

Enrolled
Senate Bill 1087

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CHAPTER

AN ACT

Relating to crime; creating new provisions; amending ORS 137.717 and 164.162; and providing that this Act shall be referred to the people for their approval or rejection.

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

SECTION 1. The Legislative Assembly finds and declares that:

(1) The manufacturing and dealing of methamphetamine, heroin, cocaine and ecstasy are especially damaging to our community.

(2) Many Oregonians are addicted to these drugs. Some of these drug-addicted persons present a danger to public safety by committing crimes to feed their addictions.

(3) In order to reduce the risk of future criminal activity, these drug-addicted offenders need the opportunity to change their behavior through effective drug treatment.

(4) Sections 2 to 5 and 6 of this 2008 Act and the amendments to ORS 137.717 and 164.162 by sections 7 and 10 of this 2008 Act increase the punishment for offenders who commit high-level or repeat drug and property crimes.

(5) Section 8 of this 2008 Act increases the availability of treatment for drug-addicted offenders.

(6) Section 9 of this 2008 Act requires swift and certain punishment for offenders who refuse or fail to successfully complete treatment as a condition of probation, parole or post-prison supervision.

SECTION 2. When a person is convicted of the unlawful delivery or manufacture of a controlled substance, the court shall sentence the person to a term of incarceration ranging from:

(1) 58 months to 130 months, depending on the person's criminal history, if the delivery or manufacture involves:

(a) 500 grams or more of a mixture or substance containing a detectable amount of cocaine;

(b) 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;

(c) 100 grams or more of a mixture or substance containing a detectable amount of heroin; or

(d) 100 grams or more or 500 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of ecstasy.

(2) 34 months to 72 months, depending on the person's criminal history, if the delivery or manufacture involves:

(a) 100 grams or more of a mixture or substance containing a detectable amount of cocaine;

(b) 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;

(c) 50 grams or more of a mixture or substance containing a detectable amount of heroin; or

(d) 50 grams or more or 250 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of ecstasy.

SECTION 3. (1) When a person is convicted of the unlawful delivery of cocaine, methamphetamine, heroin or ecstasy to a person under 18 years of age, the court shall sentence the person to a term of incarceration ranging from 34 months to 72 months, depending on the person's criminal history.

(2) The sentence described in subsection (1) of this section does not apply to a person who is less than three years older than the person under 18 years of age to whom the controlled substance was delivered, unless the person has a previous conviction for delivery of cocaine, methamphetamine, heroin or ecstasy to a person under 18 years of age.

SECTION 4. When a person is convicted of aggravated theft in the first degree under ORS 164.057, the court shall sentence the person to a term of incarceration ranging from 16 months to 45 months, depending on the person's criminal history, if:

(1) The victim of the theft was 65 years of age or older at the time of the commission of the offense; and

(2) The value of the property stolen from the victim described in subsection (1) of this section, in a single or aggregate transaction, is \$10,000 or more.

SECTION 5. As used in sections 2 to 5 of this 2008 Act:

(1) "Controlled substance" means:

(a) Cocaine;

(b) Methamphetamine;

(c) Heroin; or

(d) Ecstasy.

(2) "Ecstasy" means:

(a) 3,4-methylenedioxymethamphetamine;

(b) 3,4-methylenedioxyamphetamine; or

(c) 3,4-methylenedioxy-N-ethylamphetamine.

(3) "Mixture or substance" means any mixture or substance, whether or not the mixture or substance is in an ingestible or marketable form at the time of the offense.

SECTION 6. (1) When a court sentences a person convicted of a crime listed in subsection (2) of this section, the court may not impose a sentence of optional probation or grant a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission if the person has a previous conviction for any of the crimes listed in subsection (2) of this section.

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

(a) Manufacture or delivery of a controlled substance, other than marijuana, under ORS 475.840 (1);

(b) Creation or delivery of a counterfeit substance, other than marijuana, under ORS 475.840 (2);

(c) Manufacture or delivery of heroin under ORS 475.846, 475.848, 475.850 or 475.852;

(d) Manufacture or delivery of 3,4-methylenedioxymethamphetamine under ORS 475.866, 475.868, 475.870 or 475.872;

(e) Manufacture or delivery of cocaine under ORS 475.876, 475.878, 475.880 or 475.882;

(f) **Manufacture or delivery of methamphetamine under ORS 475.886, 475.888, 475.890 or 475.892;**

(g) **Manufacture or delivery of a controlled substance within 1,000 feet of a school under ORS 475.904;**

(h) **Delivery of a controlled substance to a person under 18 years of age under ORS 475.906; and**

(i) **Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.**

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

(b) **For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.**

(4) **For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.**

(5) **As used in this section, “previous conviction” means:**

(a) **Convictions occurring before, on or after the effective date of this 2008 Act; and**

(b) **Convictions entered in any other state or federal court for comparable offenses.**

SECTION 7. ORS 137.717 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 [19] **24** 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) [Four] **Two or more** previous convictions for any combination of the [other] 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 [13] **18** 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) [Four] **Two or more** previous convictions for any combination of the [other] 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.**

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

(a) Theft in the second degree under ORS 164.045;

(b) Theft in the first degree under ORS 164.055;

(c) Aggravated theft in the first degree under ORS 164.057;

(d) Unauthorized use of a vehicle under ORS 164.135;

(e) **Mail theft or receipt of stolen mail under ORS 164.162;**

[e] (f) Burglary in the second degree under ORS 164.215;

[f] (g) Burglary in the first degree under ORS 164.225;

[g] (h) Criminal mischief in the second degree under ORS 164.354;

[h] (i) Criminal mischief in the first degree under ORS 164.365;

[i] (j) Computer crime under ORS 164.377;

[j] (k) Forgery in the second degree under ORS 165.007;

[k] (L) Forgery in the first degree under ORS 165.013;

[L] (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;

[m] (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;

[n] (o) Fraudulent use of a credit card under ORS 165.055;

[o] (p) Identity theft under ORS 165.800;

[p] (q) Possession of a stolen vehicle under ORS 819.300; [and]

[q] (r) Trafficking in stolen vehicles under ORS 819.310[.]; **and**

(s) **Any attempt to commit a crime listed in this subsection.**

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

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

(B) **Was not used as a predicate for the presumptive sentence under subsection (1) of this section.**

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

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

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

(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) **or (3)** of this section.

[4] *As used in this section, "previous conviction" includes:*

[a] *Convictions occurring before, on or after July 1, 2003; and*

[b] *Convictions entered in any other state or federal court for comparable offenses.*

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

(6) **The court shall sentence a person under this section to at least the presumptive sentence described in subsection (1) or (3) of this section, unless the parties stipulate otherwise or the court finds that:**

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

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

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

(d) In consideration of the nature of the offense and the harm to the victim, a downward departure will:

(A) Increase public safety;

(B) Enhance the likelihood that the person will be rehabilitated; and

(C) Not unduly reduce the appropriate punishment.

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

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

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

(9) As used in this section:

(a) "Downward departure" means a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission.

(b) "Previous conviction" includes:

(A) Convictions occurring before, on or after July 1, 2003; and

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

SECTION 8. (1) The Department of Corrections shall:

(a) Provide appropriate treatment services to drug-addicted persons in the custody of the department who are at a high or medium risk of reoffending and who have moderate to severe treatment needs; and

(b) Make grants to counties in order to provide supplemental funding for:

(A) The operation of local jails;

(B) Appropriate treatment services for drug-addicted persons on probation, parole or post-prison supervision; or

(C) The intensive supervision of drug-addicted persons on probation, parole or post-prison supervision, including the incarceration of drug-addicted persons who have violated the terms and conditions of probation, parole or post-prison supervision.

(2) The Oregon Criminal Justice Commission shall make grants to counties in order to provide supplemental funding for drug courts for drug-addicted persons, including the costs of appropriate treatment services and the incarceration of persons who have violated the terms and conditions of a drug court.

(3)(a) The appropriate legislative committee shall periodically conduct oversight hearings on the effectiveness of this section.

(b) The Oregon Criminal Justice Commission shall periodically conduct independent evaluations of the programs funded by this section for their effectiveness in reducing criminal behavior in a cost-effective manner.

(4) Nothing in section 1, 2 to 5, 6, 8, 9 or 11 of this 2008 Act or the amendments to ORS 137.717 or 164.162 by sections 7 and 10 of this 2008 Act:

(a) Creates any claim, right of action or civil liability; or

(b) Requires a supervisory authority or the Department of Corrections to provide treatment to any individual under the authority's supervision or in the department's custody.

SECTION 9. If a person on probation, parole or post-prison supervision is required to successfully complete a drug or alcohol treatment program as a condition of supervision and the person refuses or otherwise fails to successfully complete the treatment program, the court or the supervising authority shall impose swift and certain punishment, including incarceration in jail.

SECTION 10. ORS 164.162 is amended to read:

164.162. (1) A person commits the crime of mail theft or receipt of stolen mail if the person intentionally:

(a) Takes or, by fraud or deception, obtains mail from a post office, postal station, mail receptacle, authorized depository or mail carrier;

(b) Takes from mail any article contained therein;

(c) Secretes, embezzles or destroys mail or any article contained therein;

(d) Takes or, by fraud or deception, obtains mail that has been delivered to or left for collection on or adjacent to a mail receptacle or authorized depository; or

(e) Buys, receives, conceals or possesses mail or any article contained therein knowing that the mail or article has been unlawfully taken or obtained.

(2) Mail theft or receipt of stolen mail is a Class C felony [A misdemeanor].

SECTION 11. (1) When a court sentences a person under sections 2 to 5 of this 2008 Act:

(a) The court shall use the criminal history scale of the sentencing guidelines grid of the Oregon Criminal Justice Commission to determine the sentence to impose. The sentence described in:

(A) Section 2 (1) of this 2008 Act shall be determined utilizing crime category 10 of the sentencing guidelines grid.

(B) Sections 2 (2) and 3 (1) of this 2008 Act shall be determined utilizing crime category 9 of the sentencing guidelines grid.

(C) Section 4 of this 2008 Act shall be determined utilizing crime category 8 of the sentencing guidelines grid.

(b)(A) Notwithstanding ORS 161.605, the court shall impose the sentence described in sections 2 to 5 of this 2008 Act and may not impose a sentence of optional probation or grant a downward dispositional departure or a downward durational departure under the rules of the commission.

(B) The court may impose a sentence other than the sentence described in sections 2 to 5 of this 2008 Act if the court imposes a longer term of incarceration that is otherwise required or authorized by law.

(2) A person sentenced under sections 2 to 5 of this 2008 Act may not receive a reduction in the term of incarceration for appropriate institutional behavior that exceeds 20 percent of the sentence imposed.

SECTION 12. (1) Sections 1 to 6 and 11 of this 2008 Act and the amendments to ORS 137.717 and 164.162 by sections 7 and 10 of this 2008 Act become operative on January 1, 2009.

(2) Sections 2 to 6 and 11 of this 2008 Act and the amendments to ORS 137.717 and 164.162 by sections 7 and 10 of this 2008 Act apply to sentences imposed for crimes committed on or after January 1, 2009.

(3) Sections 8 and 9 of this 2008 Act become operative on July 1, 2009.

SECTION 13. If Initiative Petition 40 (2008) is placed on the ballot at the next regular general election held throughout this state on November 4, 2008, and both Initiative Petition 40 (2008) and this 2008 Act are enacted or approved by a majority of the votes cast thereon:

(1) Sections 1 to 6, 8, 9, 11 and 12 of this 2008 Act and the amendments to ORS 137.717 and 164.162 by sections 7 and 10 of this 2008 Act are repealed if Initiative Petition 40 (2008) receives a number of affirmative votes greater than the number of affirmative votes received by this 2008 Act; or

(2) The preamble and sections 1 to 8 of Initiative Petition 40 (2008) are repealed if this 2008 Act receives a number of affirmative votes greater than the number of affirmative votes received by Initiative Petition 40 (2008).

SECTION 14. If any part of sections 1 to 6 and 11 of this 2008 Act and the amendments to ORS 137.717 and 164.162 by sections 7 and 10 of this 2008 Act is held to be unconstitutional or otherwise invalid, all remaining parts of sections 1 to 6 and 11 of this 2008 Act and the amendments to ORS 137.717 and 164.162 by sections 7 and 10 of this 2008 Act shall not be affected by the holding and shall remain in full force and effect.

SECTION 15. This 2008 Act shall be submitted to the people for their approval or rejection at the next regular general election held throughout this state.

Passed by Senate February 22, 2008

Referred to People

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Secretary of Senate

Filed in Office of Secretary of State:

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President of Senate

.....M,....., 2008

Passed by House February 22, 2008

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Speaker of House

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Secretary of State