

HB 4041 A -A12 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/23, 2/25

WHAT THE MEASURE DOES:

The measure is a public safety omnibus that reduces two categories of driving while suspended from a misdemeanor to a violation; increases the presumptive sentence for fleeing or attempting to elude a police officer in a vehicle for either repeat offenses or for causing an injury to another person; creates new procedural requirements for petitions for post-conviction relief for nonunanimous jury verdicts; establishes new procedures for sentence computations and for addressing erroneous releases; and increases the monetary value thresholds for varying degrees of theft and criminal mischief. The measure declares an emergency and is effective on passage, but it delays the operation of some sections.

HOUSE VOTE: Ayes, 46; Nays, 9

FISCAL IMPACT: Has minimal fiscal impact

REVENUE IMPACT: Has minimal revenue impact

Detailed Summary:

Driving While Suspended (Sections 1–2)

Removes suspensions or revocations based on criminal mischief and reckless driving from the methods of committing criminal driving while suspended or revoked. Delays the operation of this section to January 1, 2027.

Felony Fleeing or Attempting to Elude (Sections 3–4)

Requires the Criminal Justice Commission (CJC) to classify felony-level fleeing or attempting to elude a police officer in a vehicle as a crime category four in the sentencing guidelines when the defendant has a prior conviction for felony fleeing or attempting to elude a police officer in a vehicle, and as a crime category 6 if the person has two or more prior convictions. Requires the CJC to classify the crime as a person crime and either a category six if the defendant's act results in physical injury to another person, or category eight if the act results in serious physical injury to another person. Delays the operation of this section to January 1, 2027.

Post-Conviction Relief for Nonunanimous Jury Verdicts (Sections 5–6)

Requires a petition for post-conviction relief for convictions by a nonunanimous jury verdict to be filed no later than 120 days after the effective date of the measure. Creates procedures for petitions for post-conviction relief for convictions by a nonunanimous jury verdict, including by establishing the burden of proof and limiting admissible evidence.

Sentence Recalculations (Sections 7–12)

Allows the Department of Corrections (DOC) to petition the court to allow a person to be returned to custody if DOC released the person due to an error in sentence calculation. Provides for procedural requirements for the petition, including appointment of counsel, hearing timelines, possible detention of the person pending the hearing, and victim notification. Applies these provisions to persons released on or after July 10, 2025.

Adds the ability of a trial court to delete or modify an “ambiguous” term in an entry of judgment of conviction or supplemental judgment in addition to erroneous terms. Requires the court to appoint counsel for the person and hold a hearing unless either is waived, and requires the court to only make modifications that are supported by

the record from the original sentencing proceeding.

Prohibits DOC from applying more presentence incarceration credit, sometimes called “credit for time served,” to a person’s sentence than the person actually served in custody unless expressly ordered by the court. Prohibits crediting presentence incarceration credit to more than one consecutive sentence unless expressly ordered by the court in the judgment.

Requires DOC to notify the court and others if, after the initial 140 days of a person’s sentence, DOC recomputes the amount of presentence incarceration credit the person should have and the recalculation results in a projected release date different from the previously computed projected release date. Provides for the procedures of the notice. Applies changes made by Sections 10 and 11 to sentences or sentence computations on or after the measure’s effective date.

Allows DOC to grant a person up to 120 days of transitional leave if the person meets certain requirements and was released between July 10, 2025, and the effective date of the measure due to a “material error in sentence computation or legal interpretation concerning presentence incarceration credits.”

Theft and Criminal Mischief Dollar Amounts (Sections 13–18)

Increases the dollar amount required for several degrees of theft and criminal mischief as follows:

- Theft in the third degree: Changes the total property value from “less than \$100” to “less than \$150”
- Theft in the second degree: Changes the total property value from “\$100 or more and less than \$1,000” to “\$150 or more and less than \$1,500”
- Theft in the first degree: Changes the total property value from “\$1,000 or more” to “\$1,500 or more”
- Criminal mischief in the second degree: Changes the property damage amount from \$500 to \$750
- Criminal mischief in the first degree: Changes the property damage amount from \$1,000 to \$1,500

Delays the operation of these sections to January 1, 2027.

ISSUES DISCUSSED:

- Status of adults in custody released and recaptured after sentence recalculations in 2025
- Relationship of property crime value thresholds to inflation
- Retroactivity of recapture provisions

EFFECT OF AMENDMENT:

-A12 The amendment modifies sections 7 and 12A to prohibit filing a petition to return someone to custody because of an error in sentence calculation if the person has completed or been discharged from the term of post-prison supervision following the person's release and requires, rather than permits, the Department of Corrections to grant additional transitional leave to persons released because of a material error in sentence calculation between July 10, 2025, and the effective date of the measure.

FISCAL IMPACT: Has minimal fiscal impact

REVENUE IMPACT: Has minimal revenue impact

BACKGROUND:

Driving While Suspended

Driving while suspended or revoked, a crime in Oregon, can be either a violation (ORS 811.175), a misdemeanor (ORS 811.182(4)), or a felony (ORS 811.182(3)). To be a misdemeanor, a person must drive while their license is either suspended or revoked and the suspension or revocation must have been based on one of the listed reasons, many of which are the commission of other vehicular crimes. Examples of those reasons include suspensions for recklessly endangering another person resulting from operating a motor vehicle, for reckless driving, and for fleeing or attempting to elude a police officer. If the conduct does not qualify as a misdemeanor

or felony under ORS 811.182, then the driving while suspended is a Class A violation under ORS 811.175.

Felony Fleeing or Attempting to Elude

A person can commit the crime of fleeing or attempting to elude a police officer by operating a motor vehicle and knowingly fleeing or attempting to elude a police officer who has given them a visible or audible signal to stop. If the person gets out of the vehicle after being asked to stop and then flees, the crime is a Class A misdemeanor. If the person stays in the vehicle and flees in the vehicle, it is a Class C felony (ORS 811.540).

Post-Conviction Relief for Nonunanimous Jury Verdicts

Article I, Section 11, was adopted into the Oregon Constitution in 1934 and states that, in the circuit court, 10 jurors may render a verdict of guilty or not guilty for serious offenses, except for the crime of first-degree murder, which shall be found only by a unanimous verdict. As a result, from 1934 to April 2020, juries in Oregon were instructed that, to reach a verdict of guilty in criminal cases, at least 10 of 12 jurors must agree. In *Ramos v. Louisiana*, the U.S. Supreme Court held in 2020 that the Sixth Amendment's unanimous-verdict requirement to convict a defendant of a serious offense applies equally to state and federal criminal trials by way of the Fourteenth Amendment, rendering nonunanimous jury verdicts unconstitutional. In a subsequent case, *Edwards v. Vannoy*, the U.S. Supreme Court held that the *Ramos* jury unanimity rule did not apply retroactively on federal collateral review. However, the court noted that states may choose whether to allow retroactivity for state post-conviction cases. In 2022, the Oregon Supreme Court held in *Watkins v. Ackley* that the *Ramos* jury unanimity rule does apply retroactively under state law, meaning that anyone who had a nonunanimous jury conviction is entitled to a new trial. To get a new trial, an individual must file a post-conviction relief claim. Senate Bill 321 (2023) established a process for people convicted or found guilty except for insanity by a nonunanimous jury verdict to petition the court for post-conviction relief.

Sentence Recalculations

In sentencing a person convicted of a crime to time in prison, Oregon courts may order "presentence incarceration credit" for the person, including time the person was incarcerated before sentencing, in the computation of how much time the person must serve. The court may order that credit be applied to one or more sentences the defendant receives, whether they are counted concurrently or consecutively, and may apply presentence incarceration credits from time spent in jail on the case being sentenced or on other, unrelated matters. DOC computes the time a person must serve in prison, as governed in part by ORS 137.710.

In 2025, the Oregon Supreme Court held in *State ex rel Torres-Lopez v. Fahiron* that DOC did not apply presentence incarceration credit correctly in the case. Based on that ruling and additional legal guidance, DOC reexamined its computations of thousands of sentences, reduced hundreds of sentences, some by several years or more, and released some people in custody after the recalculations meant that they had finished their sentences.

After receiving updated guidance and believing the first recalculation to be a mistake, DOC again recalculated sentences and concluded that some of those released had been released in error. DOC relied on ORS 144.350, which allows DOC to issue arrest warrants for people who have escaped from supervision, custody, or control to bring those released due to a mistaken recalculation back into custody. Several of those people filed lawsuits challenging the use of ORS 144.350 and seeking their release. In *Arellano-Sanchez v. Thrasher*, the Oregon Supreme Court held that DOC had no authority under ORS 144.350 to bring Arellano-Sanchez back into custody because Arellano-Sanchez had not departed unlawfully, but rather as a result of the department's deliberate decision.

Theft and Criminal Mischief Values

In 2009, the legislature enacted House Bill 2323, which increased the value thresholds for various property crimes,

including theft and criminal mischief, for the first time since 1993.

PRELIMINARY