

House Bill 4098

Sponsored by Representative HICKS (Presession filed.)

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**.

Allows Department of Corrections inmates to receive credit for time served for presentence incarceration after arrest for lesser included offense, greater inclusive offense or crime committed during same criminal episode as sentencing crime.

Authorizes sentencing judge to allow presentence incarceration credit for time served in jail when inmate is also in custody for other sentence.

Provides that inmate shall receive credit for time served in jail before sentence, and time served as part of probation sentence, if probation is revoked. Applies to revocation proceedings occurring on or after effective date of Act.

Provides that inmate shall receive credit for time served in jail before sentence and time served as part of conditional discharge probation if probation is revoked.

Allows inmate to receive credit for time served in jail before entering diversion program or specialty court program, and time served for violating conditions of program, if inmate is terminated from program unless judge expressly orders otherwise.

Adds electronic mail address and cellular telephone number to list of personal identifiers of victim or witness subject to restricted discovery. Allows law enforcement to notify victim in matters relating to victim's rights via electronic mail or cellular telephone text message with written consent of victim.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; amending ORS 135.815, 137.370, 137.372, 147.417 and 419C.276; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 137.370 is amended to read:

6 137.370. (1) When a person is sentenced to imprisonment in the custody of the Department of
7 Corrections, the term of confinement therein commences from the day the person is delivered to the
8 custody of an officer of the Department of Corrections for the purpose of serving the sentence exe-
9 cuted, regardless of whether the sentence is to be served in a state or federal institution.

10 (2) Except as provided in subsections (3) and (4) of this section, when a person is sentenced to
11 imprisonment in the custody of the Department of Corrections, for the purpose of computing the
12 amount of sentence served the term of confinement includes only:

13 (a) The time that the person is confined by any authority after the arrest for the crime for which
14 sentence is imposed, **a lesser included offense, a greater inclusive offense and any crime con-**
15 **stituting a violation of Oregon law designated by the sentencing court in the judgment as**
16 **having been committed as part of the same criminal episode; and**

17 (b) The time that the person is authorized by the Department of Corrections to spend outside
18 a confinement facility, in a program conducted by or for the Department of Corrections.

19 (3) When a judgment of conviction is vacated and a new sentence is thereafter imposed upon the
20 defendant for the same crime, **a lesser included offense, a greater inclusive offense or any crime**
21 **constituting a violation of Oregon law designated by the sentencing court in the judgment**
22 **as having been committed as part of the same criminal episode, the period of detention and**

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 imprisonment theretofore served shall be deducted from the maximum term, and from the minimum,
 2 if any, of the new sentence.

3 *[(4) A person who is confined as the result of a sentence for a crime or conduct that is not directly*
 4 *related to the crime for which the sentence is imposed, or for violation of the conditions of probation,*
 5 *parole or post-prison supervision, shall not receive presentence incarceration credit for the time served*
 6 *in jail toward service of the term of confinement.]*

7 **(4) Unless the court expressly orders otherwise, a person may not receive presentence**
 8 **incarceration credit for the time served in jail toward service of the term of confinement if**
 9 **the person is confined as a result of a sentence for:**

10 **(a) A crime that is not directly related to the crime for which the current sentence is**
 11 **imposed; or**

12 **(b) Violation of the conditions of probation, parole or post-prison supervision for a crime**
 13 **that is not directly related to the crime for which the current sentence is imposed.**

14 (5) Unless the court expressly orders otherwise, a term of imprisonment shall be concurrent with
 15 that portion of any sentence previously imposed that remains unexpired at the time the court im-
 16 poses sentence. This subsection applies regardless of whether the earlier sentence was imposed by
 17 the same or any other court, and regardless of whether the earlier sentence is being or is to be
 18 served in the same penal institution or under the same correctional authority as will be the later
 19 sentence.

20 **(6) As used in this section, “criminal episode” has the meaning given that term in ORS**
 21 **131.505.**

22 **SECTION 2.** ORS 137.372 is amended to read:

23 137.372. (1) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been re-
 24 voked from a probationary sentence for a felony committed on or after November 1, 1989, **in a**
 25 **probation revocation proceeding occurring before the effective date of this 2014 Act** shall re-
 26 ceive credit for the time served in jail after arrest and before commencement of the probationary
 27 sentence or for the time served in jail as part of the probationary sentence unless the sentencing
 28 judge orders otherwise.

29 **(2) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been re-**
 30 **voked from a probationary sentence for a felony in a probation revocation proceeding oc-**
 31 **curring on or after the effective date of this 2014 Act shall receive credit for the time served**
 32 **in jail after arrest and before commencement of the probationary sentence or for the time**
 33 **served in jail as part of the probationary sentence.**

34 **(3) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been re-**
 35 **voked from a probationary sentence imposed as part of a conditional discharge agreement**
 36 **pursuant to ORS 475.245 shall receive credit for the time served in jail after arrest and before**
 37 **commencement of the probationary sentence or for the time served in jail as part of the**
 38 **probationary sentence.**

39 **(4) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who is sentenced to**
 40 **imprisonment in the custody of the Department of Corrections following the failure to com-**
 41 **plete a diversion program described in ORS 430.450 to 430.555 or a specialty court program**
 42 **shall receive credit for the time served in jail after arrest and before commencement of the**
 43 **program and for the time served in jail as a sanction for violating the terms of the program**
 44 **unless the sentencing judge expressly orders otherwise.**

45 *[(2)]* (5) Notwithstanding the provisions of ORS 137.320 (4), an offender who has been ordered

1 confined as part of a probationary sentence for a felony committed on or after July 18, 1995, shall
 2 receive credit for the time served in jail after arrest and before commencement of the term unless
 3 the sentencing judge orders otherwise.

4 **(6) As used in this section, “specialty court” has the meaning given that term in ORS**
 5 **137.680.**

6 **SECTION 3.** ORS 135.815 is amended to read:

7 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall
 8 disclose to a represented defendant the following material and information within the possession or
 9 control of the district attorney:

10 (a) The names and addresses of persons whom the district attorney intends to call as witnesses
 11 at any stage of the trial, together with their relevant written or recorded statements or memoranda
 12 of any oral statements of such persons.

13 (b) Any written or recorded statements or memoranda of any oral statements made by the de-
 14 fendant, or made by a codefendant if the trial is to be a joint one.

15 (c) Any reports or statements of experts, made in connection with the particular case, including
 16 results of physical or mental examinations and of scientific tests, experiments or comparisons which
 17 the district attorney intends to offer in evidence at the trial.

18 (d) Any books, papers, documents, photographs or tangible objects:

19 (A) Which the district attorney intends to offer in evidence at the trial; or

20 (B) Which were obtained from or belong to the defendant.

21 (e) If actually known to the district attorney, any record of prior criminal convictions of persons
 22 whom the district attorney intends to call as witnesses at the trial; and the district attorney shall
 23 make a good faith effort to determine if such convictions have occurred.

24 (f) All prior convictions of the defendant known to the state that would affect the determination
 25 of the defendant’s criminal history for sentencing under rules of the Oregon Criminal Justice Com-
 26 mission.

27 (g) Any material or information that tends to:

28 (A) Exculpate the defendant;

29 (B) Negate or mitigate the defendant’s guilt or punishment; or

30 (C) Impeach a person the district attorney intends to call as a witness at the trial.

31 (2)(a) The disclosure required by subsection (1)(g) of this section shall occur without delay after
 32 arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If
 33 the existence of the material or information is not known at that time, the disclosure shall be made
 34 upon discovery without regard to whether the represented defendant has entered or agreed to enter
 35 a guilty plea.

36 (b) Nothing in subsection (1)(g) of this section:

37 (A) Expands any obligation under a statutory provision or the Oregon or United States Consti-
 38 tution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement
 39 officers.

40 (B) Imposes any obligation on the district attorney to provide material or information beyond
 41 the obligation imposed by the Oregon and United States Constitutions.

42 (3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of
 43 ORS 813.010 in which an instrument was used to test a person’s breath, blood or urine to determine
 44 the alcoholic content of the person’s blood the district attorney shall disclose to a represented de-
 45 fendant at least the following material and information within the possession or control of the dis-

1 trict attorney:

2 (a) Any report prepared by a police officer relating to field tests, interviews, observations and
3 other information relating to the charged offense;

4 (b) Any report relating to the test results;

5 (c) A copy of the form provided to the defendant under ORS 813.100 (3)(b); and

6 (d) Any checklist prepared by the operator of the instrument for the test.

7 (4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the
8 defendant all of the information described in subsections (1) and (3) of this section except for the
9 personal identifiers of the victim and any witnesses.

10 (b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the
11 personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial
12 court shall order the district attorney to disclose the personal identifiers of the victim and any
13 witnesses if the trial court finds that:

14 (A) The defendant has requested the information; and

15 (B)(i) The victim or witness is a business or institution and disclosure of the information would
16 not represent a risk of harm to the victim or witness; or

17 (ii) The need for the information cannot reasonably be met by other means.

18 (5)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a
19 defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers
20 of a victim or witness obtained under subsections (1) and (3) of this section.

21 (b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the
22 defendant the personal identifiers of a victim or witness if the court finds that:

23 (A) The defendant's lawyer has requested the district attorney to disclose the information to the
24 defendant;

25 (B) The district attorney has refused to disclose the information to the defendant; and

26 (C) The need for the information cannot reasonably be met by other means.

27 (6) As used in this section:

28 (a) "Personal identifiers" means a person's address, **electronic mail address**, telephone number,
29 **cellular telephone number**, Social Security number and date of birth and the identifying number
30 of a person's depository account at a financial institution, as defined in ORS 706.008, or credit card
31 account.

32 (b) "Representative of the lawyer" has the meaning given that term in ORS 40.225.

33 (c) "Represented defendant" means a defendant who is represented by a lawyer in a criminal
34 action.

35 **SECTION 4.** ORS 419C.276 is amended to read:

36 419C.276. (1)(a) Unless authorized by the court to disclose the information, the attorney of a
37 youth or youth offender, or an agent of the attorney, may not disclose to the youth or youth offender
38 personal identifiers of a victim or witness.

39 (b) The court shall order the attorney, or agent of the attorney, to disclose to the youth or youth
40 offender the personal identifiers of a victim or witness if the court finds that:

41 (A) The attorney of the youth or youth offender has requested the district attorney or the ju-
42 venile department to disclose the information to the youth or youth offender;

43 (B) The district attorney or the juvenile department has refused to disclose the information to
44 the youth or youth offender; and

45 (C) The need for the information cannot reasonably be met by other means.

1 (2) If contacted by the attorney of the youth or youth offender, an agent of the youth or youth
 2 offender, or an agent of the attorney of the youth or youth offender, a victim must be clearly in-
 3 formed by the attorney or agent, either in person or in writing:

4 (a) Of the identity and capacity of the person contacting the victim;

5 (b) That the victim does not have to talk to the attorney or agent, or provide other discovery
 6 unless the victim wishes; and

7 (c) That the victim may have a representative of the state present during any interview.

8 (3) Unless the victim consents after receiving a full advice of rights as provided in subsection
 9 (2) of this section, a victim may not be required to be interviewed or deposed by or give discovery
 10 to the youth or youth offender or the attorney for the youth or youth offender, or an agent of the
 11 attorney or youth or youth offender. This subsection does not prohibit the youth or youth offender
 12 from:

13 (a) Subpoenaing or examining the victim in a proceeding when the purpose is other than for
 14 discovery; or

15 (b) Subpoenaing books, papers or documents as provided in ORS 136.580.

16 (4) Any preadjudication release order must prohibit any contact with the victim, either directly
 17 or indirectly, unless specifically authorized by the court. This subsection does not limit contact by
 18 the attorney for the youth or youth offender, or an agent of the attorney, other than the youth or
 19 youth offender, in the manner set forth in subsection (2) of this section.

20 (5)(a) If a victim notifies the district attorney or juvenile department that the youth or youth
 21 offender, by direct or indirect contact, threatened or intimidated the victim, the district attorney
 22 or juvenile department shall notify the court and the attorney for the youth or youth offender. If the
 23 youth or youth offender is not in custody and the court finds there is probable cause to believe the
 24 victim has been threatened or intimidated by the youth or youth offender, by direct or indirect
 25 contact, the court shall immediately issue an order to show cause why the release status should not
 26 be revoked.

27 (b) After conducting a hearing as the court deems appropriate, if the court finds that the victim
 28 has been threatened or intimidated by the youth or youth offender, by direct or indirect contact, the
 29 release status shall be revoked and the youth or youth offender shall be held in detention until
 30 conditions of release sufficient to ensure the safety of the victim and the community can be imple-
 31 mented.

32 (c) In any hearing convened under this subsection, the victim has the right to be notified in
 33 advance of the hearing, to appear personally at the hearing and, if present, to express any views
 34 relevant to the issues before the court.

35 (6)(a) For purposes of subsections (4) and (5) of this section, “contact” has the meaning given
 36 that term in ORS 163.730.

37 (b) For the purposes of subsection (1) of this section, “personal identifiers” means a person’s
 38 address, **electronic mail address**, telephone number, **cellular telephone number**, Social Security
 39 number and date of birth and the identifying number of a person’s depository account at a financial
 40 institution, as defined in ORS 706.008, or credit card account.

41 **SECTION 5.** ORS 147.417 is amended to read:

42 147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim,
 43 a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense
 44 of the person’s rights under section 42, Article I of the Oregon Constitution. The notice may be oral
 45 or written. If exercise of any of the rights depends upon the victim making a request, the law

1 enforcement agency shall include in the notice the time period in which the victim is required to
2 make the request. A law enforcement agency satisfies the requirements of this section if the law
3 enforcement agency:

4 (a) Provides notice to the victim named in the accusatory instrument, the victim's guardian or,
5 in a homicide case, the victim's next of kin; and

6 (b) Presents, if written notice is given, the notice directly to the victim or sends the notice to
7 the last address given to the law enforcement agency by the victim **or, with the written prior**
8 **consent of the victim, via electronic mail or cellular telephone text message.**

9 (2) Failure by a law enforcement agency to properly notify the victim as required by this sec-
10 tion:

11 (a) Is not grounds for setting aside a conviction.

12 (b) Does not affect the validity of a plea, except as provided by section 42 or 43, Article I of the
13 Oregon Constitution.

14 (3) Nothing in subsection (2) of this section justifies a failure to properly notify the victim.

15 (4)(a) As used in this section, "law enforcement agency" means the police agency that initially
16 responds in the case, the police agency that investigates the case or the district attorney who
17 prosecutes the case.

18 (b) The district attorney shall determine if the notice required by this section has been given
19 and, if not, shall provide the notice.

20 **SECTION 6. This 2014 Act being necessary for the immediate preservation of the public**
21 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
22 **on its passage.**

23 _____