

# House Bill 3022

Sponsored by 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**.

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

1  
2 Relating to misdemeanor sentencing; creating new provisions; and amending ORS 137.540, 161.615  
3 and 419C.501.

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

5 **SECTION 1.** ORS 161.615 is amended to read:

6 161.615. Sentences for misdemeanors shall be for a definite term. The court shall fix the term  
7 of imprisonment within the following maximum limitations:

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

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

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

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

12 **SECTION 2.** ORS 137.540 is amended to read:

13 137.540. (1) The court may sentence the defendant to probation subject to the following general  
14 conditions unless specifically deleted by the court. The probationer shall:

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

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

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

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

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

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

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

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

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

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

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

10 (L) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections  
 11 or a county community corrections agency.

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

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

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

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

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

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

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

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

25 (A) When supervision begins;

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

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

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

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

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

36 (a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after  
 37 November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence  
 38 or to the premises thereof, or be subject to any combination of such confinement and restriction,  
 39 such confinement or restriction or combination thereof to be for a period not to exceed [*one year*]  
 40 **364 days** or one-half of the maximum period of confinement that could be imposed for the offense for  
 41 which the defendant is convicted, whichever is the lesser.

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

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

45 (B) Comply with any special conditions of probation that are imposed by the supervising officer

1 in accordance with subsection (8) of this section.

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

4 (3) When a person who is a sex offender is released on probation, the court shall impose as a  
 5 special condition of probation that the person not reside in any dwelling in which another sex  
 6 offender who is on probation, parole or post-prison supervision resides, without the approval of the  
 7 person's supervising parole and probation officer, or in which more than one other sex offender who  
 8 is on probation, parole or post-prison supervision resides, without the approval of the director of the  
 9 probation agency that is supervising the person or of the county manager of the Department of  
 10 Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole  
 11 and probation officer of a person subject to the requirements of this subsection shall review the  
 12 person's living arrangement with the person's sex offender treatment provider to ensure that the  
 13 arrangement supports the goals of offender rehabilitation and community safety. As used in this  
 14 subsection:

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

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

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

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

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

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

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

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

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

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

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

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

45 (6) Failure to abide by all general and special conditions of probation may result in arrest,

1 modification of conditions, revocation of probation or imposition of structured, intermediate sanc-  
 2 tions in accordance with rules adopted under ORS 137.595.

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

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

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

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

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

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

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

28 (11) If the court determines that a defendant has violated the terms of probation, the court shall  
 29 collect a \$25 fee from the defendant. The fee becomes part of the judgment and may be collected in  
 30 the same manner as a fine. Fees collected under this subsection in the circuit court shall be depos-  
 31 ited by the clerk of the court in the General Fund. Fees collected in a justice court under this  
 32 subsection shall be paid to the county treasurer. Fees collected in a municipal court under this  
 33 subsection shall be paid to the city treasurer.

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

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

37 419C.501. (1) The court shall fix the duration of any disposition made pursuant to this chapter  
 38 and the duration may be for an indefinite period. Any placement in the legal custody of the De-  
 39 partment of Human Services or the Oregon Youth Authority under ORS 419C.478 or placement un-  
 40 der the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529 shall be for an  
 41 indefinite period. However, the period of institutionalization or commitment may not exceed:

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

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

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

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

3 (e) Five years for an act that would constitute a Class C felony if committed by an adult;

4 (f) Ten years for an act that would constitute a Class B felony if committed by an adult;

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

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

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

10 **SECTION 4. (1) The amendments to ORS 137.540 and 161.615 by sections 1 and 2 of this**  
11 **2015 Act apply to sentences imposed on or after the effective date of this 2015 Act.**

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