

D R A F T

SUMMARY

Reduces maximum term of imprisonment for Class A misdemeanor crime from one year to 364 days.

Reduces maximum period of institutionalization or commitment for youth offender for act that, if committed by adult, would constitute Class A misdemeanor from one year to 364 days.

A BILL FOR AN ACT

Relating to misdemeanor sentencing; creating new provisions; and amending
ORS 137.540, 161.615 and 419C.501.

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

SECTION 1. ORS 161.615 is amended to read:

161.615. Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

(1) For a Class A misdemeanor, [*1 year*] **364 days**.

(2) For a Class B misdemeanor, 6 months.

(3) For a Class C misdemeanor, 30 days.

(4) For an unclassified misdemeanor, as provided in the statute defining the crime.

SECTION 2. ORS 137.540 is amended to read:

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

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

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

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

6 (d) Submit to a risk and needs assessment as directed by the supervising
7 officer;

8 (e) Participate in a substance abuse evaluation as directed by the super-
9 vising officer and follow the recommendations of the evaluator if there are
10 reasonable grounds to believe there is a history of substance abuse.

11 (f) Remain in the State of Oregon until written permission to leave is
12 granted by the Department of Corrections or a county community corrections
13 agency.

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

18 (h) Change neither employment nor residence without prior permission
19 from the Department of Corrections or a county community corrections
20 agency.

21 (i) Permit the parole and probation officer to visit the probationer or the
22 probationer's work site or residence and to conduct a walk-through of the
23 common areas and of the rooms in the residence occupied by or under the
24 control of the probationer.

25 (j) Consent to the search of person, vehicle or premises upon the request
26 of a representative of the supervising officer if the supervising officer has
27 reasonable grounds to believe that evidence of a violation will be found, and
28 submit to fingerprinting or photographing, or both, when requested by the
29 Department of Corrections or a county community corrections agency for
30 supervision purposes.

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

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

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

4 (n) If recommended by the supervising officer, successfully complete a sex
5 offender treatment program approved by the supervising officer and submit
6 to polygraph examinations at the direction of the supervising officer if the
7 probationer:

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

9 (B) Was previously convicted of a sex offense under ORS 163.305 to
10 163.467; or

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

14 (o) Participate in a mental health evaluation as directed by the supervis-
15 ing officer and follow the recommendation of the evaluator.

16 (p) Report as required and abide by the direction of the supervising offi-
17 cer.

18 (q) If required to report as a sex offender under ORS 181.807, report with
19 the Department of State Police, a city police department, a county sheriff's
20 office or the supervising agency:

21 (A) When supervision begins;

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

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

24 (D) Within 10 days of the first day the person works at, carries on a vo-
25 cation at or attends an institution of higher education; and

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

28 (2) In addition to the general conditions, the court may impose any spe-
29 cial conditions of probation that are reasonably related to the crime of con-
30 viction or the needs of the probationer for the protection of the public or
31 reformation of the probationer, or both, including, but not limited to, that

1 the probationer shall:

2 (a) For crimes committed prior to November 1, 1989, and misdemeanors
3 committed on or after November 1, 1989, be confined to the county jail or
4 be restricted to the probationer's own residence or to the premises thereof,
5 or be subject to any combination of such confinement and restriction, such
6 confinement or restriction or combination thereof to be for a period not to
7 exceed [*one year*] **364 days** or one-half of the maximum period of confinement
8 that could be imposed for the offense for which the defendant is convicted,
9 whichever is the lesser.

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

11 (A) Be confined in the county jail, or be subject to other custodial sanc-
12 tions under community supervision, or both, as provided by rules of the
13 Oregon Criminal Justice Commission; and

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

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

19 (3) When a person who is a sex offender is released on probation, the
20 court shall impose as a special condition of probation that the person not
21 reside in any dwelling in which another sex offender who is on probation,
22 parole or post-prison supervision resides, without the approval of the
23 person's supervising parole and probation officer, or in which more than one
24 other sex offender who is on probation, parole or post-prison supervision re-
25 sides, without the approval of the director of the probation agency that is
26 supervising the person or of the county manager of the Department of Cor-
27 rections, or a designee of the director or manager. As soon as practicable,
28 the supervising parole and probation officer of a person subject to the re-
29 quirements of this subsection shall review the person's living arrangement
30 with the person's sex offender treatment provider to ensure that the ar-
31 rangement supports the goals of offender rehabilitation and community

1 safety. As used in this subsection:

2 (a) “Dwelling” has the meaning given that term in ORS 469B.100.

3 (b) “Dwelling” does not include a residential treatment facility or a
4 halfway house.

5 (c) “Halfway house” means a publicly or privately operated profit or
6 nonprofit residential facility that provides rehabilitative care and treatment
7 for sex offenders.

8 (d) “Sex offender” has the meaning given that term in ORS 181.805.

9 (4)(a) If the person is released on probation following conviction of a sex
10 crime, as defined in ORS 181.805, or an assault, as defined in ORS 163.175
11 or 163.185, and the victim was under 18 years of age, the court, if requested
12 by the victim, shall include as a special condition of the person’s probation
13 that the person not reside within three miles of the victim unless:

14 (A) The victim resides in a county having a population of less than
15 130,000 and the person is required to reside in that county;

16 (B) The person demonstrates to the court by a preponderance of the evi-
17 dence that no mental intimidation or pressure was brought to bear during
18 the commission of the crime;

19 (C) The person demonstrates to the court by a preponderance of the evi-
20 dence that imposition of the condition will deprive the person of a residence
21 that would be materially significant in aiding in the rehabilitation of the
22 person or in the success of the probation; or

23 (D) The person resides in a halfway house. As used in this subparagraph,
24 “halfway house” means a publicly or privately operated profit or nonprofit
25 residential facility that provides rehabilitative care and treatment for sex
26 offenders.

27 (b) A victim may request imposition of the special condition of probation
28 described in this subsection at the time of sentencing in person or through
29 the prosecuting attorney.

30 (c) If the court imposes the special condition of probation described in
31 this subsection and if at any time during the period of probation the victim

1 moves to within three miles of the probationer's residence, the court may
2 not require the probationer to change the probationer's residence in order
3 to comply with the special condition of probation.

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

10 (6) Failure to abide by all general and special conditions of probation may
11 result in arrest, modification of conditions, revocation of probation or im-
12 position of structured, intermediate sanctions in accordance with rules
13 adopted under ORS 137.595.

14 (7) The court may order that probation be supervised by the court. If the
15 court orders that probation be supervised by the court, the defendant shall
16 pay a fee of \$100 to the court. Fees imposed under this subsection in the
17 circuit court shall be deposited by the clerk of the court in the General
18 Fund. Fees imposed in a justice court under this subsection shall be paid to
19 the county treasurer. Fees imposed in a municipal court under this sub-
20 section shall be paid to the city treasurer.

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

22 (b) When the court orders a defendant placed under the supervision of the
23 Department of Corrections or a community corrections agency, the super-
24 vising officer may file with the court a proposed modification to the special
25 conditions of probation. The supervising officer shall provide a copy of the
26 proposed modification to the district attorney and the probationer. If the
27 district attorney:

28 (A) Files an objection to the proposed modification less than five judicial
29 days after the proposed modification was filed, the court shall schedule a
30 hearing no later than 10 judicial days after the proposed modification was
31 filed, unless the court finds good cause to schedule a hearing at a later time.

1 (B) Does not file an objection to the proposed modification less than five
2 judicial days after the proposed modification was filed, the proposed modifi-
3 cation becomes effective five judicial days after the proposed modification
4 was filed.

5 (9) A court may not order revocation of probation as a result of the
6 probationer's failure to pay restitution unless the court determines from the
7 totality of the circumstances that the purposes of the probation are not being
8 served.

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

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

21 (12) As used in this section, "attends," "institution of higher education,"
22 "works" and "carries on a vocation" have the meanings given those terms
23 in ORS 181.805.

24 **SECTION 3.** ORS 419C.501 is amended to read:

25 419C.501. (1) The court shall fix the duration of any disposition made
26 pursuant to this chapter and the duration may be for an indefinite period.
27 Any placement in the legal custody of the Department of Human Services
28 or the Oregon Youth Authority under ORS 419C.478 or placement under the
29 jurisdiction of the Psychiatric Security Review Board under ORS 419C.529
30 shall be for an indefinite period. However, the period of institutionalization
31 or commitment may not exceed:

1 (a) The period of time specified in the statute defining the crime for an
2 act that would constitute an unclassified misdemeanor if committed by an
3 adult;

4 (b) Thirty days for an act that would constitute a Class C misdemeanor
5 if committed by an adult;

6 (c) Six months for an act that would constitute a Class B misdemeanor
7 if committed by an adult;

8 (d) [*One year*] **Three hundred sixty-four days** for an act that would
9 constitute a Class A misdemeanor if committed by an adult;

10 (e) Five years for an act that would constitute a Class C felony if com-
11 mitted by an adult;

12 (f) Ten years for an act that would constitute a Class B felony if com-
13 mitted by an adult;

14 (g) Twenty years for an act that would constitute a Class A felony if
15 committed by an adult; and

16 (h) Life for a young person who was found to have committed an act that,
17 if committed by an adult would constitute murder or any aggravated form
18 of murder under ORS 163.095 or 163.115.

19 (2) Except as provided in subsection (1)(h) of this section, the period of
20 any disposition may not extend beyond the date on which the young person
21 or youth offender becomes 25 years of age.

22 **SECTION 4. (1) The amendments to ORS 137.540 and 161.615 by**
23 **sections 1 and 2 of this 2015 Act apply to sentences imposed on or after**
24 **the effective date of this 2015 Act.**

25 **(2) The amendments to ORS 419C.501 by section 3 of this 2015 Act**
26 **apply to findings that a youth offender is within the jurisdiction of the**
27 **court under ORS 419C.005 made on or after the effective date of this**
28 **2015 Act.**

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