a mixture or substance containing a detectable amount of heroin;

25 (ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

26 (iii) Eight grams or more of a mixture or substance containing a detectable amount of metham-  
 27 phetamine;

28 (iv) Eight grams or more of a mixture or substance containing a detectable amount of hashish;

29 [(v) *One hundred ten grams or more of a mixture or substance containing a detectable amount of*  
 30 *marijuana;*]

31 [(vi)] (v) Twenty or more user units of a mixture or substance containing a detectable amount  
 32 of lysergic acid diethylamide;

33 [(vii)] (vi) Ten grams or more of a mixture or substance containing a detectable amount of  
 34 psilocybin or psilocin; or

35 [(viii)] (vii) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance  
 36 containing a detectable amount of:

37 (I) 3,4-methylenedioxyamphetamine;

38 (II) 3,4-methylenedioxymethamphetamine; or

39 (III) 3,4-methylenedioxy-N-ethylamphetamine.

40 (c) The violation constitutes a violation of ORS 475.848, 475.852, [*475.858, 475.862,*] 475.868,  
 41 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.

42 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists  
 43 of:

44 (A) A chemical reaction involving one or more precursor substances for the purpose of manu-  
 45 facturing methamphetamine; or

1 (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of  
 2 manufacturing methamphetamine.

3 (e) The violation constitutes a violation of ORS 475.860 (4)(a) or 475.906 (1) or (2).

4 (2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified as crime category 6 of  
 5 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

6 (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or  
 7 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or  
 8 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

9 (b) The violation constitutes possession of:

10 (A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

11 (B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

12 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-  
 13 phetamine;

14 (D) One hundred grams or more of a mixture or substance containing a detectable amount of  
 15 hashish;

16 *[(E) One hundred fifty grams or more of a mixture or substance containing a detectable amount*  
 17 *of marijuana;]*

18 *[(F)]* (E) Two hundred or more user units of a mixture or substance containing a detectable  
 19 amount of lysergic acid diethylamide;

20 *[(G)]* (F) Sixty grams or more of a mixture or substance containing a detectable amount of  
 21 psilocybin or psilocin; or

22 *[(H)]* (G) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance  
 23 containing a detectable amount of:

24 (i) 3,4-methylenedioxyamphetamine;

25 (ii) 3,4-methylenedioxymethamphetamine; or

26 (iii) 3,4-methylenedioxy-N-ethylamphetamine.

27 **(3) A felony violation of ORS 475.856, 475.858, 475.860 (2), 475.862 or 475.864 shall be clas-**  
 28 **sified as:**

29 **(a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice**  
 30 **Commission if the violation involves the possession, delivery or manufacture of less than one**  
 31 **kilogram of marijuana.**

32 **(b) Crime category 5 of the sentencing guidelines grid of the Oregon Criminal Justice**  
 33 **Commission if the violation involves the possession, delivery or manufacture of one kilogram**  
 34 **or more of marijuana and less than five kilograms of marijuana.**

35 **(c) Crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice**  
 36 **Commission if the violation involves the possession, delivery or manufacture of five kilo-**  
 37 **grams or more of marijuana and less than 20 kilograms of marijuana.**

38 **(d) Crime category 9 of the sentencing guidelines grid of the Oregon Criminal Justice**  
 39 **Commission if the violation involves the possession, delivery or manufacture of 20 kilograms**  
 40 **or more of marijuana and less than 50 kilograms of marijuana.**

41 **(e) Crime category 10 of the sentencing guidelines grid of the Oregon Criminal Justice**  
 42 **Commission if the violation involves the possession, delivery or manufacture of 50 kilograms**  
 43 **or more of marijuana.**

44 *[(3)]* (4) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection  
 45 *[(1) or (2)]* (1), (2) or (3) of this section shall be classified as:

1 (a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-  
 2 sion if the violation involves delivery or manufacture of a controlled substance; or

3 (b) Crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-  
 4 sion if the violation involves possession of a controlled substance.

5 [(4)] (5) In order to prove a commercial drug offense, the state shall plead in the accusatory  
 6 instrument sufficient factors of a commercial drug offense under [subsections (1) and (2)] **subsection**  
 7 **(1), (2) or (3)** of this section. The state has the burden of proving each factor beyond a reasonable  
 8 doubt.

9 [(5)] (6) As used in this section, “mixture or substance” means any mixture or substance,  
 10 whether or not the mixture or substance is in an ingestible or marketable form at the time of the  
 11 offense.

12 **SECTION 10.** ORS 811.182 is amended to read:

13 811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the  
 14 person violates ORS 811.175 and the suspension or revocation is one described in this section, or if  
 15 the hardship or probationary permit violated is based upon a suspension or revocation described in  
 16 subsection (3) or (4) of this section.

17 (2) Affirmative defenses to the offense described in this section are established under ORS  
 18 811.180.

19 (3) The offense described in this section, criminal driving while suspended or revoked, is a Class  
 20 B felony if the suspension or revocation resulted from any degree of murder, manslaughter,  
 21 criminally negligent homicide or assault resulting from the operation of a motor vehicle, if the sus-  
 22 pension or revocation resulted from aggravated vehicular homicide or aggravated driving while  
 23 suspended or revoked or if the revocation resulted from a conviction for felony driving while under  
 24 the influence of intoxicants.

25 (4) The offense described in this section, criminal driving while suspended or revoked, is a Class  
 26 A misdemeanor if the suspension or revocation is any of the following:

27 (a) A suspension under ORS 809.411 (2) resulting from commission by the driver of any degree  
 28 of recklessly endangering another person, menacing or criminal mischief, resulting from the opera-  
 29 tion of a motor vehicle.

30 (b) A revocation under ORS 809.409 (4) resulting from perjury or the making of a false affidavit  
 31 to the Department of Transportation.

32 (c) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS  
 33 813.100 or for taking a breath or blood test the result of which discloses a blood alcohol content  
 34 of:

35 (A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

36 (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or

37 (C) Any amount if the person was under 21 years of age.

38 (d) A suspension of a commercial driver license under ORS 809.413 (1) resulting from failure to  
 39 perform the duties of a driver under ORS 811.700 while driving a commercial motor vehicle.

40 (e) A suspension of a commercial driver license under ORS 809.413 (12) where the person’s  
 41 commercial driving privileges have been suspended or revoked by the other jurisdiction for failure  
 42 of or refusal to take a chemical test to determine the alcoholic content of the person’s blood under  
 43 a statute that is substantially similar to ORS 813.100.

44 (f) A suspension of a commercial driver license under ORS 809.404.

45 (g) A revocation resulting from habitual offender status under ORS 809.640.



1 (h) A suspension resulting from any crime punishable as a felony with proof of a material ele-  
 2 ment involving the operation of a motor vehicle, other than a crime described in subsection (3) of  
 3 this section.

4 (i) A suspension for failure to perform the duties of a driver under ORS 811.705.

5 (j) A suspension for reckless driving under ORS 811.140.

6 (k) A suspension for fleeing or attempting to elude a police officer under ORS 811.540.

7 (L) A suspension or revocation resulting from misdemeanor driving while under the influence  
 8 of intoxicants under ORS 813.010.

9 (m) A suspension for use of a commercial motor vehicle in the commission of a crime punishable  
 10 as a felony.

11 (5) In addition to any other sentence that may be imposed, if a person is convicted of the offense  
 12 described in this section and the underlying suspension resulted from driving while under the influ-  
 13 ence of intoxicants, the court shall impose a minimum fine of at least \$1,000 if it is the person's first  
 14 conviction for criminal driving while suspended or revoked and a minimum fine of at least \$2,000 if  
 15 it is the person's second or subsequent conviction.

16 (6) The Oregon Criminal Justice Commission shall classify a violation of this section that is a  
 17 felony as crime category [6] 3 of the rules of the Oregon Criminal Justice Commission.

18  
 19 **PERIOD OF PROBATION OR POST-PRISON SUPERVISION**

20  
 21 **SECTION 11. (1) A person convicted of a felony who is sentenced to probation under the**  
 22 **rules of the Oregon Criminal Justice Commission or who is released on post-prison super-**  
 23 **vision is eligible for a reduction in the period of supervision for:**

24 (a) **Complying with the terms of supervision, including the payment of restitution; and**

25 (b) **Participating in recidivism reduction programs.**

26 (2) **The maximum amount of time credits earned under this section may not exceed**  
 27 **\_\_\_\_\_ percent of the period of supervision imposed.**

28 (3) **Time credits may not be used to shorten the period of supervision to less than six**  
 29 **months.**

30 (4)(a) **The State Board of Parole and Post-Prison Supervision shall adopt rules to estab-**  
 31 **lish a process for granting, retracting and restoring time credits earned under this section.**

32 (b) **The supervisory authority shall comply with the rules adopted under this section.**

33 **SECTION 12. Section 11 of this 2013 Act applies only to persons who are convicted of a**  
 34 **crime committed on or after July 1, 2013, and who are sentenced to probation or released**  
 35 **on post-prison supervision.**

36 **SECTION 13. ORS 144.085 is repealed.**

37 **SECTION 14. (1) The repeal of ORS 144.085 by section 13 of this 2013 Act becomes oper-**  
 38 **ative on July 1, 2013.**

39 (2) **Notwithstanding the repeal of ORS 144.085 by section 13 of this 2013 Act, any person**  
 40 **convicted of a crime committed before July 1, 2013, continues to be governed by ORS 144.085**  
 41 **as in effect immediately before July 1, 2013.**

42 **SECTION 15. ORS 144.087 is amended to read:**

43 144.087. (1) As used in ORS 137.124[, 144.085] and 423.478 **and section 11 of this 2013 Act**, ORS  
 44 chapter 144 and this section, "supervisory authority" means the state or local corrections agency  
 45 or official designated in each county by that county's board of county commissioners or county court

1 to operate corrections supervision services, custodial facilities or both.

2 (2) Except as provided in ORS 137.124, 137.593 (2)(d) and 423.478, all terms of imprisonment or  
3 incarceration of 12 months or less must be served at the direction of the supervisory authority.

4 (3) Nothing in this section is intended to repeal ORS 169.320 to 169.360, or in any way affect the  
5 sheriff's authority, duties and liabilities set forth in ORS 169.320 to 169.360.

6  
7 **CONDITIONS OF PROBATION**

8  
9 **SECTION 16.** ORS 137.540 is amended to read:

10 137.540. (1) The court may sentence the defendant to probation subject to the following general  
11 conditions unless specifically deleted by the court. The probationer shall:

12 (a) Pay supervision fees, fines, restitution or other fees ordered by the court.

13 (b) Not use or possess controlled substances except pursuant to a medical prescription.

14 (c) Submit to testing for controlled substance or alcohol use if the probationer has a history of  
15 substance abuse or if there is a reasonable suspicion that the probationer has illegally used con-  
16 trolled substances.

17 (d) Participate in a substance abuse evaluation as directed by the supervising officer and follow  
18 the recommendations of the evaluator if there are reasonable grounds to believe there is a history  
19 of substance abuse.

20 (e) Remain in the State of Oregon until written permission to leave is granted by the Depart-  
21 ment of Corrections or a county community corrections agency.

22 (f) If physically able, find and maintain gainful full-time employment, approved schooling, or a  
23 full-time combination of both. Any waiver of this requirement must be based on a finding by the  
24 court stating the reasons for the waiver.

25 (g) Change neither employment nor residence without prior permission from the Department of  
26 Corrections or a county community corrections agency.

27 (h) Permit the parole and probation officer to visit the probationer or the probationer's work  
28 site or residence and to conduct a walk-through of the common areas and of the rooms in the resi-  
29 dence occupied by or under the control of the probationer.

30 (i) Consent to the search of person, vehicle or premises upon the request of a representative of  
31 the supervising officer if the supervising officer has reasonable grounds to believe that evidence of  
32 a violation will be found, and submit to fingerprinting or photographing, or both, when requested  
33 by the Department of Corrections or a county community corrections agency for supervision pur-  
34 poses.

35 (j) Obey all laws, municipal, county, state and federal.

36 (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections  
37 or a county community corrections agency.

38 (L) Not possess weapons, firearms or dangerous animals.

39 (m) If recommended by the supervising officer, successfully complete a sex offender treatment  
40 program approved by the supervising officer and submit to polygraph examinations at the direction  
41 of the supervising officer if the probationer:

42 (A) Is under supervision for a sex offense under ORS 163.305 to 163.467;

43 (B) Was previously convicted of a sex offense under ORS 163.305 to 163.467; or

44 (C) Was previously convicted in another jurisdiction of an offense that would constitute a sex  
45 offense under ORS 163.305 to 163.467 if committed in this state.

1 (n) Participate in a mental health evaluation as directed by the supervising officer and follow  
 2 the recommendation of the evaluator.

3 (o) Report as required and abide by the direction of the supervising officer.

4 (p) If required to report as a sex offender under ORS 181.596, report with the Department of  
 5 State Police, a city police department, a county sheriff's office or the supervising agency:

6 (A) When supervision begins;

7 (B) Within 10 days of a change in residence;

8 (C) Once each year within 10 days of the probationer's date of birth;

9 (D) Within 10 days of the first day the person works at, carries on a vocation at or attends an  
 10 institution of higher education; and

11 (E) Within 10 days of a change in work, vocation or attendance status at an institution of higher  
 12 education.

13 (2) In addition to the general conditions, the court may impose any special conditions of pro-  
 14 bation that are reasonably related to the crime of conviction or the needs of the probationer for the  
 15 protection of the public or reformation of the probationer, or both, including, but not limited to, that  
 16 the probationer shall:

17 (a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after  
 18 November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence  
 19 or to the premises thereof, or be subject to any combination of such confinement and restriction,  
 20 such confinement or restriction or combination thereof to be for a period not to exceed one year  
 21 or one-half of the maximum period of confinement that could be imposed for the offense for which  
 22 the defendant is convicted, whichever is the lesser.

23 (b) For felonies committed on or after November 1, 1989, be confined in the county jail, or be  
 24 subject to other custodial sanctions under community supervision, or both, as provided by rules of  
 25 the Oregon Criminal Justice Commission.

26 (c) For crimes committed on or after December 5, 1996, sell any assets of the probationer as  
 27 specifically ordered by the court in order to pay restitution.

28 (3) When a person who is a sex offender is released on probation, the court shall impose as a  
 29 special condition of probation that the person not reside in any dwelling in which another sex  
 30 offender who is on probation, parole or post-prison supervision resides, without the approval of the  
 31 person's supervising parole and probation officer, or in which more than one other sex offender who  
 32 is on probation, parole or post-prison supervision resides, without the approval of the director of the  
 33 probation agency that is supervising the person or of the county manager of the Department of  
 34 Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole  
 35 and probation officer of a person subject to the requirements of this subsection shall review the  
 36 person's living arrangement with the person's sex offender treatment provider to ensure that the  
 37 arrangement supports the goals of offender rehabilitation and community safety. As used in this  
 38 subsection:

39 (a) "Dwelling" has the meaning given that term in ORS 469B.100.

40 (b) "Dwelling" does not include a residential treatment facility or a halfway house.

41 (c) "Halfway house" means a publicly or privately operated profit or nonprofit residential facil-  
 42 ity that provides rehabilitative care and treatment for sex offenders.

43 (d) "Sex offender" has the meaning given that term in ORS 181.594.

44 (4)(a) If the person is released on probation following conviction of a sex crime, as defined in  
 45 ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years

1 of age, the court, if requested by the victim, shall include as a special condition of the person's  
 2 probation that the person not reside within three miles of the victim unless:

3 (A) The victim resides in a county having a population of less than 130,000 and the person is  
 4 required to reside in that county;

5 (B) The person demonstrates to the court by a preponderance of the evidence that no mental  
 6 intimidation or pressure was brought to bear during the commission of the crime;

7 (C) The person demonstrates to the court by a preponderance of the evidence that imposition  
 8 of the condition will deprive the person of a residence that would be materially significant in aiding  
 9 in the rehabilitation of the person or in the success of the probation; or

10 (D) The person resides in a halfway house. As used in this subparagraph, "halfway house" means  
 11 a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative  
 12 care and treatment for sex offenders.

13 (b) A victim may request imposition of the special condition of probation described in this sub-  
 14 section at the time of sentencing in person or through the prosecuting attorney.

15 (c) If the court imposes the special condition of probation described in this subsection and if at  
 16 any time during the period of probation the victim moves to within three miles of the probationer's  
 17 residence, the court may not require the probationer to change the probationer's residence in order  
 18 to comply with the special condition of probation.

19 (5) When a person who is a sex offender, as defined in ORS 181.594, is released on probation,  
 20 the Department of Corrections or the county community corrections agency, whichever is appropri-  
 21 ate, shall notify the city police department, if the person is going to reside within a city, and the  
 22 county sheriff's office of the county in which the person is going to reside of the person's release  
 23 and the conditions of the person's release.

24 (6) Failure to abide by all general and special conditions imposed by the court and supervised  
 25 by the Department of Corrections or a county community corrections agency may result in arrest,  
 26 modification of conditions, revocation of probation or imposition of structured, intermediate sanc-  
 27 tions in accordance with rules adopted under ORS 137.595.

28 (7) The court may order that probation be supervised by the court. If the court orders that  
 29 probation be supervised by the court, the defendant shall pay a fee of \$100 to the court. Fees im-  
 30 posed under this subsection in the circuit court shall be deposited by the clerk of the court in the  
 31 General Fund. Fees imposed in a justice court under this subsection shall be paid to the county  
 32 treasurer. Fees imposed in a municipal court under this subsection shall be paid to the city treas-  
 33 urer.

34 (8) The court may at any time modify the conditions of probation.

35 **(9) Notwithstanding the court's authority to impose and modify the conditions of pro-**  
 36 **batation, the parole and probation officer, as defined in ORS 181.610, may modify the conditions**  
 37 **of probation at any time during the term of probation, including adding new conditions or**  
 38 **deleting conditions imposed by the court at the time of sentencing. Any modification of the**  
 39 **conditions of probation by the parole and probation officer must be based on the results of**  
 40 **an evidence-based risk and needs assessment.**

41 **(10) A court may not find a violation of the conditions of probation imposed by the court,**  
 42 **either at the time of sentencing or added at a later time, if the parole and probation officer**  
 43 **modified the conditions of probation and the probationer was in compliance with the parole**  
 44 **and probation officer's conditions.**

45 [(9)] (11) A court may not order revocation of probation as a result of the probationer's failure

1 to pay restitution unless the court determines from the totality of the circumstances that the pur-  
2 poses of the probation are not being served.

3 [(10)] (12) It is not a cause for revocation of probation that the probationer failed to apply for  
4 or accept employment at any workplace where there is a labor dispute in progress. As used in this  
5 subsection, "labor dispute" has the meaning for that term provided in ORS 662.010.

6 [(11)] (13) If the court determines that a defendant has violated the terms of probation, the court  
7 shall collect a \$25 fee from the defendant. The fee becomes part of the judgment and may be col-  
8 lected in the same manner as a fine. Fees collected under this subsection in the circuit court shall  
9 be deposited by the clerk of the court in the General Fund. Fees collected in a justice court under  
10 this subsection shall be paid to the county treasurer. Fees collected in a municipal court under this  
11 subsection shall be paid to the city treasurer.

12 [(12)] (14) As used in this section, "attends," "institution of higher education," "works" and  
13 "carries on a vocation" have the meanings given those terms in ORS 181.594.

14 **SECTION 17.** ORS 137.630 is amended to read:

15 137.630. (1) The duties of parole and probation officers appointed pursuant to ORS 137.590 or  
16 423.500 to 423.560 are:

17 (a) To make investigations and reports under ORS 137.530 as are required by the judge of any  
18 court having jurisdiction within the county, city or judicial district for which the officer is appointed  
19 to serve.

20 (b) To receive under supervision any person sentenced to probation by any court in the juris-  
21 diction area for which the officers are appointed to serve.

22 (c) To provide release assistance, and supervise any person placed in a diversion, work release  
23 or community services alternative program, by any court in the jurisdiction area for which the of-  
24 ficers are appointed to serve.

25 (d) To give each person under their supervision a statement of the conditions of probation or  
26 program participation and to instruct the person regarding the conditions.

27 **(e) To perform an evidence-based risk and needs assessment on each person under their**  
28 **supervision and, if necessary, modify the conditions of probation to address the results of the**  
29 **assessment, including adding new conditions and deleting conditions imposed by the court**  
30 **at the time of sentencing.**

31 [(e)] (f) To keep informed concerning the conduct and condition of persons under their super-  
32 vision by visiting, requiring reports and otherwise.

33 [(f)] (g) To use all suitable methods, not inconsistent with the condition of probation or program  
34 participation, to aid and encourage persons under their supervision and to effect improvement in  
35 their conduct and condition.

36 [(g)] (h) To keep detailed records of the work done and to make reports to the courts and to the  
37 Department of Corrections as the courts require.

38 [(h)] (i) To perform other duties not inconsistent with the normal and customary functions of  
39 parole and probation officers as may be required by any court in the jurisdiction area for which the  
40 officers are appointed to serve.

41 (2) Parole and probation officers of the Department of Corrections have duties as specified by  
42 rule adopted by the Director of the Department of Corrections.

43 (3) Notwithstanding subsection (2) of this section, parole and probation officers may not be re-  
44 quired to collect from persons under their supervision any fees to offset the costs of supervising the  
45 probation, including but not limited to those ordered pursuant to ORS 137.540 or 423.570.

**RECIDIVISM**

**SECTION 18.** (1) As used in this section, “rate of recidivism” means:

(a) The rate of rearrest within a three-year period following a person’s release from incarceration, whether or not the arrest leads to new charges, convictions or further incarceration;

(b) The rate of reconviction of any crime within a three-year period following a person’s release from incarceration; and

(c) The rate of reincarceration, either within a local or county correctional facility or recommitment to the legal and physical custody of the Department of Corrections.

(2) At least once a year every supervisory authority, as defined in ORS 144.087, shall issue a report to the Oregon Criminal Justice Commission concerning persons released from the legal and physical custody of the Department of Corrections under the supervision of the supervisory authority. The report shall:

(a) Include an evaluation of recidivism using the definition in subsection (1) of this section; and

(b) Whenever possible, describe the rate of recidivism for each of the following classifications of persons:

(A) Persons who present a high risk of reoffending;

(B) Persons who present a medium risk of reoffending; and

(C) Persons who present a low risk of reoffending.

(3) For purposes of the classifications described in subsection (2)(b) of this section, the supervisory authority shall use a risk assessment tool developed by the Oregon Criminal Justice Commission.

**CORRECTIONS POPULATION FORECASTS**

**SECTION 19.** ORS 184.351 is amended to read:

184.351. (1) The Oregon Department of Administrative Services shall issue state corrections population forecasts including, but not limited to, expected populations of prisons and jails and community corrections caseloads, to be used by:

(a) The Department of Corrections in preparing budget requests;

(b) The Oregon Criminal Justice Commission in considering amendments to sentencing guidelines; and

(c) Any other state agency concerned with the effect of offender populations or policy developments on budgeting.

(2) The Oregon Department of Administrative Services shall issue state corrections population forecasts on April 1 and October 1 of each year.

(3) Each state corrections population forecast shall include:

(a) The margin of error of the forecast, if known; and

(b) Whenever possible, the causes and contributing factors of any projected growth or decline in corrections population.

**EVIDENCE-BASED PROGRAMS**

1        **SECTION 20.** ORS 182.515, as amended by section 37, chapter 37, Oregon Laws 2012, is  
2 amended to read:

3        182.515. As used in this section and ORS 182.525:

4        (1) “Agency” means:

5        (a) The Department of Corrections;

6        (b) The Oregon Youth Authority;

7        (c) The Youth Development Council; and

8        (d) That part of the Oregon Health Authority that deals with mental health and addiction issues.

9        (2) “Cost effective” means that cost savings realized over a reasonable period of time are  
10 greater than costs, **as determined by an analytic tool developed by the Oregon Criminal Justice**  
11 **Commission.**

12        (3) “Evidence-based program” means a program that:

13        (a) Incorporates significant and relevant practices based on scientifically based research; and

14        (b) Is cost effective.

15        (4)(a) “Program” means a treatment or intervention program or service that is intended to:

16        (A) Reduce the propensity of a person to commit crimes;

17        (B) Improve the mental health of a person with the result of reducing the likelihood that the  
18 person will commit a crime or need emergency mental health services; or

19        (C) Reduce the propensity of a person who is less than 18 years of age to engage in antisocial  
20 behavior with the result of reducing the likelihood that the person will become a juvenile offender.

21        (b) “Program” does not include:

22        (A) An educational program or service that an agency is required to provide to meet educational  
23 requirements imposed by state law; or

24        (B) A program that provides basic medical services.

25        (5) “Scientifically based research” means research that obtains reliable and valid knowledge by:

26        (a) Employing systematic, empirical methods that draw on observation or experiment;

27        (b) Involving rigorous data analyses that are adequate to test the stated hypotheses and justify  
28 the general conclusions drawn; and

29        (c) Relying on measurements or observational methods that provide reliable and valid data  
30 across evaluators and observers, across multiple measurements and observations and across studies  
31 by the same or different investigators.

32        **SECTION 21.** ORS 182.525 is amended to read:

33        182.525. (1) An agency as defined in ORS 182.515 shall spend at least 75 percent of state moneys  
34 that the agency receives for programs on evidence-based programs.

35        (2) The agency shall submit a biennial report containing:

36        (a) An assessment of each program on which the agency expends funds, including but not limited  
37 to whether the program is an evidence-based program;

38        (b) The percentage of state moneys the agency receives for programs that is being expended on  
39 evidence-based programs;

40        (c) The percentage of federal and other moneys the agency receives for programs that is being  
41 expended on evidence-based programs; and

42        (d) A description of the efforts the agency is making to meet the requirement of subsection (1)  
43 of this section.

44        (3) The agency shall submit the report required by subsection (2) of this section no later than  
45 September 30 of each even-numbered year to the interim legislative committee dealing with judicial

1 matters.

2 (4) If an agency, in any biennium, spends more than 25 percent of the state moneys that the  
 3 agency receives for programs on programs that are not evidence based, the Legislative Assembly  
 4 shall consider the agency's failure to meet the requirement of subsection (1) of this section in mak-  
 5 ing appropriations to the agency for the following biennium.

6 (5) The agency may adopt rules necessary to carry out the provisions of this section, including  
 7 but not limited to rules defining a reasonable period of time for purposes of determining cost effec-  
 8 tiveness.

9 **(6) The Department of Corrections shall maintain a registry of all programs used by the**  
 10 **department for inmates in Department of Corrections institutions and for former inmates**  
 11 **of those institutions. The registry shall identify the types of programs, the number of in-**  
 12 **mates or former inmates participating in the programs and the locations at which the pro-**  
 13 **grams operate. The registry shall be made public on the website maintained by the**  
 14 **department.**

15 **(7) The Department of Corrections shall conduct random, controlled trials of all pro-**  
 16 **grams identified in the registry maintained under subsection (6) of this section to determine**  
 17 **whether the program continues to be effective in changing the behavior of inmates and en-**  
 18 **suring that former inmates have the best chance of successful reentry into society and that**  
 19 **recidivism is reduced to the greatest extent possible.**

20  
 21 **FISCAL IMPACT STATEMENTS**

22  
 23 **SECTION 22.** ORS 173.029 is amended to read:

24 173.029. (1) For any measure reported out of a committee of the Legislative Assembly, the effect  
 25 of which is to create a new crime [or], increase the period of incarceration allowed or required for  
 26 an existing crime **or otherwise modify sentencing or state corrections policies**, the Legislative  
 27 Fiscal Officer, with the aid of the Oregon Department of Administrative Services, Legislative Re-  
 28 venue Officer, state agencies and affected local governmental units, shall prepare a fiscal impact  
 29 statement describing the fiscal impact that the measure would, if enacted, have on the state as well  
 30 as on local governmental units.

31 (2) In particular and to the extent practicable, the Legislative Fiscal Officer shall determine and  
 32 describe in the statement the following:

33 (a) The fiscal impact on state and local law enforcement agencies, including an estimate of the  
 34 increase in anticipated number of arrests annually;

35 (b) The fiscal impact on state and local courts, including an estimate of the increase in the an-  
 36 ticipated number of trials annually;

37 (c) The fiscal impact on district attorney offices, including an estimate of the increase in the  
 38 anticipated number of prosecutions annually;

39 (d) The fiscal impact on public defense resources, including an estimate of the increase in the  
 40 anticipated number of cases annually; and

41 (e) The fiscal impact on state and local corrections resources, including resources supporting  
 42 parole and probation supervision, and also including an estimate of the increase in the anticipated  
 43 number of bed-days to be used annually at both the state and local level as a result of the passage  
 44 of the measure.

45 **(3) The statement required under this section must describe the fiscal impact the meas-**



1 ure would have on the state as well as on local governmental units for the 10-year period  
2 immediately following the date on which the measure becomes operative.

3 (4) In addition to the statement required under this section, a state agency required to  
4 prepare and submit to the Legislative Fiscal Officer fiscal impact information applicable to  
5 a measure introduced before the Legislative Assembly, the effect of which is to create a new  
6 crime, increase the period of incarceration allowed or required for an existing crime or oth-  
7 erwise modify sentencing or state corrections policies, shall describe the fiscal impact the  
8 measure would have on the agency during the 10-year period immediately following the date  
9 on which the measure becomes operative.

10  
11 **CAPTIONS**

12  
13 **SECTION 23.** The unit captions used in this 2013 Act are provided only for the conven-  
14 ience of the reader and do not become part of the statutory law of this state or express any  
15 legislative intent in the enactment of this 2013 Act.

16  
17 **EMERGENCY CLAUSE**

18  
19 **SECTION 24.** This 2013 Act being necessary for the immediate preservation of the public  
20 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
21 on its passage.

22  
\_\_\_\_\_