

SB 714-1
(LC 3382)
4/14/17 (JLM/SCT/ps)

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 714**

1 In line 2 of the printed bill, after “crime;” delete the rest of the line and
2 insert “creating new provisions; and amending ORS 137.540 and 144.102.”.

3 Delete lines 4 through 18 and insert:

4 **“SECTION 1.** ORS 137.540 is amended to read:

5 “137.540. (1) The court may sentence the defendant to probation subject
6 to the following general conditions unless specifically deleted by the court.

7 The probationer shall:

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

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

12 “(c) Submit to testing for controlled substance or alcohol use if the
13 probationer has a history of substance abuse or if there is a reasonable sus-
14 picion that the probationer has illegally used controlled substances.

15 “(d) Participate in a substance abuse evaluation as directed by the
16 supervising officer and follow the recommendations of the evaluator if there
17 are reasonable grounds to believe there is a history of substance abuse.

18 “(e) Remain in the State of Oregon until written permission to leave is
19 granted by the Department of Corrections or a county community corrections
20 agency.

21 “(f) If physically able, find and maintain gainful full-time employment,

1 approved schooling, or a full-time combination of both. Any waiver of this
2 requirement must be based on a finding by the court stating the reasons for
3 the waiver.

4 “(g) Change neither employment nor residence without prior permission
5 from the Department of Corrections or a county community corrections
6 agency.

7 “(h) Permit the parole and probation officer to visit the probationer or
8 the probationer’s work site or residence and to conduct a walk-through of
9 the common areas and of the rooms in the residence occupied by or under
10 the control of the probationer.

11 “(i) Consent to the search of person, vehicle or premises upon the request
12 of a representative of the supervising officer if the supervising officer has
13 reasonable grounds to believe that evidence of a violation will be found, and
14 submit to fingerprinting or photographing, or both, when requested by the
15 Department of Corrections or a county community corrections agency for
16 supervision purposes.

17 “(j) Obey all laws, municipal, county, state and federal.

18 “(k) Promptly and truthfully answer all reasonable inquiries by the De-
19 partment of Corrections or a county community corrections agency.

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

21 “(m) Report as required and abide by the direction of the supervising of-
22 ficer.

23 “(n) If recommended by the supervising officer, successfully complete a
24 sex offender treatment program approved by the supervising officer and
25 submit to polygraph examinations at the direction of the supervising officer
26 if the probationer:

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

28 “(B) Was previously convicted of a sex offense under ORS 163.305 to
29 163.467; or

30 “(C) Was previously convicted in another jurisdiction of an offense that

1 would constitute a sex offense under ORS 163.305 to 163.467 if committed in
2 this state.

3 “(o) Participate in a mental health evaluation as directed by the super-
4 vising officer and follow the recommendation of the evaluator.

5 “(p) If required to report as a sex offender under ORS 163A.015, report
6 with the Department of State Police, a city police department, a county
7 sheriff’s office or the supervising agency:

8 “(A) When supervision begins;

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

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

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

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

15 “(q) Submit to a risk and needs assessment as directed by the supervising
16 officer.

17 “(2) In addition to the general conditions, the court may impose any spe-
18 cial conditions of probation that are reasonably related to the crime of con-
19 viction or the needs of the probationer for the protection of the public or
20 reformation of the probationer, or both, including, but not limited to, that
21 the probationer shall:

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

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

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

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

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

10 **“(3)(a) If a person is released on probation following conviction of**
11 **stalking under ORS 163.732 (2)(b) or violating a court’s stalking pro-**
12 **TECTIVE ORDER UNDER ORS 163.750 (2)(b), the court may include as a**
13 **SPECIAL CONDITION OF THE PERSON’S PROBATION REASONABLE RESIDENCY RE-**
14 **STRICTIONS.**

15 **“(b) If the court imposes the special condition of probation de-**
16 **scribed in this subsection and if at any time during the period of pro-**
17 **bation the victim moves to a location that causes the probationer to**
18 **be in violation of the special condition of probation, the court may not**
19 **require the probationer to change the probationer’s residence in order**
20 **to comply with the special condition of probation.**

21 “[(3)] (4) When a person who is a sex offender is released on probation,
22 the court shall impose as a special condition of probation that the person
23 not reside in any dwelling in which another sex offender who is on pro-
24 bation, parole or post-prison supervision resides, without the approval of the
25 person’s supervising parole and probation officer, or in which more than one
26 other sex offender who is on probation, parole or post-prison supervision re-
27 sides, without the approval of the director of the probation agency that is
28 supervising the person or of the county manager of the Department of Cor-
29 rections, or a designee of the director or manager. As soon as practicable,
30 the supervising parole and probation officer of a person subject to the re-

1 requirements of this subsection shall review the person's living arrangement
2 with the person's sex offender treatment provider to ensure that the ar-
3 rangement supports the goals of offender rehabilitation and community
4 safety. As used in this subsection:

5 “(a) ‘Dwelling’ has the meaning given that term in ORS 469B.100.

6 “(b) ‘Dwelling’ does not include a residential treatment facility or a
7 halfway house.

8 “(c) ‘Halfway house’ means a publicly or privately operated profit or
9 nonprofit residential facility that provides rehabilitative care and treatment
10 for sex offenders.

11 “(d) ‘Sex offender’ has the meaning given that term in ORS 163A.005.

12 “[~~(4)(a)~~] **(5)(a)** If the person is released on probation following conviction
13 of a sex crime, as defined in ORS 163A.005, or an assault, as defined in ORS
14 163.175 or 163.185, and the victim was under 18 years of age, the court, if
15 requested by the victim, shall include as a special condition of the person's
16 probation that the person not reside within three miles of the victim unless:

17 “(A) The victim resides in a county having a population of less than
18 130,000 and the person is required to reside in that county;

19 “(B) The person demonstrates to the court by a preponderance of the ev-
20 idence that no mental intimidation or pressure was brought to bear during
21 the commission of the crime;

22 “(C) The person demonstrates to the court by a preponderance of the ev-
23 idence that imposition of the condition will deprive the person of a residence
24 that would be materially significant in aiding in the rehabilitation of the
25 person or in the success of the probation; or

26 “(D) The person resides in a halfway house. As used in this subparagraph,
27 ‘halfway house’ means a publicly or privately operated profit or nonprofit
28 residential facility that provides rehabilitative care and treatment for sex
29 offenders.

30 “(b) A victim may request imposition of the special condition of probation

1 described in this subsection at the time of sentencing in person or through
2 the prosecuting attorney.

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

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

14 “[6] **(7)** Failure to abide by all general and special conditions of pro-
15 bation may result in arrest, modification of conditions, revocation of pro-
16 bation or imposition of structured, intermediate sanctions in accordance with
17 rules adopted under ORS 137.595.

18 “[7] **(8)** The court may order that probation be supervised by the court.
19 If the court orders that probation be supervised by the court, the defendant
20 shall pay a fee of \$100 to the court. Fees imposed under this subsection in
21 the circuit court shall be deposited by the clerk of the court in the General
22 Fund. Fees imposed in a justice court under this subsection shall be paid to
23 the county treasurer. Fees imposed in a municipal court under this sub-
24 section shall be paid to the city treasurer.

25 “[8)(a)] **(9)(a)** The court may at any time modify the conditions of pro-
26 bation.

27 “(b) When the court orders a defendant placed under the supervision of
28 the Department of Corrections or a community corrections agency, the
29 supervising officer may file with the court a proposed modification to the
30 special conditions of probation. The supervising officer shall provide a copy

1 of the proposed modification to the district attorney and the probationer. If
2 the district attorney:

3 “(A) Files an objection to the proposed modification less than five judicial
4 days after the proposed modification was filed, the court shall schedule a
5 hearing no later than 10 judicial days after the proposed modification was
6 filed, unless the court finds good cause to schedule a hearing at a later time.

7 “(B) Does not file an objection to the proposed modification less than five
8 judicial days after the proposed modification was filed, the proposed modifi-
9 cation becomes effective five judicial days after the proposed modification
10 was filed.

11 “[~~(9)~~ (10) A court may not order revocation of probation as a result of
12 the probationer’s failure to pay restitution unless the court determines from
13 the totality of the circumstances that the purposes of the probation are not
14 being served.

15 “[~~(10)~~ (11) It is not a cause for revocation of probation that the
16 probationer failed to apply for or accept employment at any workplace where
17 there is a labor dispute in progress. As used in this subsection, ‘labor
18 dispute’ has the meaning for that term provided in ORS 662.010.

19 “[~~(11)(a)~~ (12)(a) If the court determines that a defendant has violated the
20 terms of probation, the court shall collect a \$25 fee from the defendant and
21 may impose a fee for the costs of extraditing the defendant to this state for
22 the probation violation proceeding if the defendant left the state in violation
23 of the conditions of the defendant’s probation. The fees imposed under this
24 subsection become part of the judgment and may be collected in the same
25 manner as a fine.

26 “(b) Probation violation fees collected under this subsection in the circuit
27 court shall be deposited by the clerk of the court in the General Fund.
28 Extradition cost fees collected in the circuit court under this subsection
29 shall be deposited by the clerk of the court in the Arrest and Return Account
30 established by ORS 133.865. Fees collected in a justice court under this sub-

1 section shall be paid to the county treasurer. Fees collected in a municipal
2 court under this subsection shall be paid to the city treasurer.

3 “[~~(12)~~] (13) As used in this section, ‘attends,’ ‘institution of higher edu-
4 cation,’ ‘works’ and ‘carries on a vocation’ have the meanings given those
5 terms in ORS 163A.005.

6 **“SECTION 2.** ORS 144.102 is amended to read:

7 “144.102. (1) The State Board of Parole and Post-Prison Supervision or
8 local supervisory authority responsible for correctional services for a person
9 shall specify in writing the conditions of post-prison supervision imposed
10 under ORS 144.096. A copy of the conditions must be given to the person
11 upon release from prison or jail.

12 “(2) The board or the supervisory authority shall determine, and may at
13 any time modify, the conditions of post-prison supervision, which may in-
14 clude, among other conditions, that the person shall:

15 “(a) Comply with the conditions of post-prison supervision as specified by
16 the board or supervisory authority.

17 “(b) Be under the supervision of the Department of Corrections and its
18 representatives or other supervisory authority and abide by their direction
19 and counsel.

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

22 “(d) Report to the parole officer as directed by the board, the department
23 or the supervisory authority.

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

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

26 “(g) Understand that the board or supervisory authority may, at its dis-
27 cretion, punish violations of post-prison supervision.

28 “(h) Attend a victim impact treatment session in a county that has a
29 victim impact program. If the board or supervisory authority requires at-
30 tendance under this paragraph, the board or supervisory authority may re-

1 quire the person, as an additional condition of post-prison supervision, to pay
2 a reasonable fee to the victim impact program to offset the cost of the
3 person's participation. The board or supervisory authority may not order a
4 person to pay a fee in excess of \$5 under this paragraph.

5 “(3) If the person is required to report as a sex offender under ORS
6 163A.010, the board or supervisory authority shall include as a condition of
7 post-prison supervision that the person report with the Department of State
8 Police, a city police department, a county sheriff's office or the supervising
9 agency:

10 “(a) When supervision begins;

11 “(b) Within 10 days of a change in residence;

12 “(c) Once each year within 10 days of the person's date of birth;

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

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

17 “(4)(a) The board or supervisory authority may establish special condi-
18 tions that the board or supervisory authority considers necessary because
19 of the individual circumstances of the person on post-prison supervision.

20 “(b) If the person is on post-prison supervision following conviction of a
21 sex crime, as defined in ORS 163A.005, the board or supervisory authority
22 shall include all of the following as special conditions of the person's post-
23 prison supervision:

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

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

29 “(C) A prohibition against being present more than one time, without the
30 prior written approval of the board, supervisory authority or supervising of-

1 ficer, at a place where persons under 18 years of age regularly congregate.

2 “(D) In addition to the prohibition under subparagraph (C) of this para-
3 graph, a prohibition against being present, without the prior written ap-
4 proval of the board, supervisory authority or supervising officer, at, or on
5 property adjacent to, a school, child care center, playground or other place
6 intended for use primarily by persons under 18 years of age.

7 “(E) A prohibition against working or volunteering at a school, child care
8 center, park, playground or other place where persons under 18 years of age
9 regularly congregate.

10 “(F) Entry into and completion of or successful discharge from a sex
11 offender treatment program approved by the board, supervisory authority or
12 supervising officer. The program may include polygraph and plethysmograph
13 testing. The person is responsible for paying for the treatment program.

14 “(G) A prohibition against direct or indirect contact with the victim, un-
15 less approved by the victim, the person’s treatment provider and the board,
16 supervisory authority or supervising officer.

17 “(H) Unless otherwise indicated for the treatment required under subpar-
18 agraph (F) of this paragraph, a prohibition against viewing, listening to,
19 owning or possessing sexually stimulating visual or auditory materials that
20 are relevant to the person’s deviant behavior.

21 “(I) Agreement to consent to a search of the person or the vehicle or
22 residence of the person upon the request of a representative of the board or
23 supervisory authority if the representative has reasonable grounds to believe
24 that evidence of a violation of a condition of post-prison supervision will be
25 found.

26 “(J) Participation in random polygraph examinations to obtain informa-
27 tion for risk management and treatment. The person is responsible for paying
28 the expenses of the examinations. The results of a polygraph examination
29 under this subparagraph may not be used in evidence in a hearing to prove
30 a violation of post-prison supervision.

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

4 “(L) A prohibition against using a post-office box unless approved by the
5 board, supervisory authority or supervising officer.

6 “(M) A prohibition against residing in a dwelling in which another sex
7 offender who is on probation, parole or post-prison supervision resides unless
8 approved by the board, supervisory authority or supervising officer, or in
9 which more than one other sex offender who is on probation, parole or
10 post-prison supervision resides unless approved by the board or the director
11 of the supervisory authority, or a designee of the board or director. As soon
12 as practicable, the supervising officer of a person subject to the requirements
13 of this subparagraph shall review the person’s living arrangement with the
14 person’s sex offender treatment provider to ensure that the arrangement
15 supports the goals of offender rehabilitation and community safety.

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

22 “(i) The victim resides in a county having a population of less than
23 130,000 and the person is required to reside in that county under subsection
24 (7) of this section;

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

28 “(iii) The person demonstrates to the board or supervisory authority by
29 a preponderance of the evidence that imposition of the condition will deprive
30 the person of a residence that would be materially significant in aiding in

1 the rehabilitation of the person or in the success of the post-prison super-
2 vision; or

3 “(iv) The person resides in a halfway house.

4 “(B) A victim may request imposition of the special condition of post-
5 prison supervision described in this paragraph at the time of sentencing in
6 person or through the prosecuting attorney. A victim’s request may be in-
7 cluded in the judgment document.

8 “(C) If the board or supervisory authority imposes the special condition
9 of post-prison supervision described in this paragraph and if at any time
10 during the period of post-prison supervision the victim moves to within three
11 miles of the person’s residence, the board or supervisory authority may not
12 require the person to change the person’s residence in order to comply with
13 the special condition of post-prison supervision.

14 **“(d)(A) If a person is on post-prison supervision following conviction**
15 **of stalking under ORS 163.732 (2)(b) or violating a court’s stalking**
16 **protective order under ORS 163.750 (2)(b), the board or supervisory**
17 **authority may include as a special condition of the person’s post-**
18 **prison supervision reasonable residency restrictions.**

19 **“(B) If the board or supervisory authority imposes the special con-**
20 **dition of post-prison supervision described in this paragraph and if at**
21 **any time during the period of post-prison supervision the victim moves**
22 **to a location that causes the person to be in violation of the special**
23 **condition of post-prison supervision, the board or supervisory author-**
24 **ity may not require the person to change the person’s residence in**
25 **order to comply with the special condition of post-prison supervision.**

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

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

30 “(B) When previously required as a condition of any type of supervision

1 that is later revoked.

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

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

6 “(B) Has not fully paid the restitution by the time the person has com-
7 pleted the period of post-prison supervision imposed for the offense for which
8 the restitution was ordered.

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

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

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

23 “(c) For purposes of paragraph (b) of this subsection:

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

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

27 “(ii) Records maintained by the Department of Revenue;

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

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

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

1 “(vi) Records maintained by the Oregon Health Authority.

2 “(B) If the person did not have an identifiable address at the time of the
3 offense, or the address cannot be determined, the person is considered to
4 have resided in the county where the offense occurred.

5 “(C) If the person is serving multiple sentences, the county of residence
6 is determined according to the date of the last arrest resulting in a con-
7 viction.

8 “(D) In determining the person’s county of residence, the board may not
9 consider offenses committed by the person while the person was incarcerated
10 in a Department of Corrections facility.

11 “(d) Upon motion of the board, the supervisory authority, the person, a
12 victim or a district attorney, the board may waive the residency condition
13 under paragraph (b) of this subsection only after making a finding that one
14 of the following conditions has been met:

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

18 “(B) The person is found to pose a significant danger to a victim of the
19 person’s crime residing in the county of residence, or a victim or victim’s
20 family residing in the county of residence is found to pose a significant
21 danger to the person;

22 “(C) The person has a spouse or biological or adoptive family residing in
23 a county other than the county of residence who will be materially signif-
24 icant in aiding in the rehabilitation of the person and in the success of the
25 post-prison supervision;

26 “(D) As another condition of post-prison supervision, the person is re-
27 quired to participate in a treatment program that is not available in the
28 county of residence;

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

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

1 “(8) As used in this section:

2 “(a) ‘Attends,’ ‘carries on a vocation,’ ‘institution of higher education’ and
3 ‘works’ have the meanings given those terms in ORS 163A.005.

4 “(b)(A) ‘Dwelling’ has the meaning given that term in ORS 469B.100.

5 “(B) ‘Dwelling’ does not mean a residential treatment facility or a half-
6 way house.

7 “(c) ‘Halfway house’ means a residential facility that provides
8 rehabilitative care and treatment for sex offenders.

9 “(d) ‘Labor dispute’ has the meaning given that term in ORS 662.010.

10 **“SECTION 3. The amendments to ORS 137.540 and 144.102 by**
11 **sections 1 and 2 of this 2017 Act apply to crimes committed on or after**
12 **the effective date of this 2017 Act.”.**

13
