

House Bill 2312

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim 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 **as introduced**.

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

Relating to crime; amending ORS 137.540 and 475.900; and declaring an emergency.

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

SECTION 1. ORS 137.540 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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 poses.

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

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

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

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

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

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

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

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

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

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

18 (A) When supervision begins;

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

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

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

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

25 (2) In addition to the general conditions, the court may impose any special conditions of proba-
26 tion that are reasonably related to the crime of conviction or the needs of the probationer for the
27 protection of the public or reformation of the probationer, or both, including, but not limited to, that
28 the probationer shall:

29 (a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after
30 November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence
31 or to the premises thereof, or be subject to any combination of such confinement and restriction,
32 such confinement or restriction or combination thereof to be for a period not to exceed one year
33 or one-half of the maximum period of confinement that could be imposed for the offense for which
34 the defendant is convicted, whichever is the lesser.

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

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

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

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

42 (3) When a person who is a sex offender is released on probation, the court shall impose as a
43 special condition of probation that the person not reside in any dwelling in which another sex
44 offender who is on probation, parole or post-prison supervision resides, without the approval of the
45 person's supervising parole and probation officer, or in which more than one other sex offender who

1 is on probation, parole or post-prison supervision resides, without the approval of the director of the
 2 probation agency that is supervising the person or of the county manager of the Department of
 3 Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole
 4 and probation officer of a person subject to the requirements of this subsection shall review the
 5 person's living arrangement with the person's sex offender treatment provider to ensure that the
 6 arrangement supports the goals of offender rehabilitation and community safety. As used in this
 7 subsection:

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

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

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

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

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

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

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

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

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

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

29 (c) If the court imposes the special condition of probation described in this subsection and if at
 30 any time during the period of probation the victim moves to within three miles of the probationer's
 31 residence, the court may not require the probationer to change the probationer's residence in order
 32 to comply with the special condition of probation.

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

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

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

1 urer.

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

3 (b) When the court orders a defendant placed under the supervision of the Department of Cor-
 4 rections or a community corrections agency, the supervising officer may file with the court a pro-
 5 posed modification to the special conditions of probation. The supervising officer shall provide a
 6 copy of the proposed modification to the district attorney and the probationer. **If the modification**
 7 **is proposed within 30 days after the defendant’s sentencing, the supervising officer shall also**
 8 **provide a copy of the proposed modification to the defendant’s attorney of record on the case**
 9 **for which the defendant was sentenced to probation.**

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

11 (A) Files an objection to the proposed modification less than [*five*] **10** judicial days after the
 12 proposed modification was **received or, for the court’s objection,** filed, the court shall schedule
 13 a hearing no later than [*10*] **15** judicial days after the proposed modification was filed, unless the
 14 court finds good cause to schedule a hearing at a later time.

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

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

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

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

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

32 **SECTION 2.** ORS 475.900 is amended to read:

33 475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified
 34 as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

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

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

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

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

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

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

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

- 3 (i) 3,4-methylenedioxyamphetamine;
- 4 (ii) 3,4-methylenedioxymethamphetamine; or
- 5 (iii) 3,4-methylenedioxy-N-ethylamphetamine.

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

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

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

14 (C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS
 15 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous
 16 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly
 17 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a
 18 controlled substance offense;

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

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

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

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

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

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

29 (J) The offender had constructed fortifications or had taken security measures with the potential
 30 of injuring persons; or

31 (K) The offender was in possession of controlled substances in an amount greater than:

- 32 (i) Three grams or more of a mixture or substance containing a detectable amount of heroin;
- 33 (ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;
- 34 (iii) Eight grams or more of a mixture or substance containing a detectable amount of metham-
 35 phetamine;

36 (iv) Twenty or more user units of a mixture or substance containing a detectable amount of
 37 lysergic acid diethylamide;

38 (v) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin
 39 or psilocin; or

40 (vi) Four grams or more or 20 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 (c) The violation constitutes a violation of ORS 475.848, 475.852, 475.862, 475.868, 475.872,

1 475.878, 475.882, 475.888, 475.892 or 475.904.

2 (d) The violation constitutes manufacturing methamphetamine and the manufacturing consists
3 of:

4 (A) A chemical reaction involving one or more precursor substances for the purpose of manu-
5 facturing methamphetamine; or

6 (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of
7 manufacturing methamphetamine.

8 (e) The violation constitutes a violation of ORS 475.860 (4)(a) or a violation of ORS 475.906 (1)
9 or (2) that is not described in ORS 475.907.

10 (2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified as crime category 6 of
11 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

12 (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or
13 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or
14 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

15 (b) The violation constitutes possession of:

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

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

18 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-
19 phetamine;

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

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

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

26 (i) 3,4-methylenedioxyamphetamine;

27 (ii) 3,4-methylenedioxymethamphetamine; or

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

29 (3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection (1) or
30 (2) of this section shall be classified as:

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

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

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

38 (5) As used in this section[,]:

39 (a) **“Marijuana product” has the meaning given that term in ORS 475.864.**

40 (b) **“Mixture or substance” means any mixture or substance, whether or not the mixture or**
41 **substance is in an ingestible or marketable form at the time of the offense.**

42 **SECTION 3. This 2015 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
44 **on its passage.**