

**PROPOSED AMENDMENTS TO
HOUSE BILL 4098**

1 On page 1 of the printed bill, line 2, after “137.372,” insert “137.540,”.

2 On page 6, after line 19, insert:

3 **“SECTION 6.** ORS 137.540 is amended to read:

4 “137.540. (1) The court may sentence the defendant to probation subject
5 to the following general conditions unless specifically deleted by the court.

6 The probationer shall:

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

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

11 “(c) Submit to testing for controlled substance or alcohol use if the
12 probationer has a history of substance abuse or if there is a reasonable sus-
13 picion that the probationer has illegally used controlled substances.

14 “(d) Submit to a risk and needs assessment as directed by the supervising
15 officer;

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

19 “(f) Remain in the State of Oregon until written permission to leave is
20 granted by the Department of Corrections or a county community corrections
21 agency.

22 “(g) If physically able, find and maintain gainful full-time employment,

1 approved schooling, or a full-time combination of both. Any waiver of this
2 requirement must be based on a finding by the court stating the reasons for
3 the waiver.

4 “(h) Change neither employment nor residence without prior permission
5 from the Department of Corrections or a county community corrections
6 agency.

7 “(i) Permit the parole and probation officer to visit the probationer or the
8 probationer’s work site or residence and to conduct a walk-through of the
9 common areas and of the rooms in the residence occupied by or under the
10 control of the probationer.

11 “(j) Consent to the search of person, vehicle or premises upon the request
12 of a representative of the supervising officer if the supervising officer has
13 reasonable grounds to believe that evidence of a violation will be found, and
14 submit to fingerprinting or photographing, or both, when requested by the
15 Department of Corrections or a county community corrections agency for
16 supervision purposes.

17 “(k) Obey all laws, municipal, county, state and federal.

18 “(L) Promptly and truthfully answer all reasonable inquiries by the De-
19 partment of Corrections or a county community corrections agency.

20 “(m) Not possess weapons, firearms or dangerous animals.

21 “(n) If recommended by the supervising officer, successfully complete a
22 sex offender treatment program approved by the supervising officer and
23 submit to polygraph examinations at the direction of the supervising officer
24 if the probationer:

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

26 “(B) Was previously convicted of a sex offense under ORS 163.305 to
27 163.467; or

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

1 “(o) Participate in a mental health evaluation as directed by the super-
2 vising officer and follow the recommendation of the evaluator.

3 “(p) Report as required and abide by the direction of the supervising of-
4 ficer.

5 “(q) If required to report as a sex offender under ORS 181.807, report with
6 the Department of State Police, a city police department, a county sheriff’s
7 office or the supervising agency:

8 “(A) When supervision begins;

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

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

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

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

15 “(2) In addition to the general conditions, the court may impose any spe-
16 cial conditions of probation that are reasonably related to the crime of con-
17 viction or the needs of the probationer for the protection of the public or
18 reformation of the probationer, or both, including, but not limited to, that
19 the probationer shall:

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

28 “(b) For felonies committed on or after November 1, 1989:

29 “(A) Be confined in the county jail, or be subject to other custodial
30 sanctions under community supervision, or both, as provided by rules of the

1 Oregon Criminal Justice Commission; and

2 “(B) Comply with any special conditions of probation that are imposed
3 by the supervising officer in accordance with subsection (8) of this section.

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

7 “(3) When a person who is a sex offender is released on probation, the
8 court shall impose as a special condition of probation that the person not
9 reside in any dwelling in which another sex offender who is on probation,
10 parole or post-prison supervision resides, without the approval of the
11 person’s supervising parole and probation officer, or in which more than one
12 other sex offender who is on probation, parole or post-prison supervision re-
13 sides, without the approval of the director of the probation agency that is
14 supervising the person or of the county manager of the Department of Cor-
15 rections, or a designee of the director or manager. As soon as practicable,
16 the supervising parole and probation officer of a person subject to the re-
17 quirements of this subsection shall review the person’s living arrangement
18 with the person’s sex offender treatment provider to ensure that the ar-
19 rangement supports the goals of offender rehabilitation and community
20 safety. As used in this subsection:

21 “(a) ‘Dwelling’ has the meaning given that term in ORS 469B.100.

22 “(b) ‘Dwelling’ does not include a residential treatment facility or a
23 halfway house.

24 “(c) ‘Halfway house’ means a publicly or privately operated profit or
25 nonprofit residential facility that provides rehabilitative care and treatment
26 for sex offenders.

27 “(d) ‘Sex offender’ has the meaning given that term in ORS 181.805.

28 “(4)(a) If the person is released on probation following conviction of a sex
29 crime, as defined in ORS 181.805, or an assault, as defined in ORS 163.175
30 or 163.185, and the victim was under 18 years of age, the court, if requested

1 by the victim, shall include as a special condition of the person's probation
2 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
4 130,000 and the person is required to reside in that county;

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

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

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

16 "(b) A victim may request imposition of the special condition of probation
17 described in this subsection at the time of sentencing in person or through
18 the prosecuting attorney.

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

24 "(5) When a person who is a sex offender, as defined in ORS 181.805, is
25 released on probation, the Department of Corrections or the county commu-
26 nity corrections agency, whichever is appropriate, shall notify the city police
27 department, if the person is going to reside within a city, and the county
28 sheriff's office of the county in which the person is going to reside of the
29 person's release and the conditions of the person's release.

30 "(6) Failure to abide by all general and special conditions of probation

1 may result in arrest, modification of conditions, revocation of probation or
2 imposition of structured, intermediate sanctions in accordance with rules
3 adopted under ORS 137.595.

4 “(7) The court may order that probation be supervised by the court. If the
5 court orders that probation be supervised by the court, the defendant shall
6 pay a fee of \$100 to the court. Fees imposed under this subsection in the
7 circuit court shall be deposited by the clerk of the court in the General
8 Fund. Fees imposed in a justice court under this subsection shall be paid to
9 the county treasurer. Fees imposed in a municipal court under this sub-
10 section shall be paid to the city treasurer.

11 “(8)(a) The court may at any time modify the conditions of probation.

12 “(b) When the court orders a defendant placed under the supervision of
13 the Department of Corrections or a community corrections agency, the
14 supervising officer may file with the court a proposed modification to the
15 special conditions of probation. The supervising officer shall provide a copy
16 of the proposed modification to the district attorney and the probationer. **If**
17 **the modification is proposed within 30 days after the defendant’s sen-**
18 **tencing, the supervising officer shall also provide a copy of the pro-**
19 **posed modification to the defendant’s attorney of record on the case**
20 **for which the defendant was sentenced to probation.**

21 “(c) If the district attorney, **the probationer or the court:**

22 “(A) Files an objection to the proposed modification less than [*five*] **10**
23 **judicial days after the proposed modification was received or, for the**
24 **court’s objection,** filed, the court shall schedule a hearing no later than 10
25 judicial days after the proposed modification was filed, unless the court finds
26 good cause to schedule a hearing at a later time.

27 “(B) Does not file an objection to the proposed modification less than
28 [*five*] **10** judicial days after the proposed modification was **received or, for**
29 **the court’s objection,** filed, the proposed modification becomes effective
30 [*five*] **10** judicial days after the proposed modification was filed.

1 “(9) A court may not order revocation of probation as a result of the
2 probationer’s failure to pay restitution unless the court determines from the
3 totality of the circumstances that the purposes of the probation are not being
4 served.

5 “(10) It is not a cause for revocation of probation that the probationer
6 failed to apply for or accept employment at any workplace where there is a
7 labor dispute in progress. As used in this subsection, ‘labor dispute’ has the
8 meaning for that term provided in ORS 662.010.

9 “(11) If the court determines that a defendant has violated the terms of
10 probation, the court shall collect a \$25 fee from the defendant. The fee be-
11 comes part of the judgment and may be collected in the same manner as a
12 fine. Fees collected under this subsection in the circuit court shall be de-
13 posited by the clerk of the court in the General Fund. Fees collected in a
14 justice court under this subsection shall be paid to the county treasurer.
15 Fees collected in a municipal court under this subsection shall be paid to the
16 city treasurer.

17 “(12) As used in this section, ‘attends,’ ‘institution of higher education,’
18 ‘works’ and ‘carries on a vocation’ have the meanings given those terms in
19 ORS 181.805.”.

20 In line 20, delete “6” and insert “7”.

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