

A-Engrossed
Senate Bill 730

Ordered by the Senate June 29
Including Senate Amendments dated June 29

Sponsored by COMMITTEE ON JUDICIARY

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.

[Eliminates] **Extends until July 1, 2013**, sunset of provision that limits length of incarceration that court may impose when certain probationary sentences are revoked.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 137.545 and sections 48 and 49, chapter
3 660, Oregon Laws 2009; and declaring an emergency.

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

5 **SECTION 1.** ORS 137.545, as amended by section 32, chapter 660, Oregon Laws 2009, is
6 amended to read:

7 137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice
8 Commission for felonies committed on or after November 1, 1989:

9 (a) The period of probation shall be as the court determines and may, in the discretion of the
10 court, be continued or extended.

11 (b) The court may at any time discharge a person from probation.

12 (2) At any time during the probation period, the court may issue a warrant and cause a de-
13 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
14 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
15 rant for violating any condition of probation, and a statement by the parole and probation officer
16 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
17 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
18 detention of the probationer in the county jail until the probationer can be brought before the court
19 or until the parole and probation officer or supervisory personnel impose and the offender agrees
20 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
21 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
22 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
23 personnel, the disposition shall take place in no more than five judicial days. If the offender does
24 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
25 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
26 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
27 tention to the court that imposed the probation. The parole and probation officer shall promptly
28 submit to the court a report showing in what manner the probationer has violated the conditions

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 of probation.

2 (3) Except for good cause shown or at the request of the probationer, the probationer shall be
3 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
4 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a
5 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
6 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
7 the probationer upon the condition that the probationer appear in court at a later date for a pro-
8 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
9 the magistrate may order the probationer released subject to an additional order to the probationer
10 that the probationer report within seven calendar days to the court that imposed the probation.

11 (4) When a probationer has been sentenced to probation in more than one county and the
12 probationer is being held on an out-of-county warrant for a probation violation, the court may con-
13 sider consolidation of some or all pending probation violation proceedings pursuant to rules made
14 and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

15 (a) Upon the motion of the district attorney or defense counsel in the county in which the
16 probationer is held; or

17 (b) Upon the court's own motion.

18 (5)(a) For defendants sentenced for felonies committed prior to November 1, 1989, and for any
19 misdemeanor, the court that imposed the probation, after summary hearing, may revoke the pro-
20 bation and:

21 (A) If the execution of some other part of the sentence has been suspended, the court shall cause
22 the rest of the sentence imposed to be executed.

23 (B) If no other sentence has been imposed, the court may impose any other sentence which or-
24 iginally could have been imposed.

25 (b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that
26 imposed the probationary sentence may revoke probation supervision and impose a sanction as
27 provided by rules of the Oregon Criminal Justice Commission. **If the defendant was sentenced to**
28 **a presumptive period of probation, the court may not impose a term of incarceration that**
29 **exceeds 60 days as a revocation sanction unless the revocation is the result of the**
30 **defendant's conviction for a new crime.**

31 (6) Except for good cause shown, if the revocation hearing is not conducted within 14 calendar
32 days following the arrest or detention of the probationer, the probationer shall be released from
33 custody.

34 (7) A defendant who has been previously confined in the county jail as a condition of probation
35 pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon
36 Criminal Justice Commission may be given credit for all time thus served in any order or judgment
37 of confinement resulting from revocation of probation.

38 (8) In the case of any defendant whose sentence has been suspended but who has not been sen-
39 tenced to probation, the court may issue a warrant and cause the defendant to be arrested and
40 brought before the court at any time within the maximum period for which the defendant might or-
41 iginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
42 pension of sentence and cause the sentence imposed to be executed.

43 (9) If a probationer fails to appear or report to a court for further proceedings as required by
44 an order under subsection (3) of this section, the failure to appear may be prosecuted in the county
45 to which the probationer was ordered to appear or report.

1 (10) The probationer may admit or deny the violation by being physically present at the hearing
2 or by means of simultaneous electronic transmission as described in ORS 131.045.

3 (11) The victim has the right:

4 (a) Upon request made within the time period prescribed in the notice required by ORS 147.417,
5 to be notified of any hearing before the court that may result in the revocation of the defendant's
6 probation for a felony or person Class A misdemeanor. The notification shall be provided by:

7 (A) The district attorney if the defendant is not supervised by the supervisory authority or if the
8 defendant is supervised by the supervisory authority and the district attorney initiates a request
9 with the court for a probation violation or revocation hearing.

10 (B) The supervisory authority if the defendant is supervised by the supervisory authority and
11 the supervisory authority initiates a request with the court for a probation violation or revocation
12 hearing.

13 (b) To appear personally at the hearing.

14 (c) If present, to reasonably express any views relevant to the issues before the court.

15 (12) As used in this section:

16 (a) "Person Class A misdemeanor" has the meaning given that term in the rules of the Oregon
17 Criminal Justice Commission.

18 (b) "Supervisory authority" has the meaning given that term in ORS 144.087.

19 **SECTION 2. The amendments to ORS 137.545 by section 1 of this 2011 Act apply to crimes**
20 **committed on or after July 1, 2011, and before July 1, 2013.**

21 **SECTION 3.** Section 48, chapter 660, Oregon Laws 2009, as amended by section 5, chapter 2,
22 Oregon Laws 2010, is amended to read:

23 **Sec. 48.** (1)(a) Section 18, chapter 660, Oregon Laws 2009, becomes operative on the date that
24 is 60 days after July 1, 2009.

25 (b) The Department of Corrections, the Judicial Department, the State Board of Parole and
26 Post-Prison Supervision and the district attorneys of this state may take any action before the op-
27 erative date specified in paragraph (a) of this subsection that is necessary to enable the depart-
28 ments, board or district attorneys to exercise, on or after the operative date specified in paragraph
29 (a) of this subsection, all the duties, functions and powers conferred on the departments, board or
30 district attorneys by chapter 660, Oregon Laws 2009.

31 [(2) *The amendments to ORS 137.545 by section 32, chapter 660, Oregon Laws 2009, become oper-*
32 *ative on July 1, 2011.*]

33 [(3)] (2) The amendments to ORS 137.717, [137.721 and] 164.162 **and 475.935** by sections 8, 9 and
34 15, chapter 660, Oregon Laws 2009, become operative on February 15, 2010.

35 [(4)] (3) ORS 144.730, 423.150 and 475.933 and the amendments to ORS 137.717, [137.721 and]
36 164.162 **and 475.935** by sections 11, 14 and 16, chapter 660, Oregon Laws 2009, become operative on
37 January 1, 2012.

38 [(5)] (4) The amendments to ORS 421.121 by section 19, chapter 660, Oregon Laws 2009, become
39 operative on [the effective date of this 2010 Act] **February 17, 2010.**

40 **SECTION 4.** Section 49, chapter 660, Oregon Laws 2009, as amended by section 6, chapter 2,
41 Oregon Laws 2010, is amended to read:

42 **Sec. 49.** (1) ORS 144.285 applies to prisoners convicted of aggravated murder or murder that
43 was committed before, on or after July 1, 2009, and whose petition for a change in the terms of
44 confinement is denied on or after January 1, 2010.

45 (2) ORS 144.280 applies to prisoners sentenced for a crime committed prior to November 1, 1989,

1 and who are denied parole on or after January 1, 2010.

2 (3) The amendments to ORS 144.125, 144.228 and 144.232 by sections 3 to 5, chapter 660, Oregon
3 Laws 2009, apply to prisoners:

4 (a) Whose release date is postponed under ORS 144.125 on or after January 1, 2010.

5 (b) For whom the State Board of Parole and Post-Prison Supervision is unable to set a release
6 date under ORS 144.228 or 144.232 on or after January 1, 2010.

7 (4) The amendments to ORS 137.717, [*137.721 and*] 164.162 **and 475.935** by sections 8, 9 and 15,
8 chapter 660, Oregon Laws 2009, apply to sentences imposed:

9 (a) On or after February 15, 2010; and

10 (b) For crimes committed on or after January 1, 2009, and before January 1, 2012.

11 (5) ORS 475.933 and the amendments to ORS 137.717, [*137.721 and*] 164.162 **and 475.935** by
12 sections 11, 14 and 16, chapter 660, Oregon Laws 2009, apply to sentences imposed for crimes com-
13 mitted on or after January 1, 2012.

14 (6) The amendments to ORS 421.121 by section 17, chapter 660, Oregon Laws 2009, apply to in-
15 mates who:

16 (a) Are sentenced for a crime committed:

17 (A) On or after July 1, 2009; and

18 (B) Before [*the effective date of this 2010 Act*] **February 17, 2010**; and

19 (b) Are not prohibited by any other provision of law from obtaining a reduction in the term of
20 incarceration under ORS 421.121.

21 (7) The amendments to ORS 421.121 by section 19, chapter 660, Oregon Laws 2009, apply to in-
22 mates who:

23 (a) Are sentenced for a crime committed on or after [*the effective date of this 2010 Act*] **February**
24 **17, 2010**, and before July 1, 2011; and

25 (b) Are not prohibited by any other provision of law from obtaining a reduction in the term of
26 incarceration under ORS 421.121.

27 (8) The amendments to ORS 137.545 by section 20, chapter 660, Oregon Laws 2009, apply to
28 crimes committed before July 1, 2011.

29 (9) Section 21, chapter 660, Oregon Laws 2009, applies to persons:

30 (a) Convicted of a crime committed before July 1, 2011; and

31 (b) Who are on probation on or after the effective date of the rules adopted by the Department
32 of Corrections under section 21 (3), chapter 660, Oregon Laws 2009.

33 (10) Section 31, chapter 660, Oregon Laws 2009, applies to crimes committed:

34 (a) On or after February 15, 2010; and

35 (b) Before January 1, 2012.

36 [*(11) The amendments to ORS 137.545 by section 32, chapter 660, Oregon Laws 2009, apply to*
37 *crimes committed on or after July 1, 2011.*]

38 [*(12)*] (11) ORS 163.168 and the amendments to ORS 163.165 and 163.235 by sections 39 and 43,
39 chapter 660, Oregon Laws 2009, apply to conduct occurring on or after July 1, 2009.

40 [*(13)*] (12) Except as provided in subsection [*(14)*] (13) of this section, section 23, chapter 660,
41 Oregon Laws 2009, applies to persons:

42 (a) Convicted of a crime committed before July 1, 2011; and

43 (b) Sentenced to the legal and physical custody of the supervisory authority under ORS 137.124
44 (2).

45 [*(14)(a)*] (13)(a) A person sentenced to the legal and physical custody of a supervisory authority

1 under ORS 137.124 (2) shall serve an active period of post-prison supervision of at least two addi-
2 tional months if, on July 1, 2009, the person has served:

3 (A) Four months or more of active post-prison supervision for crimes in crime categories 1 to
4 3; or

5 (B) Ten months or more of active post-prison supervision for crimes in crime categories 4 to 10.

6 (b) Except as provided in paragraph (c) of this subsection, the supervisory authority shall place
7 an offender described in paragraph (a) of this subsection on inactive supervision status on the date
8 that is two months after July 1, 2009.

9 (c) At any time before the date that is two months after July 1, 2009:

10 (A) The parole and probation officer responsible for supervising an offender described in para-
11 graph (a) of this subsection may send a report described in section 23 (3), chapter 660, Oregon Laws
12 2009, to the supervisory authority for review; and

13 (B) After reviewing the report, the supervisory authority may extend the active post-prison
14 supervision period in accordance with section 23 (4), chapter 660, Oregon Laws 2009.

15 (d) Section 23, chapter 660, Oregon Laws 2009, and the provisions of this subsection and sub-
16 section [(13)] (12) of this section do not apply to a person sentenced to the legal and physical cus-
17 tody of a supervisory authority under ORS 137.124 (2) whose term of active post-prison supervision
18 imposed by the sentencing court expires on or before the date that is two months after July 1, 2009.

19 **SECTION 5.** ORS 137.545, as amended by section 32, chapter 660, Oregon Laws 2009, and sec-
20 tion 1 of this 2011 Act, is amended to read:

21 137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice
22 Commission for felonies committed on or after November 1, 1989:

23 (a) The period of probation shall be as the court determines and may, in the discretion of the
24 court, be continued or extended.

25 (b) The court may at any time discharge a person from probation.

26 (2) At any time during the probation period, the court may issue a warrant and cause a de-
27 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
28 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
29 rant for violating any condition of probation, and a statement by the parole and probation officer
30 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
31 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
32 detention of the probationer in the county jail until the probationer can be brought before the court
33 or until the parole and probation officer or supervisory personnel impose and the offender agrees
34 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
35 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
36 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
37 personnel, the disposition shall take place in no more than five judicial days. If the offender does
38 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
39 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
40 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
41 tention to the court that imposed the probation. The parole and probation officer shall promptly
42 submit to the court a report showing in what manner the probationer has violated the conditions
43 of probation.

44 (3) Except for good cause shown or at the request of the probationer, the probationer shall be
45 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and

1 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a
2 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
3 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
4 the probationer upon the condition that the probationer appear in court at a later date for a pro-
5 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
6 the magistrate may order the probationer released subject to an additional order to the probationer
7 that the probationer report within seven calendar days to the court that imposed the probation.

8 (4) When a probationer has been sentenced to probation in more than one county and the
9 probationer is being held on an out-of-county warrant for a probation violation, the court may con-
10 sider consolidation of some or all pending probation violation proceedings pursuant to rules made
11 and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

12 (a) Upon the motion of the district attorney or defense counsel in the county in which the
13 probationer is held; or

14 (b) Upon the court's own motion.

15 (5)(a) For defendants sentenced for felonies committed prior to November 1, 1989, and for any
16 misdemeanor, the court that imposed the probation, after summary hearing, may revoke the pro-
17 bation and:

18 (A) If the execution of some other part of the sentence has been suspended, the court shall cause
19 the rest of the sentence imposed to be executed.

20 (B) If no other sentence has been imposed, the court may impose any other sentence which ori-
21 ginally could have been imposed.

22 (b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that
23 imposed the probationary sentence may revoke probation supervision and impose a sanction as
24 provided by rules of the Oregon Criminal Justice Commission. *[If the defendant was sentenced to a*
25 *presumptive period of probation, the court may not impose a term of incarceration that exceeds 60 days*
26 *as a revocation sanction unless the revocation is the result of the defendant's conviction for a new*
27 *crime.]*

28 (6) Except for good cause shown, if the revocation hearing is not conducted within 14 calendar
29 days following the arrest or detention of the probationer, the probationer shall be released from
30 custody.

31 (7) A defendant who has been previously confined in the county jail as a condition of probation
32 pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon
33 Criminal Justice Commission may be given credit for all time thus served in any order or judgment
34 of confinement resulting from revocation of probation.

35 (8) In the case of any defendant whose sentence has been suspended but who has not been sen-
36 tenced to probation, the court may issue a warrant and cause the defendant to be arrested and
37 brought before the court at any time within the maximum period for which the defendant might ori-
38 ginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
39 pension of sentence and cause the sentence imposed to be executed.

40 (9) If a probationer fails to appear or report to a court for further proceedings as required by
41 an order under subsection (3) of this section, the failure to appear may be prosecuted in the county
42 to which the probationer was ordered to appear or report.

43 (10) The probationer may admit or deny the violation by being physically present at the hearing
44 or by means of simultaneous electronic transmission as described in ORS 131.045.

45 (11) The victim has the right:

1 (a) Upon request made within the time period prescribed in the notice required by ORS 147.417,
2 to be notified of any hearing before the court that may result in the revocation of the defendant's
3 probation for a felony or person Class A misdemeanor. The notification shall be provided by:

4 (A) The district attorney if the defendant is not supervised by the supervisory authority or if the
5 defendant is supervised by the supervisory authority and the district attorney initiates a request
6 with the court for a probation violation or revocation hearing.

7 (B) The supervisory authority if the defendant is supervised by the supervisory authority and
8 the supervisory authority initiates a request with the court for a probation violation or revocation
9 hearing.

10 (b) To appear personally at the hearing.

11 (c) If present, to reasonably express any views relevant to the issues before the court.

12 (12) As used in this section:

13 (a) "Person Class A misdemeanor" has the meaning given that term in the rules of the Oregon
14 Criminal Justice Commission.

15 (b) "Supervisory authority" has the meaning given that term in ORS 144.087.

16 **SECTION 6. (1) The amendments to ORS 137.545 by section 5 of this 2011 Act become**
17 **operative on July 1, 2013.**

18 **(2) The amendments to ORS 137.545 by section 5 of this 2011 Act apply to crimes com-**
19 **mitted on or after July 1, 2013.**

20 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**
21 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
22 **on its passage.**

23