

Enrolled
House Bill 3078

Sponsored by Representatives PILUSO, SANCHEZ, WILLIAMSON; Representatives GORSEK, HOLVEY, KENY-GUYER, LININGER, MARSH, POWER, SOLLMAN, Senators DEMBROW, STEINER HAYWARD, WINTERS

CHAPTER

AN ACT

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

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

SECTION 1. Sections 7 to 10 of this 2017 Act, the amendments to ORS 137.717 and 421.168 and section 1, chapter 830, Oregon Laws 2015, by sections 2, 4, 5 and 6 of this 2017 Act and the repeal of section 16, chapter 649, Oregon Laws 2013, by section 3 of this 2017 Act shall be known and may be cited as the Safety and Savings Act.

FAMILY SENTENCING ALTERNATIVE PILOT PROGRAM

SECTION 2. Section 1, chapter 830, Oregon Laws 2015, is amended to read:

Sec. 1. (1) The Department of Corrections, in partnership with the circuit court and county community corrections agencies of participating counties and the Department of Human Services, shall establish the Family Sentencing Alternative Pilot Program.

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

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

(b) The defendant [*has not previously been convicted of, and*] is not currently being sentenced for:

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

(B) A sex crime as defined in ORS [*181.805*] **163A.005**; or

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

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

(3)(a) If the defendant meets the eligibility requirements described in subsection (2) of this section and [*receives*] is **eligible for** a downward dispositional departure under the rules of the Oregon Criminal Justice Commission, the court may order that the defendant sign a release authorizing the Department of Human Services to provide the community corrections agency with written confir-

mation of, and consultation concerning, any open or current juvenile dependency proceeding or any prior substantiated allegation of abuse or neglect involving the defendant and a minor child.

(b) The court may consider eligibility in the Family Sentencing Alternative Pilot Program as a mitigating factor when determining whether to sentence the defendant to probation, with a requirement that the defendant participate in the program as a condition of probation, as a downward dispositional departure under the rules of the commission.

(4) After receipt of the information described in subsection (3) of this section, the community corrections agency, in consultation with the Department of Human Services, shall determine if the Family Sentencing Alternative Pilot Program is an appropriate program for the defendant and, if the program is appropriate **and the defendant is sentenced to a term of probation**, require participation in the program for the first 12 months of the probationary sentence. In addition to the conditions of probation ordered under ORS 137.540, the defendant may be required to comply with any additional conditions related to the program, including but not limited to:

- (a) Geographical restrictions, including house arrest and electronic surveillance;
- (b) Participation in vocational training; and
- (c) Completion of:
 - (A) Parenting skills classes;
 - (B) Drug or alcohol treatment;
 - (C) Mental health treatment; or
 - (D) Life skills classes.

(5) The Department of Human Services and community corrections agencies shall cooperate with the Department of Corrections in implementing the Family Sentencing Alternative Pilot Program described in this section.

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

(7) The Department of Corrections shall establish a process for selecting counties to participate in the Family Sentencing Alternative Pilot Program.

(8) The Department of Corrections and the Department of Human Services may adopt rules to carry out the provisions of this section.

SHORT-TERM TRANSITIONAL LEAVE

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

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

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

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

(3) If the inmate's transition plan is approved by the department and is an essential part of the inmate's successful reintegration into the community, the department may grant a transitional leave no more than [30] **120** days prior to the inmate's discharge date.

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

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

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

SENTENCING AND SUPERVISION FOR PROPERTY OFFENSES

SECTION 5. ORS 137.717 is amended to read:

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

(a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225 or aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

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

(b) [*Theft in the first degree under ORS 164.055,*] Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS 164.377, robbery in the third degree under ORS 164.395, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b), [*identity theft under ORS 165.800,*] possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

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

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

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

(c) Theft in the first degree under ORS 164.055 or identity theft under ORS 165.800, the presumptive sentence is 13 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405, robbery in the first degree under

ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803; or

(B) Four or more previous convictions for any combination of crimes listed in subsection (2) of this section.

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

- (a) Theft in the second degree under ORS 164.045;
- (b) Theft in the first degree under ORS 164.055;
- (c) Aggravated theft in the first degree under ORS 164.057;
- (d) Unauthorized use of a vehicle under ORS 164.135;
- (e) Mail theft or receipt of stolen mail under ORS 164.162;
- (f) Burglary in the second degree under ORS 164.215;
- (g) Burglary in the first degree under ORS 164.225;
- (h) Criminal mischief in the second degree under ORS 164.354;
- (i) Criminal mischief in the first degree under ORS 164.365;
- (j) Computer crime under ORS 164.377;
- (k) Forgery in the second degree under ORS 165.007;
- (L) Forgery in the first degree under ORS 165.013;
- (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- (o) Fraudulent use of a credit card under ORS 165.055;
- (p) Identity theft under ORS 165.800;
- (q) Possession of a stolen vehicle under ORS 819.300;
- (r) Trafficking in stolen vehicles under ORS 819.310; and
- (s) Any attempt to commit a crime listed in this subsection.

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

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

(B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or (b) of this section.

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

(4) The court may impose a sentence other than the sentence provided by subsection (1) or (3) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) or (3) of this section.

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

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

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

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

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

(d) In consideration of the nature of the offense and the harm to the victim, a downward departure will:

- (A) Increase public safety;
- (B) Enhance the likelihood that the person will be rehabilitated; and
- (C) Not unduly reduce the appropriate punishment.

(7) When the court imposes a sentence of probation for a conviction for theft in the first degree or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS 144.087 may require the person to receive a high level of supervision for at least 12 months, and may extend the period of high-level supervision for all or part of the remaining probationary term.

[~~(7)(a)~~] **(8)(a)** For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

[~~(8)~~] **(9)** For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

[~~(9)~~] **(10)** As used in this section:

(a) “Downward departure” means a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission.

(b) “Previous conviction” includes:

(A) Convictions occurring before, on or after July 1, 2003; and

(B) Convictions entered in any other state or federal court for comparable offenses.

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

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

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

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

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

(b) [*Theft in the first degree under ORS 164.055,*] Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery

in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

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

(c) Theft in the first degree under ORS 164.055 or identity theft under ORS 165.800, the presumptive sentence is 13 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803; or

(B) Four or more previous convictions for any combination of crimes listed in subsection (2) of this section.

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

- (a) Theft in the second degree under ORS 164.045;
- (b) Theft in the first degree under ORS 164.055;
- (c) Aggravated theft in the first degree under ORS 164.057;
- (d) Unauthorized use of a vehicle under ORS 164.135;
- (e) Mail theft or receipt of stolen mail under ORS 164.162;
- (f) Burglary in the second degree under ORS 164.215;
- (g) Burglary in the first degree under ORS 164.225;
- (h) Criminal mischief in the second degree under ORS 164.354;
- (i) Criminal mischief in the first degree under ORS 164.365;
- (j) Computer crime under ORS 164.377;
- (k) Forgery in the second degree under ORS 165.007;
- (L) Forgery in the first degree under ORS 165.013;
- (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- (o) Fraudulent use of a credit card under ORS 165.055;
- (p) Identity theft under ORS 165.800;
- (q) Possession of a stolen vehicle under ORS 819.300;
- (r) Trafficking in stolen vehicles under ORS 819.310; and
- (s) Any attempt to commit a crime listed in this subsection.

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

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

(B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or (b) of this section.

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

(4) The court may impose a sentence other than the sentence provided by subsection (1) or (3) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-

lowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) or (3) of this section.

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

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

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

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

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

(d) In consideration of the nature of the offense and the harm to the victim, a downward departure will:

(A) Increase public safety;

(B) Enhance the likelihood that the person will be rehabilitated; and

(C) Not unduly reduce the appropriate punishment.

(7) When the court imposes a sentence of probation for a conviction for theft in the first degree or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS 144.087 may require the person to receive a high level of supervision for at least 12 months, and may extend the period of high-level supervision for all or part of the remaining probationary term.

[(7)(a)] **(8)(a)** For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

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

[(9)] **(10)** As used in this section:

(a) "Downward departure" means a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission.

(b) "Previous conviction" includes:

(A) Convictions occurring before, on or after July 1, 2003; and

(B) Convictions entered in any other state or federal court for comparable offenses.

APPROPRIATIONS

SECTION 7. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Criminal Justice Commission, for the biennium beginning July 1, 2017, out of the General Fund, the amount of \$7,000,000, to be deposited in the Justice Reinvestment Account described in section 52, chapter 649, Oregon Laws 2013, and expended for the purposes of carrying out the provisions of section 9 of this 2017 Act.

SECTION 8. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Justice, for the biennium beginning July 1, 2017, out of the General Fund, the amount of \$1,000,000, for the Crime Victims' Services Division and services for victims of domestic and sexual violence.

OREGON CRIMINAL JUSTICE COMMISSION

SECTION 9. (1) The Oregon Criminal Justice Commission shall establish a program to award supplemental grant funds to counties for downward departure prison diversion programs as part of the Justice Reinvestment Program described in section 53, chapter 649, Oregon Laws 2013. Notwithstanding sections 52 and 53 (1)(a), chapter 649, Oregon Laws 2013, the commission shall use the moneys described in section 7 of this 2017 Act for supplemental grant funds for downward departure prison diversion programs in counties selected by the commission to receive the supplemental grant funds. The commission shall give preference to counties establishing downward departure prison diversion programs on or after the effective date of this 2017 Act.

(2) The commission shall monitor the downward departure prison diversion programs described in subsection (1) of this section and evaluate prison utilization by counties that receive the supplemental grant funds. The commission shall annually report the evaluation findings to the Joint Interim Committee on Ways and Means.

SECTION 10. The Oregon Criminal Justice Commission shall study the impact of this 2017 Act on prison utilization, recidivism and public safety and report the results of the study to the interim committees of the Legislative Assembly related to the judiciary, in the manner provided in ORS 192.245, no later than February 1 of each year.

MISCELLANEOUS PROVISIONS

SECTION 11. The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

SECTION 12. (1) The amendments to ORS 137.717 and 421.168 by sections 4 and 5 of this 2017 Act and the repeal of section 16, chapter 649, Oregon Laws 2013, by section 3 of this 2017 Act become operative on January 1, 2018.

(2) The amendments to ORS 137.717 by section 6 of this 2017 Act become operative on July 1, 2023.

SECTION 13. (1) The amendments to section 1, chapter 830, Oregon Laws 2015, by section 2 of this 2017 Act apply to sentences imposed on or after the effective date of this 2017 Act.

(2) The amendments to ORS 137.717 and 421.168 by sections 4 and 5 of this 2017 Act apply to sentences imposed on or after January 1, 2018.

(3) The amendments to ORS 137.717 by section 6 of this 2017 Act apply to sentences imposed on or after July 1, 2023.

SECTION 14. (1) Section 9 of this 2017 Act is repealed on July 1, 2023.

(2) Section 10 of this 2017 Act is repealed on January 2, 2028.

EMERGENCY CLAUSE

SECTION 15. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House July 5, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 6, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State