

SB 339-1
(LC 2385)
3/3/23 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 339**

1 In line 2 of the printed bill, after “crime” insert “; amending ORS
2 137.540”.

3 Delete lines 4 through 9 and insert:

4 **“SECTION 1.** ORS 137.540, as amended by section 10, chapter 78, Oregon
5 Laws 2022, is amended to read:

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

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

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

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

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

19 “(e) Not change residence without prior permission from the Department
20 of Corrections or a county community corrections agency and inform the
21 parole and probation officer of any change in employment.

1 “(f) Permit the parole and probation officer to visit the probationer or the
2 probationer’s work site or residence and to conduct a walk-through of the
3 common areas and of the rooms in the residence occupied by or under the
4 control of the probationer.

5 “(g) Consent to the search of person, vehicle or premises upon the request
6 of a representative of the supervising officer if the supervising officer has
7 reasonable grounds to believe that evidence of a violation will be found, and
8 submit to fingerprinting or photographing, or both, when requested by the
9 Department of Corrections or a county community corrections agency for
10 supervision purposes.

11 “(h) Obey all laws, municipal, county, state and federal, and in circum-
12 stances in which state and federal law conflict, obey state law.

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

15 “(j) Not possess weapons, firearms or dangerous animals.

16 “(k) Report as required and abide by the direction of the supervising of-
17 ficer.

18 “(L) If recommended by the supervising officer, successfully complete a
19 sex offender treatment program approved by the supervising officer and
20 submit to polygraph examinations at the direction of the supervising officer
21 if the probationer:

22 “(A) Is under supervision for a sex offense under ORS 163.305 to 163.467
23 **or harassment under ORS 166.065 (4)(a)(A);**

24 “(B) Was previously convicted of a sex offense under ORS 163.305 to
25 163.467; or

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

29 “(m) Participate in a mental health evaluation as directed by the super-
30 vising officer and follow the recommendation of the evaluator.

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

4 “(A) When supervision begins;

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

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

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

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

11 “(o) Submit to a risk and needs assessment as directed by the supervising
12 officer and follow reasonable recommendations resulting from the assess-
13 ment.

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

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

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

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

1 “(B) Comply with any special conditions of probation that are imposed
2 by the supervising officer in accordance with subsection (9) of this section.

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

6 “(d) For crimes constituting delivery of a controlled substance, as those
7 terms are defined in ORS 475.005, or for telephonic harassment under ORS
8 166.090, or for crimes involving domestic violence, as defined in ORS 135.230,
9 be prohibited from using Internet websites that provide anonymous text
10 message services.

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

13 “(3)(a) If a person is released on probation following conviction of stalk-
14 ing under ORS 163.732 (2)(b) or violating a court’s stalking protective order
15 under ORS 163.750 (2)(b), the court may include as a special condition of the
16 person’s probation reasonable residency restrictions.

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

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

1 rections, or a designee of the director or manager. As soon as practicable,
2 the supervising parole and probation officer of a person subject to the re-
3 quirements of this subsection shall review the person’s living arrangement
4 with the person’s sex offender treatment provider to ensure that the ar-
5 rangement supports the goals of offender rehabilitation and community
6 safety. As used in this subsection:

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

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

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

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

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

19 “(A) The victim resides in a county having a population of less than
20 130,000 and the person is required to reside in that county;

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

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

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

1 offenders.

2 “(b) A victim may request imposition of the special condition of probation
3 described in this subsection at the time of sentencing in person or through
4 the prosecuting attorney.

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

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

16 “(7) Failure to abide by all general and special conditions of probation
17 may result in arrest, modification of conditions, revocation of probation or
18 imposition of structured, intermediate sanctions in accordance with rules
19 adopted under ORS 137.595.

20 “(8) The court may order that probation be supervised by the court.

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

22 “(b) When the court orders a defendant placed under the supervision of
23 the Department of Corrections or a community corrections agency, the
24 supervising officer may file with the court a proposed modification to the
25 special conditions of probation. The supervising officer shall provide a copy
26 of the proposed modification to the district attorney and the probationer, and
27 shall notify the probationer of the right to file an objection and have a
28 hearing as described in subparagraph (A) of this paragraph. The notice re-
29 quirement may be satisfied by providing the probationer with a copy of a
30 form developed in accordance with rules adopted under ORS 137.595 (2)(b)

1 that describes the right to a hearing. If the district attorney or probationer:

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

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

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

14 “(11) If the court ordered as a special condition of probation that the
15 probationer find and maintain employment, it is not a cause for revocation
16 of probation that the probationer failed to apply for or accept employment
17 at any workplace where there is a labor dispute in progress. As used in this
18 subsection, ‘labor dispute’ has the meaning for that term provided in ORS
19 662.010.

20 “(12) As used in this section, ‘attends,’ ‘institution of higher education,’
21 ‘works’ and ‘carries on a vocation’ have the meanings given those terms in
22 ORS 163A.005.”.

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