



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 2, 2013

Representative Jeff Barker, Chairman
House Judiciary Committee
Hearing Room 343, State Capitol
Salem, Oregon 97310

Re: House Bill 2607 (2013)

Dear Chairperson Barker and Members of the Committee:

Under existing law, when a person is sentenced to a term of incarceration to an ODOC institution, the sheriff of the county under whom the person is confined is required to deliver to ODOC officials the person, a copy of the judgment of conviction and sentence, and a statement by the sheriff of the number of days the person was in jail prior to delivery of the person to ODOC. *See* ORS 137.370(3). Once the sheriff delivers the person and those papers, ODOC is required to calculate the ODOC term of incarceration "in accordance with ORS 137.370." *Id.* In turn, ORS 137.370(2) directs ODOC as to how to calculate the ODOC term of incarceration with regard to the pre-sentence time that the person spent in the county jail:

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

- (a) The time that the person is confined by any authority after the arrest for the crime *for which sentence is imposed*; and
- (b) The time that the person is authorized by the Department of Corrections to spend outside a confinement facility, in a program conducted by or for the Department of Corrections.

(Emphasis added).

Based on the wording of ORS 137.370, ODOC currently applies pre-sentence jail incarceration toward an ODOC term of incarceration *only* if the following criteria are met: a) the crime for which the offender is sentenced is the same crime for which the offender was actually confined in jail, or b) the crime for which the offender is sentenced is a lesser-included offense of the crime for which the offender was actually confined in jail. Time that a person spends in jail prior to sentencing on any other crime or conduct, *even if committed in the same criminal episode*, is not applied to the ODOC term of incarceration.

Throughout the course of a criminal prosecution, the criminal charges for which a person is confined in jail change from arrest to conviction and sentencing for a variety of reasons, including different criminal charges being returned by a Grand Jury, negotiated pleas by the

parties, or changes in the evidence or testimony necessary to convict the person. Additionally, those changes occur in a variety of ways, including dismissal and re-indictment of the person within the same criminal case, dismissal and re-indictment of the person with different criminal cases, and the filing of a District Attorney Information (either in the same or different case numbers). Under ORS 137.370(2)(a) and existing ODOC calculations, if the change in the criminal charges result in the crime of conviction and sentence not being the same crime or a lesser-included offense of the crime for which the person was confined in jail after arrest, that pre-sentence jail confinement time is not applied to the subsequent ODOC term of incarceration, *even though the crimes of arrest and crimes of ultimate conviction and sentence arose from the same criminal episode.*

House Bill 2607 (2013) proposes a limited amendment of ORS 137.370 to authorize ODOC to apply pre-sentence credit to persons in situations where the crime of arrest and the crime of conviction and sentence, although committed in the same criminal episode, are so different such that they are not the same crime or a lesser-included offense of one another. Specifically, HB 2607 (2013) authorizes a sentencing court to grant pre-sentence incarceration toward a later imposed ODOC term of incarceration only if the crime of conviction/sentence and the crime of arrest arose as part of the same criminal episode (as defined in ORS 131.505) and the different crimes do not involve different victims. In order to grant such pre-sentence time, HB 2607 (2013) requires the sentencing court to do the following:

- Make a finding that crime of arrest and crime of conviction and sentence arose out of same criminal episode and doesn't involve different victims (findings do not need to be in the judgment);
- Determine the beginning date and end date of the pre-sentence incarceration time that is being granted;
- Place the date range for the pre-sentence incarceration time and whether the time comes from the same or different case numbers in the judgment. If there is no such order in the judgment, ODOC would not be authorized to grant such time.

With that said, HB 2607 (2013) does not authorize a sentencing court to grant pre-sentence incarceration credit if such an order would result in a person receiving duplicate pre-sentence jail credit applied toward ODOC terms of incarceration. Moreover, HB 2607 (2013) does not amend or repeal any of the existing restrictions against persons receiving duplicate credit toward ODOC terms of incarceration.

Sincerely,

Herbert F. Lovejoy
Senior Assistant Attorney General
Government Services Section