

House Bill 4089

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim 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 **as introduced**.

Limits length of incarceration court may impose when certain probationary sentences are revoked for reasons other than commission of new crime.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to probation; creating new provisions; amending ORS 137.545; and declaring an emergency.

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

4 **SECTION 1.** ORS 137.545 is amended to read:

5 137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice
6 Commission for felonies committed on or after November 1, 1989:

7 (a) The period of probation shall be as the court determines and may, in the discretion of the
8 court, be continued or extended.

9 (b) The court may at any time discharge a person from probation.

10 (2) At any time during the probation period, the court may issue a warrant and cause a de-
11 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
12 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
13 rant for violating any condition of probation, and a statement by the parole and probation officer
14 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
15 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
16 detention of the probationer in the county jail until the probationer can be brought before the court
17 or until the parole and probation officer or supervisory personnel impose and the offender agrees
18 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
19 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
20 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
21 personnel, the disposition shall take place in no more than five judicial days. If the offender does
22 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
23 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
24 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
25 tention to the court that imposed the probation. The parole and probation officer shall promptly
26 submit to the court a report showing in what manner the probationer has violated the conditions
27 of probation.

28 (3) Except for good cause shown or at the request of the probationer, the probationer shall be
29 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
30 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a

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 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
 2 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
 3 the probationer upon the condition that the probationer appear in court at a later date for a pro-
 4 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
 5 the magistrate may order the probationer released subject to an additional order to the probationer
 6 that the probationer report within seven calendar days to the court that imposed the probation.

7 (4) When a probationer has been sentenced to probation in more than one county and the
 8 probationer is being held on an out-of-county warrant for a probation violation, the court may con-
 9 sider consolidation of some or all pending probation violation proceedings pursuant to rules made
 10 and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

11 (a) Upon the motion of the district attorney or defense counsel in the county in which the
 12 probationer is held; or

13 (b) Upon the court's own motion.

14 (5)(a) For defendants sentenced for felonies committed prior to November 1, 1989, and for any
 15 misdemeanor, the court that imposed the probation, after summary hearing, may revoke the pro-
 16 bation and:

17 (A) If the execution of some other part of the sentence has been suspended, the court shall cause
 18 the rest of the sentence imposed to be executed.

19 (B) If no other sentence has been imposed, the court may impose any other sentence which or-
 20 iginally could have been imposed.

21 (b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that
 22 imposed the probationary sentence may revoke probation supervision and impose a sanction as
 23 provided by rules of the Oregon Criminal Justice Commission. **If the defendant was sentenced to**
 24 **a presumptive period of probation, the court may not impose a term of incarceration that**
 25 **exceeds 60 days as a revocation sanction unless the revocation is the result of the**
 26 **defendant's conviction for a new crime.**

27 (6) Except for good cause shown, if the revocation hearing is not conducted within 14 calendar
 28 days following the arrest or detention of the probationer, the probationer shall be released from
 29 custody.

30 (7) A defendant who has been previously confined in the county jail as a condition of probation
 31 pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon
 32 Criminal Justice Commission may be given credit for all time thus served in any order or judgment
 33 of confinement resulting from revocation of probation.

34 (8) In the case of any defendant whose sentence has been suspended but who has not been sen-
 35 tenced to probation, the court may issue a warrant and cause the defendant to be arrested and
 36 brought before the court at any time within the maximum period for which the defendant might or-
 37 iginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
 38 pension of sentence and cause the sentence imposed to be executed.

39 (9) If a probationer fails to appear or report to a court for further proceedings as required by
 40 an order under subsection (3) of this section, the failure to appear may be prosecuted in the county
 41 to which the probationer was ordered to appear or report.

42 (10) The probationer may admit or deny the violation by being physically present at the hearing
 43 or by means of simultaneous electronic transmission as described in ORS 131.045.

44 (11) The victim has the right:

45 (a) Upon request made within the time period prescribed in the notice required by ORS 147.417,

1 to be notified of any hearing before the court that may result in the revocation of the defendant's
2 probation for a felony or person Class A misdemeanor. The notification shall be provided by:

3 (A) The district attorney if the defendant is not supervised by the supervisory authority or if the
4 defendant is supervised by the supervisory authority and the district attorney initiates a request
5 with the court for a probation violation or revocation hearing.

6 (B) The supervisory authority if the defendant is supervised by the supervisory authority and
7 the supervisory authority initiates a request with the court for a probation violation or revocation
8 hearing.

9 (b) To appear personally at the hearing.

10 (c) If present, to reasonably express any views relevant to the issues before the court.

11 (12) As used in this section:

12 (a) "Person Class A misdemeanor" has the meaning given that term in the rules of the Oregon
13 Criminal Justice Commission.

14 (b) "Supervisory authority" has the meaning given that term in ORS 144.087.

15 **SECTION 2. The amendments to ORS 137.545 by section 1 of this 2014 Act apply to crimes**
16 **committed on or after the effective date of this 2014 Act.**

17 **SECTION 3. This 2014 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
19 **on its passage.**

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