

# Senate Bill 315

Sponsored by Senators WINTERS, KNOPP; Senator FERRIOLI (Presession filed.)

## 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, at request of victim, special condition of probation restricting location of person's residence if person released on probation following conviction for felony stalking crime.

## A BILL FOR AN ACT

1  
2 Relating to residential conditions of probation requested by victims in stalking cases; creating new  
3 provisions; and amending ORS 137.540.

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

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

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

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

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

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

13 (d) 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 (e) Remain in the State of Oregon until written permission to leave is granted by the Depart-  
17 ment of Corrections or a county community corrections agency.

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

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

26 (i) 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 (j) 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 (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections  
2 or a county community corrections agency.

3 (L) Not possess weapons, firearms or dangerous animals.

4 (m) Report as required and abide by the direction of the supervising officer.

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

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

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

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

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

14 (p) If required to report as a sex offender under ORS 163A.015, 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 (q) Submit to a risk and needs assessment as directed by the supervising officer.

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

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

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

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

37 (B) Comply with any special conditions of probation that are imposed by the supervising officer  
38 in accordance with subsection [(8)] (9) of this section.

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

41 **(3)(a) If a person is released on probation following conviction of stalking under ORS**  
42 **163.732 (2)(b) or violating a court's stalking protective order under ORS 163.750 (2)(b), the**  
43 **court, if requested by the victim, may include as a special condition of the person's probation**  
44 **that the person not reside within three miles of the victim unless:**

45 **(A) The victim resides in a county having a population of less than 130,000 and the person**

1 **is required to reside in that county;**

2 **(B) The person demonstrates to the court by clear and convincing evidence that residing**  
 3 **within three miles of the victim would not jeopardize the safety and welfare of the victim**  
 4 **or the victim's immediate family or household members; or**

5 **(C) The person demonstrates to the court by a preponderance of the evidence that im-**  
 6 **position of the special condition would deprive the person of a residence that would be**  
 7 **materially significant in aiding in the rehabilitation of the person or in the success of the**  
 8 **probation.**

9 **(b) A victim may request imposition of the special condition of probation described in this**  
 10 **subsection at the time of sentencing in person or through the prosecuting attorney.**

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

15 [(3)] (4) When a person who is a sex offender is released on probation, the court shall impose  
 16 as a special condition of probation that the person not reside in any dwelling in which another sex  
 17 offender who is on probation, parole or post-prison supervision resides, without the approval of the  
 18 person's supervising parole and probation officer, or in which more than one other sex offender who  
 19 is on probation, parole or post-prison supervision resides, without the approval of the director of the  
 20 probation agency that is supervising the person or of the county manager of the Department of  
 21 Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole  
 22 and probation officer of a person subject to the requirements of this subsection shall review the  
 23 person's living arrangement with the person's sex offender treatment provider to ensure that the  
 24 arrangement supports the goals of offender rehabilitation and community safety. As used in this  
 25 subsection:

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

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

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

30 (d) "Sex offender" has the meaning given that term in ORS 163A.005.

31 [(4)(a)] (5)(a) If the person is released on probation following conviction of a sex crime, as de-  
 32 fined in ORS 163A.005, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under  
 33 18 years of age, the court, if requested by the victim, shall include as a special condition of the  
 34 person's probation that the person not reside within three miles of the victim unless:

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

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

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

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

45 (b) A victim may request imposition of the special condition of probation described in this sub-

1 section at the time of sentencing in person or through the prosecuting attorney.

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

6 [(5)] (6) When a person who is a sex offender, as defined in ORS 163A.005, is released on pro-  
7 bation, the Department of Corrections or the county community corrections agency, whichever is  
8 appropriate, shall notify the city police department, if the person is going to reside within a city,  
9 and the county sheriff's office of the county in which the person is going to reside of the person's  
10 release and the conditions of the person's release.

11 [(6)] (7) Failure to abide by all general and special conditions of probation may result in arrest,  
12 modification of conditions, revocation of probation or imposition of structured, intermediate sanc-  
13 tions in accordance with rules adopted under ORS 137.595.

14 [(7)] (8) The court may order that probation be supervised by the court. If the court orders that  
15 probation be supervised by the court, the defendant shall pay a fee of \$100 to the court. Fees im-  
16 posed under this subsection in the circuit court shall be deposited by the clerk of the court in the  
17 General Fund. Fees imposed in a justice court under this subsection shall be paid to the county  
18 treasurer. Fees imposed in a municipal court under this subsection shall be paid to the city treas-  
19 urer.

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

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

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

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

33 [(9)] (10) A court may not order revocation of probation as a result of the probationer's failure  
34 to pay restitution unless the court determines from the totality of the circumstances that the pur-  
35 poses of the probation are not being served.

36 [(10)] (11) It is not a cause for revocation of probation that the probationer failed to apply for  
37 or accept employment at any workplace where there is a labor dispute in progress. As used in this  
38 subsection, "labor dispute" has the meaning for that term provided in ORS 662.010.

39 [(11)(a)] (12)(a) If the court determines that a defendant has violated the terms of probation, the  
40 court shall collect a \$25 fee from the defendant and may impose a fee for the costs of extraditing  
41 the defendant to this state for the probation violation proceeding if the defendant left the state in  
42 violation of the conditions of the defendant's probation. The fees imposed under this subsection be-  
43 come part of the judgment and may be collected in the same manner as a fine.

44 (b) Probation violation fees collected under this subsection in the circuit court shall be depos-  
45 ited by the clerk of the court in the General Fund. Extradition cost fees collected in the circuit

1 court under this subsection shall be deposited by the clerk of the court in the Arrest and Return  
2 Account established by ORS 133.865. Fees collected in a justice court under this subsection shall  
3 be paid to the county treasurer. Fees collected in a municipal court under this subsection shall be  
4 paid to the city treasurer.

5 [(12)] (13) As used in this section, “attends,” “institution of higher education,” “works” and  
6 “carries on a vocation” have the meanings given those terms in ORS 163A.005.

7 **SECTION 2. The amendments to ORS 137.540 by section 1 of this 2017 Act apply to crimes**  
8 **committed on or after the effective date of this 2017 Act.**

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