

D R A F T

SUMMARY

Modifies eligibility for Family Sentencing Alternative Pilot Program. Authorizes Department of Corrections to increase reduction in term of imprisonment if inmate meets certain criteria related to participation in family program.

Increases maximum period of short-term transitional leave for certain Department of Corrections inmates.

Reduces presumptive sentences and eliminates mandatory sentences for certain property crimes when defendant has prior property crime convictions. Increases number of prior property crime convictions required for presumptive sentence to apply. Eliminates certain crimes that can be used as prior convictions.

Appropriates moneys to Department of Corrections and Department of Human Services for purpose of funding and expanding Family Sentencing Alternative Pilot Program.

Transfers moneys from General Fund to Justice Reinvestment Account and Oregon Domestic and Sexual Violence Services Fund.

A BILL FOR AN ACT

Relating to public safety; creating new provisions; amending ORS 137.717 and 421.168 and section 1, chapter 830, Oregon Laws 2015; and repealing ORS 475.934 and sections 8 and 16, chapter 649, Oregon Laws 2013.

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

FAMILY SENTENCING ALTERNATIVE PILOT PROGRAM

SECTION 1. Section 1, chapter 830, Oregon Laws 2015, is amended to read:

Sec. 1. (1) The Department of Corrections, in partnership with the circuit

1 court and county community corrections agencies of participating counties
2 and the Department of Human Services, shall establish the Family Sentenc-
3 ing Alternative Pilot Program.

4 (2) A defendant is eligible for the Family Sentencing Alternative Pilot
5 Program if:

6 (a) The defendant's presumptive sentence under the sentencing guidelines
7 of the Oregon Criminal Justice Commission is a term of imprisonment in the
8 legal and physical custody of the Department of Corrections of at least one
9 year;

10 (b) The defendant [*has not previously been convicted of, and*] is not cur-
11 rently being sentenced for:

12 (A) A person felony as defined in the rules of the Oregon Criminal Justice
13 Commission;

14 (B) A sex crime as defined in ORS 181.805; or

15 (C) An offense requiring a specified sentence under ORS 137.635, 137.700,
16 137.707, 164.061, 475.907, 475.925, 475.930 or [*813.010*] **813.011**; and

17 (c) The defendant is **pregnant at the time of sentencing, or is** the
18 parent or legal guardian of a minor child and **at the time of the offense**
19 had physical custody of the child [*at the time of the offense*].

20 (3)(a) If the defendant meets the eligibility requirements described in
21 subsection (2) of this section and [*receives*] **is eligible for** a downward dis-
22 positional departure under the rules of the Oregon Criminal Justice Com-
23 mission, the court may order that the defendant sign a release authorizing
24 the Department of Human Services to provide the community corrections
25 agency with written confirmation of, and consultation concerning, any open
26 or current juvenile dependency proceeding or any prior substantiated
27 allegation of abuse or neglect involving the defendant and a minor child.

28 (b) **When determining whether to sentence the defendant to pro-**
29 **bation as a downward dispositional departure under the rules of the**
30 **commission, the court may consider eligibility in the Family Sen-**
31 **tencing Alternative Pilot Program as a mitigating factor.**

1 (4) After receipt of the information described in subsection (3) of this
2 section, the community corrections agency, in consultation with the Depart-
3 ment of Human Services, shall determine if the Family Sentencing Alterna-
4 tive Pilot Program is an appropriate program for the defendant and, if the
5 program is appropriate, require participation in the program for the first 12
6 months of the probationary sentence. In addition to the conditions of pro-
7 bation ordered under ORS 137.540, the defendant may be required to comply
8 with any additional conditions related to the program, including but not
9 limited to:

10 (a) Geographical restrictions, including house arrest and electronic sur-
11 veillance;

12 (b) Participation in vocational training; and

13 (c) Completion of:

14 (A) Parenting skills classes;

15 (B) Drug or alcohol treatment;

16 (C) Mental health treatment; or

17 (D) Life skills classes.

18 (5) The Department of Human Services and community corrections agen-
19 cies shall cooperate with the Department of Corrections in implementing the
20 Family Sentencing Alternative Pilot Program described in this section.

21 (6) The Department of Human Services and the Department of Corrections
22 shall jointly submit a report concerning the Family Sentencing Alternative
23 Pilot Program, which must include program outcomes and data related to the
24 efficacy of the program, and which may include recommendations for legis-
25 lation in the manner provided by ORS 192.245, to the interim committees of
26 the Legislative Assembly related to the judiciary no later than January 1[,
27 2017] of each year.

28 **SECTION 2. (1) The Department of Corrections may further reduce**
29 **the term of incarceration of an inmate as described in ORS 421.121 by**
30 **a period of an additional six months if the inmate meets the following**
31 **eligibility requirements:**

- 1 **(a) The inmate has never been convicted of:**
2 **(A) A person felony as defined in the rules of the Oregon Criminal**
3 **Justice Commission; or**
4 **(B) A sex crime as defined in ORS 181.805;**
5 **(b) The inmate is not serving a sentence for an offense requiring a**
6 **specified sentence under ORS 137.635, 137.700, 137.707 164.061, 475.907,**
7 **475.925, 475.930 or 813.011;**
8 **(c) The inmate is the parent or legal guardian of a minor child;**
9 **(d) The inmate has participated in a program related to creating**
10 **and maintaining a relationship with the inmate's child; and**
11 **(e) The inmate has demonstrated appropriate institutional behavior**
12 **as defined by rule of the department.**
13 **(2) The State Board of Parole and Post-Prison Supervision or the**
14 **local supervisory authority may, in addition to the conditions of post-**
15 **prison supervision described in ORS 144.102, order additional conditions**
16 **of post-prison supervision for a person released under this section as**
17 **the board or authority considers appropriate including, but not limited**
18 **to:**
19 **(a) Geographical restrictions, including house arrest and electronic**
20 **surveillance;**
21 **(b) Participation in vocational training; and**
22 **(c) Completion of:**
23 **(A) Parenting skills classes;**
24 **(B) Drug or alcohol treatment;**
25 **(C) Mental health treatment; or**
26 **(D) Life skills classes.**
27 **(3) The Department of Corrections and the State Board of Parole**
28 **and Post-Prison Supervision shall adopt rules to implement this sec-**
29 **tion.**
30
31

SHORT-TERM TRANSITIONAL LEAVE

1 **SECTION 3. Section 16, chapter 649, Oregon Laws 2013, is repealed.**

2 **SECTION 4.** ORS 421.168, as amended by section 15, chapter 649, Oregon
3 Laws 2013, is amended to read:

4 421.168. (1) The Department of Corrections shall establish a short-term
5 transitional leave program. The program shall provide inmates with an op-
6 portunity to secure appropriate transitional support when necessary for
7 successful reintegration into the community prior to the inmate's discharge
8 to post-prison supervision.

9 (2) The Department of Corrections shall identify each inmate who is eli-
10 gible for the short-term transitional leave program and shall, in conjunction
11 with the supervisory authority for the county to which the inmate will be
12 released, assist each eligible inmate in preparing a transition plan and in
13 identifying and applying for an employment, educational or other transi-
14 tional opportunity in the community.

15 (3) If the inmate's transition plan is approved by the department and is
16 an essential part of the inmate's successful reintegration into the community,
17 the department may grant a transitional leave no more than [30] **180** days
18 prior to the inmate's discharge date.

19 (4) An inmate is not eligible for transitional leave before having served
20 six months of prison incarceration.

21 (5) The department shall adopt rules to carry out the provisions of this
22 section. The rules must include a set of release conditions for inmates re-
23 leased on transitional leave status. An inmate on transitional leave status
24 is subject to immediate return to prison for any violation of the conditions
25 of release.

26 (6) The provisions of this section do not apply to inmates whose sentences
27 were imposed under ORS 137.635, **137.690**, 137.700, [or] 137.707, **164.061**,
28 **475.907, 475.925, 475.930 or 813.011** or [any other] **under a** provision of law
29 that prohibits release on any form of temporary leave from custody.

30
31 **DRUG AND PROPERTY OFFENSES**

1 **SECTION 5. Section 8, chapter 649, Oregon Laws 2013, is repealed.**

2 **SECTION 6.** ORS 137.717, as amended by section 7, chapter 649, Oregon
3 Laws 2013, is amended to read:

4 137.717. (1) When a court sentences a person convicted of:

5 (a) Aggravated theft in the first degree under ORS 164.057, burglary in
6 the first degree under ORS 164.225[*robbery in the third degree under ORS*
7 *164.395, identity theft under ORS 165.800*] or aggravated identity theft under
8 ORS 165.803, the presumptive sentence is [24] **19** months of incarceration,
9 unless the rules of the Oregon Criminal Justice Commission prescribe a
10 longer presumptive sentence, if the person has:

11 (A) A previous conviction for aggravated theft in the first degree under
12 ORS 164.057, burglary in the first degree under ORS 164.225, [*robbery in the*
13 *third degree under ORS 164.395,*] robbery in the second degree under ORS
14 164.405, robbery in the first degree under ORS 164.415 or aggravated identity
15 theft under ORS 165.803; **or**

16 (B) [*Two*] **Four** or more previous convictions for any combination of the
17 crimes listed in subsection (2) of this section[; *or*].

18 [*(C) A previous conviction for a crime listed in subsection (2) of this section,*
19 *if the current crime of conviction was committed while the defendant was on*
20 *supervision for the previous conviction or less than three years after the date*
21 *the defendant completed the period of supervision for the previous conviction.*]

22 (b) Theft in the first degree under ORS 164.055, unauthorized use of a
23 vehicle under ORS 164.135, [*mail theft or receipt of stolen mail under ORS*
24 *164.162,*] burglary in the second degree under ORS 164.215, criminal mischief
25 in the first degree under ORS 164.365, computer crime under ORS 164.377,
26 forgery in the first degree under ORS 165.013, [*criminal possession of a forged*
27 *instrument in the first degree under ORS 165.022, fraudulent use of a credit*
28 *card under ORS 165.055 (4)(b),*] **identity theft under ORS 165.800**, pos-
29 session of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles
30 under ORS 819.310, the presumptive sentence is [18] **13** months of incarcer-
31 ation, unless the rules of the Oregon Criminal Justice Commission prescribe

1 a longer presumptive sentence, if the person has:

2 (A) A previous conviction for aggravated theft in the first degree under
3 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in
4 the first degree under ORS 164.225, [*robbery in the third degree under ORS*
5 *164.395,*] robbery in the second degree under ORS 164.405, robbery in the first
6 degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300,
7 trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft
8 under ORS 165.803; **or**

9 (B) [*Two*] **Four** or more previous convictions for any combination of the
10 crimes listed in subsection (2) of this section[; *or*].

11 [*(C) A previous conviction for a crime listed in subsection (2) of this section,*
12 *if the current crime of conviction was committed while the defendant was on*
13 *supervision for the previous conviction or less than three years after the date*
14 *the defendant completed the period of supervision for the previous conviction.*]

15 (2) The crimes to which subsection (1) of this section applies are:

16 (a) Theft in the second degree under ORS 164.045;

17 (b) Theft in the first degree under ORS 164.055;

18 (c) Aggravated theft in the first degree under ORS 164.057;

19 (d) Unauthorized use of a vehicle under ORS 164.135;

20 [*(e) Mail theft or receipt of stolen mail under ORS 164.162;*]

21 [*(f)*] (e) Burglary in the second degree under ORS 164.215;

22 [*(g)*] (f) Burglary in the first degree under ORS 164.225;

23 [*(h)*] (g) Criminal mischief in the second degree under ORS 164.354;

24 [*(i)*] (h) Criminal mischief in the first degree under ORS 164.365;

25 [*(j)*] (i) Computer crime under ORS 164.377;

26 [*(k)*] (j) Forgery in the second degree under ORS 165.007;

27 [*(L)*] (k) Forgery in the first degree under ORS 165.013;

28 [*(m)*] (L) Criminal possession of a forged instrument in the second degree
29 under ORS 165.017;

30 [*(n)*] (m) Criminal possession of a forged instrument in the first degree
31 under ORS 165.022;

1 [(o)] **(n)** Fraudulent use of a credit card under ORS 165.055;
2 [(p)] **(o)** Identity theft under ORS 165.800;
3 [(q)] **(p)** Possession of a stolen vehicle under ORS 819.300; **and**
4 [(r)] **(q)** Trafficking in stolen vehicles under ORS 819.310[; and].
5 [(s) Any attempt to commit a crime listed in this subsection.]

6 [(3)(a) A presumptive sentence described in subsection (1) of this section
7 shall be increased by two months for each previous conviction the person has
8 that:]

9 [(A) Was for any of the crimes listed in subsection (1) or (2) of this section;
10 and]

11 [(B) Was not used as a predicate for the presumptive sentence described in
12 subsection (1) of this section.]

13 [(b) Previous convictions may not increase a presumptive sentence described
14 in subsection (1) of this section by more than 12 months under this
15 subsection.]

16 [(4)] **(3)** The court may impose a sentence other than the sentence pro-
17 vided by subsection (1) [or (3)] of this section if the court imposes:

18 (a) A longer term of incarceration that is otherwise required or author-
19 ized by law; or

20 (b) A departure sentence authorized by the rules of the Oregon Criminal
21 Justice Commission based upon findings of substantial and compelling rea-
22 sons. Unless the law or the rules of the Oregon Criminal Justice Commission
23 allow for imposition of a longer sentence, the maximum departure allowed
24 for a person sentenced under this subsection is double the presumptive sen-
25 tence provided in subsection (1) [or (3)] of this section.

26 [(5) Notwithstanding subsection (4)(b) of this section, the court may not
27 sentence a person under subsection (4) of this section to a term of incarceration
28 that exceeds the period of time described in ORS 161.605.]

29 [(6) The court shall sentence a person under this section to at least the
30 presumptive sentence described in subsection (1) or (3) of this section, unless
31 the parties stipulate otherwise or the court finds that:]

1 [(a) *The person was not on probation, parole or post-prison supervision for*
2 *a crime listed in subsection (1) of this section at the time of the commission*
3 *of the current crime of conviction;*]

4 [(b) *The person has not previously received a downward departure from a*
5 *presumptive sentence for a crime listed in subsection (1) of this section;*]

6 [(c) *The harm or loss caused by the crime is not greater than usual for that*
7 *type of crime; and]*

8 [(d) *In consideration of the nature of the offense and the harm to the victim,*
9 *a downward departure will:*]

10 [(A) *Increase public safety;*]

11 [(B) *Enhance the likelihood that the person will be rehabilitated; and]*

12 [(C) *Not unduly reduce the appropriate punishment.*]

13 [(7)(a)] **(4)(a)** For a crime committed on or after November 1, 1989, a
14 conviction is considered to have occurred upon the pronouncement of sen-
15 tence in open court. However, when sentences are imposed for two or more
16 convictions arising out of the same conduct or criminal episode, none of the
17 convictions is considered to have occurred prior to any of the other con-
18 victions arising out of the same conduct or criminal episode.

19 (b) For a crime committed prior to November 1, 1989, a conviction is
20 considered to have occurred upon the pronouncement in open court of a
21 sentence or upon the pronouncement in open court of the suspended imposi-
22 tion of a sentence.

23 [(8)] **(5)** For purposes of this section, previous convictions must be proven
24 pursuant to ORS 137.079.

25 [(9)] **(6)** As used in this section[:],

26 [(a) *“Downward departure” means a downward dispositional departure or*
27 *a downward durational departure under the rules of the Oregon Criminal*
28 *Justice Commission.*]

29 [(b)] “previous conviction” includes:

30 [(A)] **(a)** Convictions occurring before, on or after July 1, 2003; and

31 [(B)] **(b)** Convictions entered in any other state or federal court for com-

1 parable offenses.

2 **SECTION 7. ORS 475.934 is repealed.**

3

4 **APPROPRIATIONS AND TRANSFERS**

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6 **SECTION 8. In addition to and not in lieu of any other appropri-**
7 **ation, there is appropriated to the Department of Corrections, for the**
8 **biennium beginning July 1, 2017, out of the General Fund, the amount**
9 **of \$_____ for the purposes of funding the Family Sentencing Alter-**
10 **native Pilot Program described in section 1, chapter 830, Oregon Laws**
11 **2015, increasing the number of counties participating in the program**
12 **and carrying out the provisions of section 2 of this 2017 Act.**

13 **SECTION 9. (1) In addition to and not in lieu of any other appro-**
14 **priation, there is appropriated to the Department of Human Services,**
15 **for the biennium beginning July 1, 2017, out of the General Fund, the**
16 **amount of \$_____ for the purposes of funding the Family Sentencing**
17 **Alternative Pilot Program described in section 1, chapter 830, Oregon**
18 **Laws 2015, increasing the number of counties participating in the**
19 **program and carrying out the provisions of section 2 of this 2017 Act.**

20 **(2) Notwithstanding any other law limiting expenditures, the**
21 **amount of \$_____ is established for the biennium beginning July 1,**
22 **2017, as the maximum limit for payment of expenses from federal**
23 **funds collected or received by the Department of Human Services for**
24 **the purposes of funding the Family Sentencing Alternative Pilot Pro-**
25 **gram described in section 1, chapter 830, Oregon Laws 2015, increasing**
26 **the number of counties participating in the program and carrying out**
27 **the provisions of section 2 of this 2017 Act.**

28 **SECTION 10. There is transferred, from the General Fund to the**
29 **Justice Reinvestment Account described in section 52, chapter 649,**
30 **Oregon Laws 2013, the amount of \$_____ to be expended for the**
31 **purposes of the Justice Reinvestment Program described in section 53,**

1 **chapter 649, Oregon Laws 2013.**

2 **SECTION 11. There is transferred, from the General Fund to the**
3 **Oregon Domestic and Sexual Violence Services Fund described in ORS**
4 **147.453, the amount of \$_____ to be expended as described in ORS**
5 **147.450 to 147.471.**

6
7 **MISCELLANEOUS PROVISIONS**
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9 **SECTION 12. (1) Section 2 of this 2017 Act and the amendments to**
10 **section 1, chapter 830, Oregon Laws 2015, by section 1 of this 2017 Act**
11 **apply to sentences imposed on or after the effective date of this 2017**
12 **Act.**

13 **(2) The amendments to ORS 421.168 by section 4 of this 2017 Act**
14 **apply to sentences imposed on or after the effective date of this 2017**
15 **Act.**

16 **(3) The amendments to ORS 137.717 by section 6 of this 2017 Act and**
17 **the repeal of ORS 475.934 by section 7 of this 2017 Act apply to sen-**
18 **tences imposed on or after the effective date of this 2017 Act.**

19 **SECTION 13. The unit captions used in this 2017 Act are provided**
20 **only for the convenience of the reader and do not become part of the**
21 **statutory law of this state or express any legislative intent in the**
22 **enactment of this 2017 Act.**

23 _____