

B-Engrossed
House Bill 3438

Ordered by the Senate June 6
Including House Amendments dated April 26 and Senate Amendments
dated June 6

Sponsored by Representatives SANCHEZ, WILLIAMSON; Representatives BYNUM, LININGER

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.

Directs Department of Corrections to include in inmate release plan information concerning transitional housing or treatment programs to which inmate has been accepted.

Directs State Board of Parole and Post-Prison Supervision to consider eligibility for transitional housing and residential treatment programs when determining whether to waive requirement that person released on post-prison supervision reside in county in which person resided prior to incarceration.

Directs Department of Corrections to collect data concerning residency requirement waivers and submit annual report to interim committees of Legislative Assembly related to judiciary. Sunsets reporting requirement February 1, 2022.

A BILL FOR AN ACT

1
2 Relating to reentry after incarceration; creating new provisions; and amending ORS 144.096 and
3 144.102.

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

5 **SECTION 1.** ORS 144.096 is amended to read:

6 144.096. (1)(a) The Department of Corrections shall prepare a proposed release plan for an in-
7 mate prior to the inmate's release from prison.

8 (b) The department shall submit the proposed release plan to the State Board of Parole and
9 Post-Prison Supervision not less than 75 days prior to the inmate's release.

10 (c) If the proposed release plan is not approved by the board, the board shall return the plan
11 to the department with its recommended modifications. The department shall submit a revised plan
12 to the board not less than 25 days prior to the inmate's release.

13 (d) If the revised plan is not acceptable to the board, the board shall determine the provisions
14 of the final plan prior to the inmate's release.

15 (e) If an inmate was sentenced under section 29, chapter 649, Oregon Laws 2013, and the release
16 plan recommends that the inmate participate in a reentry court, the board shall provide a copy of
17 the release plan to the reentry court.

18 (2) The local supervisory authority that is responsible for correctional services for an inmate
19 shall prepare a proposed release plan for the inmate prior to the inmate's release from jail. The local
20 supervisory authority shall approve the release plan under its rules. If the inmate was sentenced
21 under section 29, chapter 649, Oregon Laws 2013, and the supervisory authority recommends that
22 the inmate participate in a reentry court, the supervisory authority shall provide a copy of the re-
23 lease plan to the reentry court.

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 (3) A release plan prepared under subsection (1) or (2) of this section must include:

2 (a) A description of support services and program opportunities available to the inmate, **in-**
3 **cluding any transitional housing or treatment programs to which the inmate has been ac-**
4 **cepted;**

5 (b) The recommended conditions of post-prison supervision;

6 (c) The level of supervision that shall be consistent with the inmate's risk assessment classi-
7 fication;

8 (d) Any other conditions and requirements as may be necessary to promote public safety;

9 (e) For all inmates whose sentence to make restitution under ORS 137.106 has been suspended
10 for the term of imprisonment, a restitution payment schedule; and

11 (f) Any conditions necessary to assist the reformation of the inmate.

12 **SECTION 2.** ORS 144.096, as amended by section 35, chapter 649, Oregon Laws 2013, is
13 amended to read:

14 144.096. (1)(a) The Department of Corrections shall prepare a proposed release plan for an in-
15 mate prior to the inmate's release from prison.

16 (b) The department shall submit the proposed release plan to the State Board of Parole and
17 Post-Prison Supervision not less than 60 days prior to the inmate's release.

18 (c) If the proposed release plan is not approved by the board, the board shall return the plan
19 to the department with its recommended modifications. The department shall submit a revised plan
20 to the board not less than 10 days prior to the inmate's release.

21 (d) If the revised plan is not acceptable to the board, the board shall determine the provisions
22 of the final plan prior to the inmate's release.

23 (2) The local supervisory authority that is responsible for correctional services for an inmate
24 shall prepare a proposed release plan for the inmate prior to the inmate's release from jail. The local
25 supervisory authority shall approve the release plan under its rules.

26 (3) A release plan prepared under subsection (1) or (2) of this section must include:

27 (a) A description of support services and program opportunities available to the inmate, **in-**
28 **cluding any transitional housing or treatment programs to which the inmate has been ac-**
29 **cepted;**

30 (b) The recommended conditions of post-prison supervision;

31 (c) The level of supervision that shall be consistent with the inmate's risk assessment classi-
32 fication;

33 (d) Any other conditions and requirements as may be necessary to promote public safety;

34 (e) For all inmates whose sentence to make restitution under ORS 137.106 has been suspended
35 for the term of imprisonment, a restitution payment schedule; and

36 (f) Any conditions necessary to assist the reformation of the inmate.

37 **SECTION 3.** ORS 144.102 is amended to read:

38 144.102. (1) The State Board of Parole and Post-Prison Supervision or local supervisory authority
39 responsible for correctional services for a person shall specify in writing the conditions of post-
40 prison supervision imposed under ORS 144.096. A copy of the conditions must be given to the person
41 upon release from prison or jail.

42 (2) The board or the supervisory authority shall determine, and may at any time modify, the
43 conditions of post-prison supervision, which may include, among other conditions, that the person
44 shall:

45 (a) Comply with the conditions of post-prison supervision as specified by the board or supervi-

1 sory authority.

2 (b) Be under the supervision of the Department of Corrections and its representatives or other
3 supervisory authority and abide by their direction and counsel.

4 (c) Answer all reasonable inquiries of the board, the department or the supervisory authority.

5 (d) Report to the parole officer as directed by the board, the department or the supervisory au-
6 thority.

7 (e) Not own, possess or be in control of any weapon.

8 (f) Respect and obey all municipal, county, state and federal laws.

9 (g) Understand that the board or supervisory authority may, at its discretion, punish violations
10 of post-prison supervision.

11 (h) Attend a victim impact treatment session in a county that has a victim impact program. If
12 the board or supervisory authority requires attendance under this paragraph, the board or supervi-
13 sory authority may require the person, as an additional condition of post-prison supervision, to pay
14 a reasonable fee to the victim impact program to offset the cost of the person's participation. The
15 board or supervisory authority may not order a person to pay a fee in excess of \$5 under this par-
16 agraph.

17 (3) If the person is required to report as a sex offender under ORS 163A.010, the board or su-
18 pervisory authority shall include as a condition of post-prison supervision that the person report
19 with the Department of State Police, a city police department, a county sheriff's office or the
20 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 person's date of birth;

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

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

28 (4)(a) The board or supervisory authority may establish special conditions that the board or su-
29 pervisory authority considers necessary because of the individual circumstances of the person on
30 post-prison supervision.

31 (b) If the person is on post-prison supervision following conviction of a sex crime, as defined in
32 ORS 163A.005, the board or supervisory authority shall include all of the following as special con-
33 ditions of the person's post-prison supervision:

34 (A) Agreement to comply with a curfew set by the board, the supervisory authority or the
35 supervising officer.

36 (B) A prohibition against contacting a person under 18 years of age without the prior written
37 approval of the board, supervisory authority or supervising officer.

38 (C) A prohibition against being present more than one time, without the prior written approval
39 of the board, supervisory authority or supervising officer, at a place where persons under 18 years
40 of age regularly congregate.

41 (D) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition
42 against being present, without the prior written approval of the board, supervisory authority or
43 supervising officer, at, or on property adjacent to, a school, child care center, playground or other
44 place intended for use primarily by persons under 18 years of age.

45 (E) A prohibition against working or volunteering at a school, child care center, park, play-

1 ground or other place where persons under 18 years of age regularly congregate.

2 (F) Entry into and completion of or successful discharge from a sex offender treatment program
3 approved by the board, supervisory authority or supervising officer. The program may include
4 polygraph and plethysmograph testing. The person is responsible for paying for the treatment pro-
5 gram.

6 (G) A prohibition against direct or indirect contact with the victim, unless approved by the
7 victim, the person's treatment provider and the board, supervisory authority or supervising officer.

8 (H) Unless otherwise indicated for the treatment required under subparagraph (F) of this para-
9 graph, a prohibition against viewing, listening to, owning or possessing sexually stimulating visual
10 or auditory materials that are relevant to the person's deviant behavior.

11 (I) Agreement to consent to a search of the person or the vehicle or residence of the person
12 upon the request of a representative of the board or supervisory authority if the representative has
13 reasonable grounds to believe that evidence of a violation of a condition of post-prison supervision
14 will be found.

15 (J) Participation in random polygraph examinations to obtain information for risk management
16 and treatment. The person is responsible for paying the expenses of the examinations. The results
17 of a polygraph examination under this subparagraph may not be used in evidence in a hearing to
18 prove a violation of post-prison supervision.

19 (K) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless
20 approved by the board, supervisory authority or supervising officer.

21 (L) A prohibition against using a post-office box unless approved by the board, supervisory au-
22 thority or supervising officer.

23 (M) A prohibition against residing in a dwelling in which another sex offender who is on pro-
24 bation, parole or post-prison supervision resides unless approved by the board, supervisory authority
25 or supervising officer, or in which more than one other sex offender who is on probation, parole or
26 post-prison supervision resides unless approved by the board or the director of the supervisory au-
27 thority, or a designee of the board or director. As soon as practicable, the supervising officer of a
28 person subject to the requirements of this subparagraph shall review the person's living arrange-
29 ment with the person's sex offender treatment provider to ensure that the arrangement supports the
30 goals of offender rehabilitation and community safety.

31 (c)(A) If the person is on post-prison supervision following conviction of a sex crime, as defined
32 in ORS 163A.005, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18
33 years of age, the board or supervisory authority, if requested by the victim, shall include as a special
34 condition of the person's post-prison supervision that the person not reside within three miles of the
35 victim unless:

36 (i) The victim resides in a county having a population of less than 130,000 and the person is
37 required to reside in that county under subsection (7) of this section;

38 (ii) The person demonstrates to the board or supervisory authority by a preponderance of the
39 evidence that no mental intimidation or pressure was brought to bear during the commission of the
40 crime;

41 (iii) The person demonstrates to the board or supervisory authority by a preponderance of the
42 evidence that imposition of the condition will deprive the person of a residence that would be
43 materially significant in aiding in the rehabilitation of the person or in the success of the post-prison
44 supervision; or

45 (iv) The person resides in a halfway house.

1 (B) A victim may request imposition of the special condition of post-prison supervision described
2 in this paragraph at the time of sentencing in person or through the prosecuting attorney. A victim's
3 request may be included in the judgment document.

4 (C) If the board or supervisory authority imposes the special condition of post-prison supervision
5 described in this paragraph and if at any time during the period of post-prison supervision the victim
6 moves to within three miles of the person's residence, the board or supervisory authority may not
7 require the person to change the person's residence in order to comply with the special condition
8 of post-prison supervision.

9 (5)(a) The board or supervisory authority may require the person to pay, as a condition of
10 post-prison supervision, compensatory fines, restitution or attorney fees:

11 (A) As determined, imposed or required by the sentencing court; or

12 (B) When previously required as a condition of any type of supervision that is later revoked.

13 (b) The board may require a person to pay restitution as a condition of post-prison supervision
14 imposed for an offense other than the offense for which the restitution was ordered if the person:

15 (A) Was ordered to pay restitution as a result of another conviction; and

16 (B) Has not fully paid the restitution by the time the person has completed the period of post-
17 prison supervision imposed for the offense for which the restitution was ordered.

18 (6) A person's failure to apply for or accept employment at a workplace where there is a labor
19 dispute in progress does not constitute a violation of the conditions of post-prison supervision.

20 (7)(a) When a person is released from imprisonment on post-prison supervision, the board shall
21 order as a condition of post-prison supervision that the person reside for the first six months after
22 release in the county that last supervised the person, if the person was on active supervision as an
23 adult for a felony at the time of the offense that resulted in the imprisonment.

24 (b) If the person was not on active supervision as an adult for a felony at the time of the offense
25 that resulted in the imprisonment, the board shall order as a condition of post-prison supervision
26 that the person reside for the first six months after release in the county where the person resided
27 at the time of the offense that resulted in the imprisonment.

28 (c) For purposes of paragraph (b) of this subsection:

29 (A) The board shall determine the county where the person resided at the time of the offense
30 by examining records such as:

31 (i) An Oregon driver license, regardless of its validity;

32 (ii) Records maintained by the Department of Revenue;

33 (iii) Records maintained by the Department of State Police;

34 (iv) Records maintained by the Department of Human Services;

35 (v) Records maintained by the Department of Corrections; and

36 (vi) Records maintained by the Oregon Health Authority.

37 (B) If the person did not have an identifiable address at the time of the offense, or the address
38 cannot be determined, the person is considered to have resided in the county where the offense oc-
39 curred.

40 (C) If the person is serving multiple sentences, the county of residence is determined according
41 to the date of the last arrest resulting in a conviction.

42 (D) In determining the person's county of residence, the board may not consider offenses com-
43 mitted by the person while the person was incarcerated in a Department of Corrections facility.

44 (d) Upon motion of the board, the supervisory authority, the person, a victim or a district at-
45 torney, the board may waive the residency condition under paragraph (b) of this subsection only

1 after making a finding that one of the following conditions has been met:

2 (A) The person provides proof of employment with no set ending date in a county other than the
3 county of residence determined under paragraph (c) of this section;

4 (B) The person is found to pose a significant danger to a victim of the person's crime residing
5 in the county of residence, or a victim or victim's family residing in the county of residence is found
6 to pose a significant danger to the person;

7 (C) The person has a spouse or biological or adoptive family residing in a county other than the
8 county of residence who will be materially significant in aiding in the rehabilitation of the person
9 and in the success of the post-prison supervision;

10 (D) As another condition of post-prison supervision, the person is required to participate in a
11 treatment program that is not available in the county of residence;

12 (E) The person requests release to another state; or

13 (F) The board finds other good cause for the waiver.

14 (e) **The board shall consider eligibility for transitional housing programs and residential**
15 **treatment programs when determining whether to waive the residency condition under par-**
16 **agraph (b) of this subsection, and the acceptance of the person into a transitional housing**
17 **program or a residential treatment program constitutes good cause as described in para-**
18 **graph (d)(F) of this subsection.**

19 (8) As used in this section:

20 (a) "Attends," "carries on a vocation," "institution of higher education" and "works" have the
21 meanings given those terms in ORS 163A.005.

22 (b)(A) "Dwelling" has the meaning given that term in ORS 469B.100.

23 (B) "Dwelling" does not mean a residential treatment facility or a halfway house.

24 (c) "Halfway house" means a residential facility that provides rehabilitative care and treatment
25 for sex offenders.

26 (d) "Labor dispute" has the meaning given that term in ORS 662.010.

27 **SECTION 4. The Department of Corrections, in consultation with the State Board of**
28 **Parole and Post-Prison Supervision, shall:**

29 (1) **Determine annually:**

30 (a) **The number of persons considered for waiver under ORS 144.102 (7)(d) of the condition**
31 **of post-prison supervision requiring the person to reside for the first six months after re-**
32 **lease in the person's county of residence at the time of the offense resulting in**
33 **imprisonment; and**

34 (b) **The number of persons actually granted waiver under ORS 144.102 (7)(d) and the**
35 **specific finding authorizing the waiver; and**

36 (2) **Submit a report containing the data described in subsection (1) of this section to the**
37 **interim committees of the Legislative Assembly related to the judiciary in the manner pro-**
38 **vided in ORS 192.245 no later than January 31 of each year.**

39 **SECTION 5. Section 4 of this 2017 Act is repealed on February 1, 2022.**

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