

A-Engrossed
House Bill 4098

Ordered by the House February 13
Including House Amendments dated February 13

Sponsored by Representative HICKS (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.

Allows Department of Corrections inmates to receive credit for time served for presentence incarceration after arrest for lesser included offense, greater inclusive offense or crime committed during same criminal episode as sentencing crime. Authorizes sentencing judge to allow presentence incarceration credit for time served in jail when inmate is also in custody for other sentence. **Applies to sentencing proceedings occurring on or after effective date of Act.**

Provides that inmate shall receive credit for time served in jail before sentence, and time served as part of probation sentence, if probation **imposed as downward dispositional departure** is revoked. Applies to revocation proceedings occurring on or after effective date of Act.

Provides that inmate shall receive credit for time served in jail before sentence and time served as part of conditional discharge probation if probation is revoked.

Allows inmate to receive credit for time served in jail before entering diversion program or specialty court program, and time served for violating conditions of program, if inmate is terminated from program unless judge expressly orders otherwise.

Adds electronic mail address and cellular telephone number to list of personal identifiers of victim or witness subject to restricted discovery. Allows law enforcement to notify victim in matters relating to victim's rights via electronic mail or cellular telephone text message with written consent of victim.

Allows probationer or court to object to supervising officer's proposed modification to special conditions of probation.

Provides that possession, delivery or manufacture of controlled substance constituting commercial drug offense must be for controlled substance other than marijuana or marijuana product.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 135.815, 137.370, 137.372, 137.540, 147.417,
3 419C.276 and 475.900; and declaring an emergency.

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

5 **SECTION 1.** ORS 137.370 is amended to read:

6 137.370. (1) When a person is sentenced to imprisonment in the custody of the Department of
7 Corrections, the term of confinement therein commences from the day the person is delivered to the
8 custody of an officer of the Department of Corrections for the purpose of serving the sentence exe-
9 cuted, regardless of whether the sentence is to be served in a state or federal institution.

10 (2) Except as provided in subsections (3) and (4) of this section, when a person is sentenced to
11 imprisonment in the custody of the Department of Corrections, for the purpose of computing the
12 amount of sentence served the term of confinement includes only:

13 (a) The time that the person is confined by any authority after the arrest for the crime for which
14 sentence is imposed, **a lesser included offense, a greater inclusive offense and any crime con-**
15 **stituting a violation of Oregon law within the same county designated by the sentencing**
16 **court in the judgment as having been committed as part of the same criminal episode; and**

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 (b) The time that the person is authorized by the Department of Corrections to spend outside
2 a confinement facility, in a program conducted by or for the Department of Corrections.

3 (3) When a judgment of conviction is vacated and a new sentence is thereafter imposed upon the
4 defendant for the same crime, **a lesser included offense, a greater inclusive offense or any crime**
5 **constituting a violation of Oregon law within the same county designated by the sentencing**
6 **court in the judgment as having been committed as part of the same criminal episode**, the
7 period of detention and imprisonment theretofore served shall be deducted from the maximum term,
8 and from the minimum, if any, of the new sentence.

9 *[(4) A person who is confined as the result of a sentence for a crime or conduct that is not directly*
10 *related to the crime for which the sentence is imposed, or for violation of the conditions of probation,*
11 *parole or post-prison supervision, shall not receive presentence incarceration credit for the time served*
12 *in jail toward service of the term of confinement.]*

13 (4) **Unless the court expressly orders otherwise, a person may not receive presentence**
14 **incarceration credit for the time served in jail toward service of the term of confinement if**
15 **the person is confined as a result of a sentence for:**

16 (a) **A crime that is not directly related to the crime for which the current sentence is**
17 **imposed; or**

18 (b) **Violation of the conditions of probation, parole or post-prison supervision for a crime**
19 **that is not directly related to the crime for which the current sentence is imposed.**

20 (5) Unless the court expressly orders otherwise, a term of imprisonment shall be concurrent with
21 that portion of any sentence previously imposed that remains unexpired at the time the court im-
22 poses sentence. This subsection applies regardless of whether the earlier sentence was imposed by
23 the same or any other court, and regardless of whether the earlier sentence is being or is to be
24 served in the same penal institution or under the same correctional authority as will be the later
25 sentence.

26 (6) **As used in this section, “criminal episode” has the meaning given that term in ORS**
27 **131.505.**

28 **SECTION 2.** ORS 137.372 is amended to read:

29 137.372. *[(1) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been re-*
30 *voked from a probationary sentence for a felony committed on or after November 1, 1989, shall receive*
31 *credit for the time served in jail after arrest and before commencement of the probationary sentence or*
32 *for the time served in jail as part of the probationary sentence unless the sentencing judge orders oth-*
33 *erwise.]*

34 (1)(a) **Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been**
35 **revoked from a probationary sentence for a felony committed on or after November 1, 1989,**
36 **and whose sentence was imposed as a downward dispositional departure under the rules of**
37 **the Oregon Criminal Justice Commission, shall receive credit for the time served in jail after**
38 **arrest and before commencement of the probationary sentence or for the time served in jail**
39 **as part of the probationary sentence.**

40 (b) **Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been re-**
41 **voked from a probationary sentence for a felony committed on or after November 1, 1989,**
42 **and whose sentence was imposed as a presumptive probationary sentence under the rules**
43 **of the Oregon Criminal Justice Commission, shall receive credit for the time served in jail**
44 **after arrest and before commencement of the probationary sentence or for the time served**
45 **in jail as part of the probationary sentence, unless the sentencing judge orders otherwise.**

1 **(2) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been re-**
2 **voked from a probationary sentence imposed as part of a conditional discharge agreement**
3 **pursuant to ORS 475.245 shall receive credit for the time served in jail after arrest and before**
4 **commencement of the probationary sentence or for the time served in jail as part of the**
5 **probationary sentence.**

6 **(3) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who is sentenced to**
7 **imprisonment in the custody of the Department of Corrections following the failure to com-**
8 **plete a diversion program described in ORS 430.450 to 430.555 or a specialty court program**
9 **shall receive credit for the time served in jail after arrest and before commencement of the**
10 **program and for the time served in jail as a sanction for violating the terms of the program**
11 **unless the sentencing judge expressly orders otherwise.**

12 [(2)] **(4) Notwithstanding the provisions of ORS 137.320 (4), an offender who has been ordered**
13 **confined as part of a probationary sentence for a felony committed on or after July 18, 1995, shall**
14 **receive credit for the time served in jail after arrest and before commencement of the term unless**
15 **the sentencing judge orders otherwise.**

16 **(5) As used in this section, “specialty court” has the meaning given that term in ORS**
17 **137.680.**

18 **SECTION 3.** ORS 135.815 is amended to read:

19 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall
20 disclose to a represented defendant the following material and information within the possession or
21 control of the district attorney:

22 (a) The names and addresses of persons whom the district attorney intends to call as witnesses
23 at any stage of the trial, together with their relevant written or recorded statements or memoranda
24 of any oral statements of such persons.

25 (b) Any written or recorded statements or memoranda of any oral statements made by the de-
26 fendant, or made by a codefendant if the trial is to be a joint one.

27 (c) Any reports or statements of experts, made in connection with the particular case, including
28 results of physical or mental examinations and of scientific tests, experiments or comparisons which
29 the district attorney intends to offer in evidence at the trial.

30 (d) Any books, papers, documents, photographs or tangible objects:

31 (A) Which the district attorney intends to offer in evidence at the trial; or

32 (B) Which were obtained from or belong to the defendant.

33 (e) If actually known to the district attorney, any record of prior criminal convictions of persons
34 whom the district attorney intends to call as witnesses at the trial; and the district attorney shall
35 make a good faith effort to determine if such convictions have occurred.

36 (f) All prior convictions of the defendant known to the state that would affect the determination
37 of the defendant’s criminal history for sentencing under rules of the Oregon Criminal Justice Com-
38 mission.

39 (g) Any material or information that tends to:

40 (A) Exculpate the defendant;

41 (B) Negate or mitigate the defendant’s guilt or punishment; or

42 (C) Impeach a person the district attorney intends to call as a witness at the trial.

43 (2)(a) The disclosure required by subsection (1)(g) of this section shall occur without delay after
44 arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If
45 the existence of the material or information is not known at that time, the disclosure shall be made

1 upon discovery without regard to whether the represented defendant has entered or agreed to enter
2 a guilty plea.

3 (b) Nothing in subsection (1)(g) of this section:

4 (A) Expands any obligation under a statutory provision or the Oregon or United States Consti-
5 tution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement
6 officers.

7 (B) Imposes any obligation on the district attorney to provide material or information beyond
8 the obligation imposed by the Oregon and United States Constitutions.

9 (3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of
10 ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to determine
11 the alcoholic content of the person's blood the district attorney shall disclose to a represented de-
12 fendant at least the following material and information within the possession or control of the dis-
13 trict attorney:

14 (a) Any report prepared by a police officer relating to field tests, interviews, observations and
15 other information relating to the charged offense;

16 (b) Any report relating to the test results;

17 (c) A copy of the form provided to the defendant under ORS 813.100 (3)(b); and

18 (d) Any checklist prepared by the operator of the instrument for the test.

19 (4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the
20 defendant all of the information described in subsections (1) and (3) of this section except for the
21 personal identifiers of the victim and any witnesses.

22 (b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the
23 personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial
24 court shall order the district attorney to disclose the personal identifiers of the victim and any
25 witnesses if the trial court finds that:

26 (A) The defendant has requested the information; and

27 (B)(i) The victim or witness is a business or institution and disclosure of the information would
28 not represent a risk of harm to the victim or witness; or

29 (ii) The need for the information cannot reasonably be met by other means.

30 (5)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a
31 defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers
32 of a victim or witness obtained under subsections (1) and (3) of this section.

33 (b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the
34 defendant the personal identifiers of a victim or witness if the court finds that:

35 (A) The defendant's lawyer has requested the district attorney to disclose the information to the
36 defendant;

37 (B) The district attorney has refused to disclose the information to the defendant; and

38 (C) The need for the information cannot reasonably be met by other means.

39 (6) As used in this section:

40 (a) "Personal identifiers" means a person's address, **electronic mail address**, telephone number,
41 **cellular telephone number**, Social Security number and date of birth and the identifying number
42 of a person's depository account at a financial institution, as defined in ORS 706.008, or credit card
43 account.

44 (b) "Representative of the lawyer" has the meaning given that term in ORS 40.225.

45 (c) "Represented defendant" means a defendant who is represented by a lawyer in a criminal

1 action.

2 **SECTION 4.** ORS 419C.276 is amended to read:

3 419C.276. (1)(a) Unless authorized by the court to disclose the information, the attorney of a
4 youth or youth offender, or an agent of the attorney, may not disclose to the youth or youth offender
5 personal identifiers of a victim or witness.

6 (b) The court shall order the attorney, or agent of the attorney, to disclose to the youth or youth
7 offender the personal identifiers of a victim or witness if the court finds that:

8 (A) The attorney of the youth or youth offender has requested the district attorney or the ju-
9 venile department to disclose the information to the youth or youth offender;

10 (B) The district attorney or the juvenile department has refused to disclose the information to
11 the youth or youth offender; and

12 (C) The need for the information cannot reasonably be met by other means.

13 (2) If contacted by the attorney of the youth or youth offender, an agent of the youth or youth
14 offender, or an agent of the attorney of the youth or youth offender, a victim must be clearly in-
15 formed by the attorney or agent, either in person or in writing:

16 (a) Of the identity and capacity of the person contacting the victim;

17 (b) That the victim does not have to talk to the attorney or agent, or provide other discovery
18 unless the victim wishes; and

19 (c) That the victim may have a representative of the state present during any interview.

20 (3) Unless the victim consents after receiving a full advice of rights as provided in subsection
21 (2) of this section, a victim may not be required to be interviewed or deposed by or give discovery
22 to the youth or youth offender or the attorney for the youth or youth offender, or an agent of the
23 attorney or youth or youth offender. This subsection does not prohibit the youth or youth offender
24 from:

25 (a) Subpoenaing or examining the victim in a proceeding when the purpose is other than for
26 discovery; or

27 (b) Subpoenaing books, papers or documents as provided in ORS 136.580.

28 (4) Any preadjudication release order must prohibit any contact with the victim, either directly
29 or indirectly, unless specifically authorized by the court. This subsection does not limit contact by
30 the attorney for the youth or youth offender, or an agent of the attorney, other than the youth or
31 youth offender, in the manner set forth in subsection (2) of this section.

32 (5)(a) If a victim notifies the district attorney or juvenile department that the youth or youth
33 offender, by direct or indirect contact, threatened or intimidated the victim, the district attorney
34 or juvenile department shall notify the court and the attorney for the youth or youth offender. If the
35 youth or youth offender is not in custody and the court finds there is probable cause to believe the
36 victim has been threatened or intimidated by the youth or youth offender, by direct or indirect
37 contact, the court shall immediately issue an order to show cause why the release status should not
38 be revoked.

39 (b) After conducting a hearing as the court deems appropriate, if the court finds that the victim
40 has been threatened or intimidated by the youth or youth offender, by direct or indirect contact, the
41 release status shall be revoked and the youth or youth offender shall be held in detention until
42 conditions of release sufficient to ensure the safety of the victim and the community can be imple-
43 mented.

44 (c) In any hearing convened under this subsection, the victim has the right to be notified in
45 advance of the hearing, to appear personally at the hearing and, if present, to express any views

1 relevant to the issues before the court.

2 (6)(a) For purposes of subsections (4) and (5) of this section, “contact” has the meaning given
3 that term in ORS 163.730.

4 (b) For the purposes of subsection (1) of this section, “personal identifiers” means a person’s
5 address, **electronic mail address**, telephone number, **cellular telephone number**, Social Security
6 number and date of birth and the identifying number of a person’s depository account at a financial
7 institution, as defined in ORS 706.008, or credit card account.

8 **SECTION 5.** ORS 147.417 is amended to read:

9 147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim,
10 a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense
11 of the person’s rights under section 42, Article I of the Oregon Constitution. The notice may be oral
12 or written. If exercise of any of the rights depends upon the victim making a request, the law
13 enforcement agency shall include in the notice the time period in which the victim is required to
14 make the request. A law enforcement agency satisfies the requirements of this section if the law
15 enforcement agency:

16 (a) Provides notice to the victim named in the accusatory instrument, the victim’s guardian or,
17 in a homicide case, the victim’s next of kin; and

18 (b) Presents, if written notice is given, the notice directly to the victim or sends the notice to
19 the last address given to the law enforcement agency by the victim **or, with the written prior**
20 **consent of the victim, via electronic mail or cellular telephone text message.**

21 (2) Failure by a law enforcement agency to properly notify the victim as required by this sec-
22 tion:

23 (a) Is not grounds for setting aside a conviction.

24 (b) Does not affect the validity of a plea, except as provided by section 42 or 43, Article I of the
25 Oregon Constitution.

26 (3) Nothing in subsection (2) of this section justifies a failure to properly notify the victim.

27 (4)(a) As used in this section, “law enforcement agency” means the police agency that initially
28 responds in the case, the police agency that investigates the case or the district attorney who
29 prosecutes the case.

30 (b) The district attorney shall determine if the notice required by this section has been given
31 and, if not, shall provide the notice.

32 **SECTION 6.** (1) **The amendments to ORS 137.370 by section 1 of this 2014 Act apply to**
33 **sentencing proceedings occurring on or after the effective date of this 2014 Act.**

34 (2) **The amendments to ORS 137.372 by section 2 of this 2014 Act apply to probation vio-**
35 **lation proceedings occurring on or after the effective date of this 2014 Act.**

36 **SECTION 7.** ORS 137.540 is amended to read:

37 137.540. (1) The court may sentence the defendant to probation subject to the following general
38 conditions unless specifically deleted by the court. The probationer shall:

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

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

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

44 (d) Submit to a risk and needs assessment as directed by the supervising officer;

45 (e) Participate in a substance abuse evaluation as directed by the supervising officer and follow

1 the recommendations of the evaluator if there are reasonable grounds to believe there is a history
2 of substance abuse.

3 (f) Remain in the State of Oregon until written permission to leave is granted by the Department
4 of Corrections or a county community corrections agency.

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

8 (h) Change neither employment nor residence without prior permission from the Department of
9 Corrections or a county community corrections agency.

10 (i) Permit the parole and probation officer to visit the probationer or the probationer's work site
11 or residence and to conduct a walk-through of the common areas and of the rooms in the residence
12 occupied by or under the control of the probationer.

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

18 (k) Obey all laws, municipal, county, state and federal.

19 (L) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections
20 or a county community corrections agency.

21 (m) Not possess weapons, firearms or dangerous animals.

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

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

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

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

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

31 (p) Report as required and abide by the direction of the supervising officer.

32 (q) If required to report as a sex offender under ORS 181.807, report with the Department of
33 State Police, a city police department, a county sheriff's office or the supervising agency:

34 (A) When supervision begins;

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

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

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

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

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

45 (a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after

1 November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence
2 or to the premises thereof, or be subject to any combination of such confinement and restriction,
3 such confinement or restriction or combination thereof to be for a period not to exceed one year
4 or one-half of the maximum period of confinement that could be imposed for the offense for which
5 the defendant is convicted, whichever is the lesser.

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

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

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

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

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

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

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

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

28 (d) "Sex offender" has the meaning given that term in ORS 181.805.

29 (4)(a) If the person is released on probation following conviction of a sex crime, as defined in
30 ORS 181.805, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years
31 of age, the court, if requested by the victim, shall include as a special condition of the person's
32 probation that the person not reside within three miles of the victim unless:

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

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

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

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

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

45 (c) If the court imposes the special condition of probation described in this subsection and if at

1 any time during the period of probation the victim moves to within three miles of the probationer's
2 residence, the court may not require the probationer to change the probationer's residence in order
3 to comply with the special condition of probation.

4 (5) When a person who is a sex offender, as defined in ORS 181.805, is released on probation,
5 the Department of Corrections or the county community corrections agency, whichever is appropri-
6 ate, shall notify the city police department, if the person is going to reside within a city, and the
7 county sheriff's office of the county in which the person is going to reside of the person's release
8 and the conditions of the person's release.

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

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

18 (8)(a) The court may at any time modify the conditions of probation.

19 (b) When the court orders a defendant placed under the supervision of the Department of Cor-
20 rections or a community corrections agency, the supervising officer may file with the court a pro-
21 posed modification to the special conditions of probation. The supervising officer shall provide a
22 copy of the proposed modification to the district attorney and the probationer. **If the modification**
23 **is proposed within 30 days after the defendant's sentencing, the supervising officer shall also**
24 **provide a copy of the proposed modification to the defendant's attorney of record on the case**
25 **for which the defendant was sentenced to probation.**

26 (c) If the district attorney, **the probationer or the court:**

27 (A) Files an objection to the proposed modification less than [*five*] 10 judicial days after the
28 proposed modification was **received or, for the court's objection**, filed, the court shall schedule
29 a hearing no later than 10 judicial days after the proposed modification was filed, unless the court
30 finds good cause to schedule a hearing at a later time.

31 (B) Does not file an objection to the proposed modification less than [*five*] 10 judicial days after
32 the proposed modification was **received or, for the court's objection**, filed, the proposed modifi-
33 cation becomes effective [*five*] 10 judicial days after the proposed modification was filed.

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

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

40 (11) If the court determines that a defendant has violated the terms of probation, the court shall
41 collect a \$25 fee from the defendant. The fee becomes part of the judgment and may be collected in
42 the same manner as a fine. Fees collected under this subsection in the circuit court shall be depos-
43 ited by the clerk of the court in the General Fund. Fees collected in a justice court under this
44 subsection shall be paid to the county treasurer. Fees collected in a municipal court under this
45 subsection shall be paid to the city treasurer.

1 (12) As used in this section, “attends,” “institution of higher education,” “works” and “carries
2 on a vocation” have the meanings given those terms in ORS 181.805.

3 **SECTION 8.** ORS 475.900 is amended to read:

4 475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified
5 as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

6 (a) The violation constitutes delivery or manufacture of a controlled substance and involves
7 substantial quantities of a controlled substance. For purposes of this paragraph, the following
8 amounts constitute substantial quantities of the following controlled substances:

9 (A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

10 (B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

11 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-
12 phetamine, its salts, isomers or salts of its isomers;

13 (D) Two hundred or more user units of a mixture or substance containing a detectable amount
14 of lysergic acid diethylamide;

15 (E) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin
16 or psilocin; or

17 (F) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance con-
18 taining a detectable amount of:

19 (i) 3,4-methylenedioxyamphetamine;

20 (ii) 3,4-methylenedioxymethamphetamine; or

21 (iii) 3,4-methylenedioxy-N-ethylamphetamine.

22 (b) The violation constitutes possession, delivery or manufacture of a controlled substance **other**
23 **than marijuana or marijuana product** and the possession, delivery or manufacture is a commer-
24 **cial drug offense. A possession, delivery or manufacture of a controlled substance other than**
25 **marijuana or marijuana product** is a commercial drug offense for purposes of this subsection if
26 it is accompanied by at least three of the following factors:

27 (A) The delivery was of heroin, cocaine, methamphetamine, lysergic acid diethylamide,
28 psilocybin or psilocin and was for consideration;

29 (B) The offender was in possession of \$300 or more in cash;

30 (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS
31 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous
32 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly
33 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a
34 controlled substance offense;

35 (D) The offender was in possession of materials being used for the packaging of controlled sub-
36 stances such as scales, wrapping or foil, other than the material being used to contain the substance
37 that is the subject of the offense;

38 (E) The offender was in possession of drug transaction records or customer lists;

39 (F) The offender was in possession of stolen property;

40 (G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled
41 substance offense;

42 (H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor
43 chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

44 (I) The offender was using public lands for the manufacture of controlled substances;

45 (J) The offender had constructed fortifications or had taken security measures with the potential

- 1 of injuring persons; or
- 2 (K) The offender was in possession of controlled substances in an amount greater than:
- 3 (i) Three grams or more of a mixture or substance containing a detectable amount of heroin;
- 4 (ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;
- 5 (iii) Eight grams or more of a mixture or substance containing a detectable amount of metham-
- 6 phetamine;
- 7 (iv) Twenty or more user units of a mixture or substance containing a detectable amount of
- 8 lysergic acid diethylamide;
- 9 (v) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin
- 10 or psilocin; or
- 11 (vi) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance con-
- 12 taining a detectable amount of:
- 13 (I) 3,4-methylenedioxyamphetamine;
- 14 (II) 3,4-methylenedioxymethamphetamine; or
- 15 (III) 3,4-methylenedioxy-N-ethylamphetamine.
- 16 (c) The violation constitutes a violation of ORS 475.848, 475.852, 475.862, 475.868, 475.872,
- 17 475.878, 475.882, 475.888, 475.892 or 475.904.
- 18 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists
- 19 of:
- 20 (A) A chemical reaction involving one or more precursor substances for the purpose of manu-
- 21 facturing methamphetamine; or
- 22 (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of
- 23 manufacturing methamphetamine.
- 24 (e) The violation constitutes a violation of ORS 475.860 (4)(a) or a violation of ORS 475.906 (1)
- 25 or (2) that is not described in ORS 475.907.
- 26 (2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified as crime category 6 of
- 27 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:
- 28 (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or
- 29 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or
- 30 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.
- 31 (b) The violation constitutes possession of:
- 32 (A) Five grams or more of a mixture or substance containing a detectable amount of heroin;
- 33 (B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;
- 34 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-
- 35 phetamine;
- 36 (D) Two hundred or more user units of a mixture or substance containing a detectable amount
- 37 of lysergic acid diethylamide;
- 38 (E) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin
- 39 or psilocin; or
- 40 (F) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance con-
- 41 taining a detectable amount of:
- 42 (i) 3,4-methylenedioxyamphetamine;
- 43 (ii) 3,4-methylenedioxymethamphetamine; or
- 44 (iii) 3,4-methylenedioxy-N-ethylamphetamine.
- 45 (3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection (1) or

1 (2) of this section shall be classified as:

2 (a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-
3 sion if the violation involves delivery or manufacture of a controlled substance; or

4 (b) Crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-
5 sion if the violation involves possession of a controlled substance.

6 (4) In order to prove a commercial drug offense, the state shall plead in the accusatory instru-
7 ment sufficient factors of a commercial drug offense under subsections (1) and (2) of this section.
8 The state has the burden of proving each factor beyond a reasonable doubt.

9 (5) As used in this section, "mixture or substance" means any mixture or substance, whether
10 or not the mixture or substance is in an ingestible or marketable form at the time of the offense.

11 **SECTION 9. This 2014 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
13 **on its passage.**

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