

Senate Bill 651

Sponsored by Senator GORSEK (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**.

Provides that probationer or probationer's attorney may file objection to proposed modification to special conditions of probation.

A BILL FOR AN ACT

1
2 Relating to probation conditions; amending ORS 137.540.

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

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

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

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

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

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

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

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

17 (f) If physically able, find and maintain gainful full-time employment, approved schooling, or a
18 full-time combination of both. Any waiver of this requirement must be based on a finding by the
19 court stating the reasons for the waiver.

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

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

25 (i) Consent to the search of person, vehicle or premises upon the request of a representative of
26 the supervising officer if the supervising officer has reasonable grounds to believe that evidence of
27 a violation will be found, and submit to fingerprinting or photographing, or both, when requested
28 by the Department of Corrections or a county community corrections agency for supervision pur-
29 poses.

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

31 (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections

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 or a county community corrections agency.

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

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

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

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

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

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

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

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

15 (A) When supervision begins;

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

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

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

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

22 (q) Submit to a risk and needs assessment as directed by the supervising officer and follow
23 reasonable recommendations resulting from the assessment.

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 (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 (d) For crimes constituting delivery of a controlled substance, as those terms are defined in ORS
42 475.005, or for telephonic harassment under ORS 166.090, or for crimes involving domestic violence,
43 as defined in ORS 135.230, be prohibited from using Internet websites that provide anonymous text
44 message services.

45 (3)(a) If a person is released on probation following conviction of stalking under ORS 163.732

1 (2)(b) or violating a court's stalking protective order under ORS 163.750 (2)(b), the court may include
2 as a special condition of the person's probation reasonable residency restrictions.

3 (b) If the court imposes the special condition of probation described in this subsection and if at
4 any time during the period of probation the victim moves to a location that causes the probationer
5 to be in violation of the special condition of probation, the court may not require the probationer
6 to change the probationer's residence in order to comply with the special condition of probation.

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

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

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

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

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

23 (5)(a) If the person is released on probation following conviction of a sex crime, as defined in
24 ORS 163A.005, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18
25 years of age, the court, if requested by the victim, shall include as a special condition of the person's
26 probation that the person not reside within three miles of the victim unless:

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

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

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

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

37 (b) A victim may request imposition of the special condition of probation described in this sub-
38 section at the time of sentencing in person or through the prosecuting attorney.

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

43 (6) When a person who is a sex offender, as defined in ORS 163A.005, is released on probation,
44 the Department of Corrections or the county community corrections agency, whichever is appropri-
45 ate, shall notify the city police department, if the person is going to reside within a city, and the

1 county sheriff's office of the county in which the person is going to reside of the person's release
2 and the conditions of the person's release.

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

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

12 (9)(a) The court may at any time modify the conditions of probation.

13 (b) When the court orders a defendant placed under the supervision of the Department of Cor-
14 rections or a community corrections agency, the supervising officer may file with the court a pro-
15 posed modification to the special conditions of probation. The supervising officer shall provide a
16 copy of the proposed modification to the district attorney, [and] the probationer **and, if the**
17 **probationer is represented by an attorney, the probationer's attorney.** If the district attorney,
18 **probationer or the probationer's attorney:**

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

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

26 (10) A court may not order revocation of probation as a result of the probationer's failure to
27 pay restitution unless the court determines from the totality of the circumstances that the purposes
28 of the probation are not being served.

29 (11) It is not a cause for revocation of probation that the probationer failed to apply for or ac-
30 cept employment at any workplace where there is a labor dispute in progress. As used in this sub-
31 section, "labor dispute" has the meaning for that term provided in ORS 662.010.

32 (12)(a) If the court determines that a defendant has violated the terms of probation, the court
33 shall collect a \$25 fee from the defendant and may impose a fee for the costs of extraditing the de-
34 fendant to this state for the probation violation proceeding if the defendant left the state in violation
35 of the conditions of the defendant's probation. The fees imposed under this subsection become part
36 of the judgment and may be collected in the same manner as a fine.

37 (b) Probation violation fees collected under this subsection in the circuit court shall be depos-
38 ited by the clerk of the court in the General Fund. Extradition cost fees collected in the circuit
39 court under this subsection shall be deposited by the clerk of the court in the Arrest and Return
40 Account established by ORS 133.865. Fees collected in a justice court under this subsection shall
41 be paid to the county treasurer. Fees collected in a municipal court under this subsection shall be
42 paid to the city treasurer.

43 (13) As used in this section, "attends," "institution of higher education," "works" and "carries
44 on a vocation" have the meanings given those terms in ORS 163A.005.

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