

Senate Bill 554

Sponsored by Senator BOQUIST (at the request of Norm Voshall) (Pre-session filed.)

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**.

Increases penalties for felonies having as an element defendant's use or threatened use of firearm in commission of crime. Punishes by mandatory minimum term of 10 years' imprisonment for first offense. Prohibits plea agreement to crime other than felony having as an element defendant's use or threatened use of firearm.

A BILL FOR AN ACT

1
2 Relating to sentences for felonies involving firearms; amending ORS 161.610.

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

4 **SECTION 1.** ORS 161.610 is amended to read:

5 161.610. (1) As used in this section, "firearm" has the meaning given that term in ORS 166.210.

6 (2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant
7 during the commission of a felony may be pleaded in the accusatory instrument and proved at trial
8 as an element in aggravation of the crime as provided in this section. When a crime is so pleaded,
9 the aggravated nature of the crime may be indicated by adding the words "with a firearm" to the
10 title of the offense. The unaggravated crime shall be considered a lesser included offense.

11 (3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise pro-
12 vided in subsection (6) of this section, if a defendant is convicted of a felony having as an element
13 the defendant's use or threatened use of a firearm during the commission of the crime, the court
14 shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section.
15 Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall
16 any person punishable under this section become eligible for work release, parole, temporary leave
17 or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent
18 to any reduction of imprisonment granted for good time served or time credits earned under ORS
19 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the
20 court.

21 (4) The minimum terms of imprisonment for felonies having as an element the defendant's use
22 or threatened use of a firearm in the commission of the crime shall be as follows:

23 (a) *[Except as provided in subsection (5) of this section,]* Upon the first conviction for such felony,
24 *[five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or*
25 *is equipped with a firearms silencer, the term of imprisonment shall be]* 10 years.

26 (b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of
27 this subsection *[or subsection (5) of this section]*, 10 years, except that if the firearm is a machine
28 gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of
29 imprisonment shall be 20 years.

30 (c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of

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 this subsection, 30 years.

2 *[(5) If it is the first time that the defendant is subject to punishment under this section, rather than*
3 *impose the sentence otherwise required by subsection (4)(a) of this section, the court may:]*

4 *[(a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or*
5 *impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justify-*
6 *ing such lesser sentence and sets forth those circumstances in its statement on sentencing; or]*

7 *[(b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance*
8 *with the rules of the Oregon Criminal Justice Commission.]*

9 **(5) Notwithstanding ORS 135.405 and 135.445, a person charged with a felony having as**
10 **an element the defendant's use or threatened use of a firearm in commission of the crime**
11 **under this section shall not be allowed to plead guilty or no contest to a lesser included of-**
12 **fense, or to any other offense, in exchange for a dismissal of the offense charged. A prose-**
13 **cuting attorney may not make a motion, and a judge may not enter an order, in derogation**
14 **of this subsection.**

15 (6) When a defendant who is convicted of a felony having as an element the defendant's use or
16 threatened use of a firearm during the commission of the crime is a person who was waived from
17 juvenile court under ORS 137.707 (5)(b)(A), 419C.349, 419C.352, 419C.364 or 419C.370, the court is
18 not required to impose a minimum term of imprisonment under this section.

19