

House Bill 3078

Sponsored by Representatives PILUSO, SANCHEZ, WILLIAMSON

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**.

Modifies eligibility for Family Sentencing Alternative Pilot Program. Authorizes Department of Corrections to increase reduction in term of imprisonment if inmate meets certain criteria related to participation in family program.

Increases maximum period of short-term transitional leave for certain Department of Corrections inmates.

Reduces presumptive sentences and eliminates mandatory sentences for certain property crimes when defendant has prior property crime convictions. Increases number of prior property crime convictions required for presumptive sentence to apply. Eliminates certain crimes that can be used as prior convictions.

Appropriates moneys from General Fund to Department of Corrections and Department of Human Services for purpose of funding and expanding Family Sentencing Alternative Pilot Program.

Appropriates moneys from General Fund to Oregon Criminal Justice Commission for deposit in Justice Reinvestment Account and to Department of Justice for deposit in Oregon Domestic and Sexual Violence Services Fund.

A BILL FOR AN ACT

1
2 Relating to public safety; creating new provisions; amending ORS 137.717 and 421.168 and section
3 1, chapter 830, Oregon Laws 2015; and repealing ORS 475.934 and sections 8 and 16, chapter 649,
4 Oregon Laws 2013.

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

6 **SECTION 1. Sections 3 and 9 to 12 of this 2017 Act, the amendments to ORS 137.717 and**
7 **421.168 and section 1, chapter 830, Oregon Laws 2015, by sections 2, 5 and 7 of this 2017 Act**
8 **and the repeal of ORS 475.934 and sections 8 and 16, chapter 649, Oregon Laws 2013, by**
9 **sections 4, 6 and 8 of this 2017 Act shall be known and may be cited as the Safety and Savings**
10 **Act.**

FAMILY SENTENCING ALTERNATIVE PILOT PROGRAM

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14 **SECTION 2.** Section 1, chapter 830, Oregon Laws 2015, is amended to read:

15 **Sec. 1.** (1) The Department of Corrections, in partnership with the circuit court and county
16 community corrections agencies of participating counties and the Department of Human Services,
17 shall establish the Family Sentencing Alternative Pilot Program.

18 (2) A defendant is eligible for the Family Sentencing Alternative Pilot Program if:

19 (a) The defendant's presumptive sentence under the sentencing guidelines of the Oregon Crimi-
20 nal Justice Commission is a term of imprisonment in the legal and physical custody of the Depart-
21 ment of Corrections of at least one year;

22 (b) The defendant [*has not previously been convicted of, and*] is not currently being sentenced for:

23 (A) A person felony as defined in the rules of the Oregon Criminal Justice Commission;

24 (B) A sex crime as defined in ORS [*181.805*] **163A.005**; or

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 (C) An offense requiring a specified sentence under ORS 137.635, 137.700, 137.707, 164.061,
2 475.907, 475.925, 475.930 or [813.010] **813.011**; and

3 (c) The defendant is **pregnant at the time of sentencing, or is** the parent or legal guardian
4 of a minor child and **at the time of the offense or sentencing** had physical custody of the child
5 [*at the time of the offense*].

6 (3)(a) If the defendant meets the eligibility requirements described in subsection (2) of this sec-
7 tion and [*receives*] **is eligible for** a downward dispositional departure under the rules of the Oregon
8 Criminal Justice Commission, the court may order that the defendant sign a release authorizing the
9 Department of Human Services to provide the community corrections agency with written confir-
10 mation of, and consultation concerning, any open or current juvenile dependency proceeding or any
11 prior substantiated allegation of abuse or neglect involving the defendant and a minor child.

12 **(b) When determining whether to sentence the defendant to probation as a downward**
13 **dispositional departure under the rules of the commission, the court may consider eligibility**
14 **in the Family Sentencing Alternative Pilot Program as a mitigating factor.**

15 (4) After receipt of the information described in subsection (3) of this section, the community
16 corrections agency, in consultation with the Department of Human Services, shall determine if the
17 Family Sentencing Alternative Pilot Program is an appropriate program for the defendant and, if the
18 program is appropriate **and the defendant is sentenced to a term of probation**, require partic-
19 ipation in the program for the first 12 months of the probationary sentence. In addition to the con-
20 ditions of probation ordered under ORS 137.540, the defendant may be required to comply with any
21 additional conditions related to the program, including but not limited to:

22 (a) Geographical restrictions, including house arrest and electronic surveillance;

23 (b) Participation in vocational training; and

24 (c) Completion of:

25 (A) Parenting skills classes;

26 (B) Drug or alcohol treatment;

27 (C) Mental health treatment; or

28 (D) Life skills classes.

29 (5) The Department of Human Services and community corrections agencies shall cooperate with
30 the Department of Corrections in implementing the Family Sentencing Alternative Pilot Program
31 described in this section.

32 (6) The Department of Human Services and the Department of Corrections shall jointly submit
33 a report concerning the Family Sentencing Alternative Pilot Program, which must include program
34 outcomes and data related to the efficacy of the program, and which may include recommendations
35 for legislation in the manner provided by ORS 192.245, to the interim committees of the Legislative
36 Assembly related to the judiciary no later than January 1[, 2017] **of each year.**

37 **(7) The Department of Corrections shall establish a process for selecting counties to**
38 **participate in the Family Sentencing Alternative Pilot Program.**

39 **(8) The Department of Corrections and the Department of Human Services may adopt**
40 **rules to carry out the provisions of this section.**

41 **SECTION 3. (1) The Department of Corrections may further reduce the term of**
42 **incarceration of an inmate as described in ORS 421.121 by a period of an additional six**
43 **months if the inmate meets the following eligibility requirements:**

44 **(a) The inmate is not serving a sentence for:**

45 **(A) A person felony as defined in the rules of the Oregon Criminal Justice Commission;**

1 (B) A sex crime as defined in ORS 163A.005; or

2 (C) An offense requiring a specified sentence under ORS 137.635, 137.700, 137.707, 164.061,
3 475.907, 475.925, 475.930 or 813.011;

4 (b) The inmate is the parent or legal guardian of a minor child;

5 (c) The inmate has participated in a program related to creating and maintaining a re-
6 lationship with the inmate's child; and

7 (d) The inmate has demonstrated appropriate institutional behavior as defined by rule
8 of the department.

9 (2) The State Board of Parole and Post-Prison Supervision or the local supervisory au-
10 thority may, in addition to the conditions of post-prison supervision described in ORS 144.102,
11 order additional conditions of post-prison supervision for a person released under this section
12 as the board or authority considers appropriate including, but not limited to:

13 (a) Geographical restrictions, including house arrest and electronic surveillance;

14 (b) Participation in vocational training; and

15 (c) Completion of:

16 (A) Parenting skills classes;

17 (B) Drug or alcohol treatment;

18 (C) Mental health treatment; or

19 (D) Life skills classes.

20 (3) The Department of Corrections and the State Board of Parole and Post-Prison
21 Supervision shall adopt rules to implement this section.

22
23 **SHORT-TERM TRANSITIONAL LEAVE**

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25 **SECTION 4. Section 16, chapter 649, Oregon Laws 2013, is repealed.**

26 **SECTION 5.** ORS 421.168, as amended by section 15, chapter 649, Oregon Laws 2013, is
27 amended to read:

28 421.168. (1) The Department of Corrections shall establish a short-term transitional leave pro-
29 gram. The program shall provide inmates with an opportunity to secure appropriate transitional
30 support when necessary for successful reintegration into the community prior to the inmate's dis-
31 charge to post-prison supervision.

32 (2) The Department of Corrections shall identify each inmate who is eligible for the short-term
33 transitional leave program and shall, in conjunction with the supervisory authority for the county
34 to which the inmate will be released, assist each eligible inmate in preparing a transition plan and
35 in identifying and applying for an employment, educational or other transitional opportunity in the
36 community.

37 (3) If the inmate's transition plan is approved by the department and is an essential part of the
38 inmate's successful reintegration into the community, the department may grant a transitional leave
39 no more than [30] 180 days prior to the inmate's discharge date.

40 (4) An inmate is not eligible for transitional leave before having served six months of prison
41 incarceration.

42 (5) The department shall adopt rules to carry out the provisions of this section. The rules must
43 include a set of release conditions for inmates released on transitional leave status. An inmate on
44 transitional leave status is subject to immediate return to prison for any violation of the conditions
45 of release.

(6) The provisions of this section do not apply to inmates whose sentences were imposed under ORS 137.635, **137.690**, 137.700, [or] 137.707, **164.061**, **475.907**, **475.925**, **475.930** or **813.011** or [any other] **under a** provision of law that prohibits release on any form of temporary leave from custody.

DRUG AND PROPERTY OFFENSES

SECTION 6. Section 8, chapter 649, Oregon Laws 2013, is repealed.

SECTION 7. ORS 137.717, as amended by section 7, chapter 649, Oregon Laws 2013, is amended to read:

137.717. (1) When a court sentences a person convicted of:

(a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225[*robbery in the third degree under ORS 164.395, identity theft under ORS 165.800*] or aggravated identity theft under ORS 165.803, the presumptive sentence is [24] **19** months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, [*robbery in the third degree under ORS 164.395,*] robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated identity theft under ORS 165.803; **or**

(B) [*Two*] **Four** or more previous convictions for any combination of the crimes listed in subsection (2) of this section[; or].

[*C*] *A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.*]

(b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS 164.135, [*mail theft or receipt of stolen mail under ORS 164.162,*] burglary in the second degree under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013, [*criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),*] **identity theft under ORS 165.800**, possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is [18] **13** months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, [*robbery in the third degree under ORS 164.395,*] robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803; **or**

(B) [*Two*] **Four** or more previous convictions for any combination of the crimes listed in subsection (2) of this section[; or].

[*C*] *A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.*]

1 (2) The crimes to which subsection (1) of this section applies are:

- 2 (a) Theft in the second degree under ORS 164.045;
- 3 (b) Theft in the first degree under ORS 164.055;
- 4 (c) Aggravated theft in the first degree under ORS 164.057;
- 5 (d) Unauthorized use of a vehicle under ORS 164.135;
- 6 [(e) *Mail theft or receipt of stolen mail under ORS 164.162;*]
- 7 [(f)] (e) Burglary in the second degree under ORS 164.215;
- 8 [(g)] (f) Burglary in the first degree under ORS 164.225;
- 9 [(h)] (g) Criminal mischief in the second degree under ORS 164.354;
- 10 [(i)] (h) Criminal mischief in the first degree under ORS 164.365;
- 11 [(j)] (i) Computer crime under ORS 164.377;
- 12 [(k)] (j) Forgery in the second degree under ORS 165.007;
- 13 [(L)] (k) Forgery in the first degree under ORS 165.013;
- 14 [(m)] (L) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- 15 [(n)] (m) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- 16 [(o)] (n) Fraudulent use of a credit card under ORS 165.055;
- 17 [(p)] (o) Identity theft under ORS 165.800;
- 18 [(q)] (p) Possession of a stolen vehicle under ORS 819.300; **and**
- 19 [(r)] (q) Trafficking in stolen vehicles under ORS 819.310[; *and*].
- 20 [(s) *Any attempt to commit a crime listed in this subsection.*]

21 [(3)(a) *A presumptive sentence described in subsection (1) of this section shall be increased by two*
 22 *months for each previous conviction the person has that:*]

23 [(A) *Was for any of the crimes listed in subsection (1) or (2) of this section; and*]

24 [(B) *Was not used as a predicate for the presumptive sentence described in subsection (1) of this*
 25 *section.*]

26 [(b) *Previous convictions may not increase a presumptive sentence described in subsection (1) of this*
 27 *section by more than 12 months under this subsection.*]

28 [(4)] (3) The court may impose a sentence other than the sentence provided by subsection (1)
 29 [or (3)] of this section if the court imposes:

30 (a) A longer term of incarceration that is otherwise required or authorized by law; or

31 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
 32 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
 33 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
 34 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
 35 subsection (1) [or (3)] of this section.

36 [(5) *Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under*
 37 *subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS*
 38 *161.605.*]

39 [(6) *The court shall sentence a person under this section to at least the presumptive sentence de-*
 40 *scribed in subsection (1) or (3) of this section, unless the parties stipulate otherwise or the court finds*
 41 *that:*]

42 [(a) *The person was not on probation, parole or post-prison supervision for a crime listed in sub-*
 43 *section (1) of this section at the time of the commission of the current crime of conviction;*]

44 [(b) *The person has not previously received a downward departure from a presumptive sentence for*
 45 *a crime listed in subsection (1) of this section;*]

1 [(c) *The harm or loss caused by the crime is not greater than usual for that type of crime; and]*

2 [(d) *In consideration of the nature of the offense and the harm to the victim, a downward departure*
3 *will.*]

4 [(A) *Increase public safety;*]

5 [(B) *Enhance the likelihood that the person will be rehabilitated; and]*

6 [(C) *Not unduly reduce the appropriate punishment.*]

7 [(7)(a)] (4)(a) For a crime committed on or after November 1, 1989, a conviction is considered
8 to have occurred upon the pronouncement of sentence in open court. However, when sentences are
9 imposed for two or more convictions arising out of the same conduct or criminal episode, none of
10 the convictions is considered to have occurred prior to any of the other convictions arising out of
11 the same conduct or criminal episode.

12 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
13 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open
14 court of the suspended imposition of a sentence.

15 [(8)] (5) For purposes of this section, previous convictions must be proven pursuant to ORS
16 137.079.

17 [(9)] (6) As used in this section[.],

18 [(a) *“Downward departure” means a downward dispositional departure or a downward durational*
19 *departure under the rules of the Oregon Criminal Justice Commission.*]

20 [(b)] “previous conviction” includes:

21 [(A)] (a) Convictions occurring before, on or after July 1, 2003; and

22 [(B)] (b) Convictions entered in any other state or federal court for comparable offenses.

23 **SECTION 8. ORS 475.934 is repealed.**

24
25 **APPROPRIATIONS**

26
27 **SECTION 9.** In addition to and not in lieu of any other appropriation, there is appropri-
28 ated to the Department of Corrections, for the biennium beginning July 1, 2017, out of the
29 General Fund, the amount of \$_____ for the purposes of funding the Family Sentencing
30 Alternative Pilot Program described in section 1, chapter 830, Oregon Laws 2015, increasing
31 the number of counties participating in the program and carrying out the provisions of sec-
32 tion 3 of this 2017 Act.

33 **SECTION 10.** (1) In addition to and not in lieu of any other appropriation, there is ap-
34 propriated to the Department of Human Services, for the biennium beginning July 1, 2017,
35 out of the General Fund, the amount of \$_____ for the purposes of funding the Family
36 Sentencing Alternative Pilot Program described in section 1, chapter 830, Oregon Laws 2015,
37 increasing the number of counties participating in the program and carrying out the pro-
38 visions of section 3 of this 2017 Act.

39 (2) Notwithstanding any other law limiting expenditures, the amount of \$_____ is es-
40 tablished for the biennium beginning July 1, 2017, as the maximum limit for payment of ex-
41 penses from federal funds collected or received by the Department of Human Services for the
42 purposes of funding the Family Sentencing Alternative Pilot Program described in section
43 1, chapter 830, Oregon Laws 2015, increasing the number of counties participating in the
44 program and carrying out the provisions of section 3 of this 2017 Act.

45 **SECTION 11.** In addition to and not in lieu of any other appropriation, there is appro-

