

HOUSE AMENDMENTS TO HOUSE BILL 4098

By COMMITTEE ON JUDICIARY

February 13

1 On page 1 of the printed bill, line 2, after “crime;” delete the rest of the line and delete line 3
2 and insert “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 In line 15, after “law” insert “within the same county”.

5 In line 21, after “law” insert “within the same county”.

6 On page 2, line 23, after “137.372.” delete the rest of the line and delete lines 24 through 33 and
7 insert:

8 “(1)(a) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been revoked
9 from a probationary sentence for a felony committed on or after November 1, 1989, and whose sen-
10 tence was imposed as a downward dispositional departure under the rules of the Oregon Criminal
11 Justice Commission, shall receive credit for the time served in jail after arrest and before com-
12 mencement of the probationary sentence or for the time served in jail as part of the probationary
13 sentence.

14 “(b) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been revoked
15 from a probationary sentence for a felony committed on or after November 1, 1989, and whose sen-
16 tence was imposed as a presumptive probationary sentence under the rules of the Oregon Criminal
17 Justice Commission, shall receive credit for the time served in jail after arrest and before com-
18 mencement of the probationary sentence or for the time served in jail as part of the probationary
19 sentence, unless the sentencing judge orders otherwise.”.

20 In line 34, delete “(3)” and insert “(2)”.

21 In line 39, delete “(4)” and insert “(3)”.

22 In line 45, delete “(5)” and insert “(4)”.

23 On page 3, line 4, delete “(6)” and insert “(5)”.

24 On page 6, after line 19, insert:

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

27 **“(2) The amendments to ORS 137.372 by section 2 of this 2014 Act apply to probation vi-**
28 **olation proceedings occurring on or after the effective date of this 2014 Act.**

29 **“SECTION 7.** ORS 137.540 is amended to read:

30 “137.540. (1) The court may sentence the defendant to probation subject to the following general
31 conditions unless specifically deleted by the court. The probationer shall:

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

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

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

1 controlled substances.

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

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

6 “(f) Remain in the State of Oregon until written permission to leave is granted by the Depart-
7 ment of Corrections or a county community corrections agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 “(A) When supervision begins;

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

39 “(C) Once each year within 10 days of the probationer’s date of birth;

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

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

44 “(2) In addition to the general conditions, the court may impose any special conditions of pro-
45 bation that are reasonably related to the crime of conviction or the needs of the probationer for the

1 protection of the public or reformation of the probationer, or both, including, but not limited to, that
2 the probationer shall:

3 “(a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after
4 November 1, 1989, be confined to the county jail or be restricted to the probationer’s own residence
5 or to the premises thereof, or be subject to any combination of such confinement and restriction,
6 such confinement or restriction or combination thereof to be for a period not to exceed one year
7 or one-half of the maximum period of confinement that could be imposed for the offense for which
8 the defendant is convicted, whichever is the lesser.

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

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

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

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

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

27 “(a) ‘Dwelling’ has the meaning given that term in ORS 469B.100.

28 “(b) ‘Dwelling’ does not include a residential treatment facility or a halfway house.

29 “(c) ‘Halfway house’ means a publicly or privately operated profit or nonprofit residential facil-
30 ity that provides rehabilitative care and treatment for sex offenders.

31 “(d) ‘Sex offender’ has the meaning given that term in ORS 181.805.

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

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

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

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

43 “(D) The person resides in a halfway house. As used in this subparagraph, ‘halfway house’ means
44 a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative
45 care and treatment for sex offenders.

1 “(b) A victim may request imposition of the special condition of probation described in this
2 subsection at the time of sentencing in person or through the prosecuting attorney.

3 “(c) If the court imposes the special condition of probation described in this subsection and if
4 at any time during the period of probation the victim moves to within three miles of the
5 probationer’s residence, the court may not require the probationer to change the probationer’s res-
6 idence in order to comply with the special condition of probation.

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

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

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

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

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

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

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

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

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

40 “(10) It is not a cause for revocation of probation that the probationer failed to apply for or
41 accept employment at any workplace where there is a labor dispute in progress. As used in this
42 subsection, ‘labor dispute’ has the meaning for that term provided in ORS 662.010.

43 “(11) If the court determines that a defendant has violated the terms of probation, the court
44 shall collect a \$25 fee from the defendant. The fee becomes part of the judgment and may be col-
45 lected in the same manner as a fine. Fees collected under this subsection in the circuit court shall

1 be deposited by the clerk of the court in the General Fund. Fees collected in a justice court under
2 this subsection shall be paid to the county treasurer. Fees collected in a municipal court under this
3 subsection shall be paid to the city treasurer.

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

6 “**SECTION 8.** ORS 475.900 is amended to read:

7 “475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified
8 as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

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

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

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

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

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

18 “(E) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin
19 or psilocin; or

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

22 “(i) 3,4-methylenedioxyamphetamine;

23 “(ii) 3,4-methylenedioxymethamphetamine; or

24 “(iii) 3,4-methylenedioxy-N-ethylamphetamine.

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

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

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

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

38 “(D) The offender was in possession of materials being used for the packaging of controlled
39 substances such as scales, wrapping or foil, other than the material being used to contain the sub-
40 stance that is the subject of the offense;

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

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

43 “(G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a con-
44 trolled substance offense;

45 “(H) The offender was in possession of manufacturing paraphernalia, including recipes, precur-

1 sor chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

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

3 “(J) The offender had constructed fortifications or had taken security measures with the poten-

4 tial of injuring persons; or

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

6 “(i) Three grams or more of a mixture or substance containing a detectable amount of heroin;

7 “(ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

8 “(iii) Eight grams or more of a mixture or substance containing a detectable amount of meth-

9 amphetamine;

10 “(iv) Twenty or more user units of a mixture or substance containing a detectable amount of

11 lysergic acid diethylamide;

12 “(v) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin

13 or psilocin; or

14 “(vi) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance

15 containing a detectable amount of:

16 “(I) 3,4-methylenedioxyamphetamine;

17 “(II) 3,4-methylenedioxymethamphetamine; or

18 “(III) 3,4-methylenedioxy-N-ethylamphetamine.

19 “(c) The violation constitutes a violation of ORS 475.848, 475.852, 475.862, 475.868, 475.872,

20 475.878, 475.882, 475.888, 475.892 or 475.904.

21 “(d) The violation constitutes manufacturing methamphetamine and the manufacturing consists

22 of:

23 “(A) A chemical reaction involving one or more precursor substances for the purpose of manu-

24 facturing methamphetamine; or

25 “(B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of

26 manufacturing methamphetamine.

27 “(e) The violation constitutes a violation of ORS 475.860 (4)(a) or a violation of ORS 475.906 (1)

28 or (2) that is not described in ORS 475.907.

29 “(2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified as crime category 6 of

30 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

31 “(a) The violation constitutes delivery of heroin, cocaine, methamphetamine or

32 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or

33 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

34 “(b) The violation constitutes possession of:

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

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

37 “(C) Ten grams or more of a mixture or substance containing a detectable amount of metham-

38 phetamine;

39 “(D) Two hundred or more user units of a mixture or substance containing a detectable amount

40 of lysergic acid diethylamide;

41 “(E) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin

42 or psilocin; or

43 “(F) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance con-

44 taining a detectable amount of:

45 “(i) 3,4-methylenedioxyamphetamine;

1 “(ii) 3,4-methylenedioxyamphetamine; or
2 “(iii) 3,4-methylenedioxy-N-ethylamphetamine.
3 “(3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection (1)
4 or (2) of this section shall be classified as:
5 “(a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Com-
6 mission if the violation involves delivery or manufacture of a controlled substance; or
7 “(b) Crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Com-
8 mission if the violation involves possession of a controlled substance.
9 “(4) In order to prove a commercial drug offense, the state shall plead in the accusatory in-
10 strument sufficient factors of a commercial drug offense under subsections (1) and (2) of this section.
11 The state has the burden of proving each factor beyond a reasonable doubt.
12 “(5) As used in this section, ‘mixture or substance’ means any mixture or substance, whether
13 or not the mixture or substance is in an ingestible or marketable form at the time of the offense.”.
14 In line 20, delete “6” and insert “9”.
15
