

House Bill 2341

Introduced and printed pursuant to House Rule 12.00. Pre-session 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**.

Authorizes court to order defendant to pay extradition costs when defendant is found in violation of probation.

A BILL FOR AN ACT

1
2 Relating to extradition costs; creating new provisions; and amending ORS 137.540 and 161.665.

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

4 **SECTION 1.** ORS 137.540 is amended to read:

5 137.540. (1) The court may sentence the defendant to probation subject to the following general
6 conditions unless specifically deleted by the court. The probationer shall:

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

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

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

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

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

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

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

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

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

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

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

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 (L) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections
 2 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 offender treatment
 5 program approved by the supervising officer and submit to polygraph examinations at the direction
 6 of the supervising officer if the probationer:

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

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

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

11 (o) Participate in a mental health evaluation as directed by the supervising officer and follow
 12 the recommendation of the evaluator.

13 (p) Report as required and abide by the direction of the supervising officer.

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

16 (A) When supervision begins;

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

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

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

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

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

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

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

34 (A) Be confined in the county jail, or be subject to other custodial sanctions under community
 35 supervision, or both, as provided by rules of the Oregon Criminal Justice Commission; and

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

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

40 (3) When a person who is a sex offender is released on probation, the court shall impose as a
 41 special condition of probation that the person not reside in any dwelling in which another sex
 42 offender who is on probation, parole or post-prison supervision resides, without the approval of the
 43 person's supervising parole and probation officer, or in which more than one other sex offender who
 44 is on probation, parole or post-prison supervision resides, without the approval of the director of the
 45 probation agency that is supervising the person or of the county manager of the Department of

1 Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole
 2 and probation officer of a person subject to the requirements of this subsection shall review the
 3 person's living arrangement with the person's sex offender treatment provider to ensure that the
 4 arrangement supports the goals of offender rehabilitation and community safety. As used in this
 5 subsection:

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

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

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

10 (d) "Sex offender" has the meaning given that term in ORS 181.805.

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

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

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

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

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

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

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

31 (5) When a person who is a sex offender, as defined in ORS 181.805, is released on probation,
 32 the Department of Corrections or the county community corrections agency, whichever is appropri-
 33 ate, shall notify the city police department, if the person is going to reside within a city, and the
 34 county sheriff's office of the county in which the person is going to reside of the person's release
 35 and the conditions of the person's release.

36 (6) Failure to abide by all general and special conditions of probation may result in arrest,
 37 modification of conditions, revocation of probation or imposition of structured, intermediate sanc-
 38 tions in accordance with rules adopted under ORS 137.595.

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

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

1 (b) When the court orders a defendant placed under the supervision of the Department of Cor-
 2 rections or a community corrections agency, the supervising officer may file with the court a pro-
 3 posed modification to the special conditions of probation. The supervising officer shall provide a
 4 copy of the proposed modification to the district attorney and the probationer. If the district attor-
 5 ney:

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

10 (B) Does not file an objection to the proposed modification less than five judicial days after the
 11 proposed modification was filed, the proposed modification becomes effective five judicial days after
 12 the proposed modification was filed.

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

16 (10) It is not a cause for revocation of probation that the probationer failed to apply for or ac-
 17 cept employment at any workplace where there is a labor dispute in progress. As used in this sub-
 18 section, "labor dispute" has the meaning for that term provided in ORS 662.010.

19 (11) If the court determines that a defendant has violated the terms of probation, the court shall
 20 collect a \$25 fee from the defendant **and may impose a fee for the costs of extraditing the de-**
 21 **fendant to this state for the probation violation proceeding.** The *[fee becomes]* **fees imposed**
 22 **under this subsection become** part of the judgment and may be collected in the same manner as
 23 a fine. Fees collected under this subsection in the circuit court shall be deposited by the clerk of
 24 the court in the General Fund. Fees collected in a justice court under this subsection shall be paid
 25 to the county treasurer. Fees collected in a municipal court under this subsection shall be paid to
 26 the city treasurer.

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

29 **SECTION 2.** ORS 161.665 is amended to read:

30 161.665. (1) Except as provided in ORS 151.505, the court, only in the case of a defendant for
 31 whom it enters a judgment of conviction, may include in its sentence thereunder a money award for
 32 all costs specially incurred by the state in prosecuting the defendant. Costs include a reasonable
 33 attorney fee for counsel appointed pursuant to ORS 135.045 or 135.050 and a reasonable amount for
 34 fees and expenses incurred pursuant to preauthorization under ORS 135.055. A reasonable attorney
 35 fee is presumed to be a reasonable number of hours at the hourly rate authorized by the Public
 36 Defense Services Commission under ORS 151.216. Costs do not include expenses inherent in provid-
 37 ing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and
 38 operation of government agencies that must be made by the public irrespective of specific violations
 39 of law.

40 (2) Except as provided in ORS 151.505, the court, after the conclusion of an appeal of its initial
 41 judgment of conviction, may include in its general judgment, or enter a supplemental judgment that
 42 includes, a money award that requires a convicted defendant to pay a reasonable attorney fee for
 43 counsel appointed pursuant to ORS 138.500, including counsel who is appointed under ORS 151.216
 44 or counsel who is under contract to provide services for the proceeding under ORS 151.219, and
 45 other costs and expenses allowed by the public defense services executive director under ORS

1 138.500 (4). A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly
2 rate authorized by the commission under ORS 151.216.

3 (3) For purposes of subsections (1) and (2) of this section, compensation of counsel is determined
4 by reference to a schedule of compensation established by the commission under ORS 151.216.

5 (4) The court may not sentence a defendant to pay costs under this section unless the defendant
6 is or may be able to pay them. In determining the amount and method of payment of costs, the court
7 shall take account of the financial resources of the defendant and the nature of the burden that
8 payment of costs will impose.

9 (5) A defendant who has been sentenced to pay costs under this section and who is not in
10 contumacious default in the payment of costs may at any time petition the court that sentenced the
11 defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to
12 the satisfaction of the court that payment of the amount due will impose manifest hardship on the
13 defendant or the immediate family of the defendant, the court may enter a supplemental judgment
14 that remits all or part of the amount due in costs, or modifies the method of payment under ORS
15 161.675.

16 (6) All moneys collected or paid under this section shall be paid into the Criminal Fine Account.

17 (7) **The court may, in the judgment of conviction, include a money award requiring the**
18 **defendant to pay the costs of extraditing the defendant to this state.** Any amounts awarded to
19 the state under [*a judgment of conviction for the costs of extraditing the defendant to this state*] **this**
20 **subsection** must be listed separately in the money award portion of the judgment.

21 **SECTION 3. The amendments to ORS 137.540 and 161.665 by sections 1 and 2 of this 2015**
22 **Act apply to judgments of conviction entered on or after the effective date of this 2015 Act.**
23
