

Enrolled
Senate Bill 497

Sponsored by Senator GORSEK; Representatives KROPF, MCLAIN, SOLLMAN, WILDE,
WILLIAMS (Presession filed.)

CHAPTER

AN ACT

Relating to designated person misdemeanors; creating new provisions; and amending ORS 137.633, 163.160, 163.190, 423.478 and 423.525.

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

SECTION 1. ORS 163.160 is amended to read:

163.160. (1) A person commits the crime of assault in the fourth degree if the person:

- (a) Intentionally, knowingly or recklessly causes physical injury to another;
- (b) With criminal negligence causes physical injury to another by means of a deadly weapon;

or

(c) With criminal negligence causes serious physical injury to another who is a vulnerable user of a public way, as defined in ORS 801.608, by means of a motor vehicle.

(2) Assault in the fourth degree is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, assault in the fourth degree under subsection (1)(a) or (b) of this section is a Class C felony if the person commits the crime of assault in the fourth degree and:

(a) The assault is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim;

(b) The person has been previously convicted of violating this section or ORS 163.165, 163.175, 163.185, 163.187 or 163.190, or of committing an equivalent crime in another jurisdiction, and the victim in the previous conviction is the same person who is the victim of the current crime;

(c) The person has at least three previous convictions for violating this section or ORS 163.165, 163.175, 163.185, 163.187 or 163.190 or for committing an equivalent crime in another jurisdiction, in any combination; or

(d) The person commits the assault knowing that the victim is pregnant.

(4) If a person is convicted of misdemeanor assault in the fourth degree constituting domestic violence as an element of the crime as described ORS 132.586, the court shall ensure that the judgment document reflects that the conviction constitutes domestic violence.

[(4)] (5) For purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child.

SECTION 2. ORS 163.190 is amended to read:

163.190. (1) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

(2) Menacing is a Class A misdemeanor.

(3) If a person is convicted of menacing constituting domestic violence as an element of the crime as described ORS 132.586, the court shall ensure that the judgment document reflects that the conviction constitutes domestic violence.

SECTION 3. ORS 423.478, as amended by section 20, chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020)), is amended to read:

423.478. (1) The Department of Corrections shall:

(a) Operate prisons for offenders sentenced to terms of incarceration for more than 12 months;
(b) Provide central information and data services sufficient to:

(A) Allow tracking of offenders; and

(B) Permit analysis of correlations between sanctions, supervision, services and programs, and future criminal conduct; and

(c) Provide interstate compact administration and jail inspections.

(2) Subject to ORS 423.483, [the] **each** county, in partnership with the department, shall assume responsibility for community-based supervision, sanctions and services for offenders convicted of felonies, [or] designated drug-related misdemeanors **or designated person misdemeanors** who are:

(a) On parole;

(b) On probation;

(c) On post-prison supervision;

(d) Sentenced, on or after January 1, 1997, to 12 months or less incarceration;

(e) Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-Prison Supervision to 12 months or less incarceration for violation of a condition of parole, probation or post-prison supervision; or

(f) On conditional release under ORS 420A.206.

(3) Notwithstanding the fact that the court has sentenced a person to a term of incarceration, when an offender is committed to the custody of the supervisory authority of a county under ORS 137.124 (2) or (4), the supervisory authority may execute the sentence by imposing sanctions other than incarceration if deemed appropriate by the supervisory authority. If the supervisory authority releases a person from custody under this subsection and the person is required to report as a sex offender under ORS 163A.010, the supervisory authority, as a condition of release, shall order the person to report to the Department of State Police, a city police department or a county sheriff's office or to the supervising agency, if any:

(a) When the person is released;

(b) Within 10 days of a change of residence;

(c) Once each year within 10 days of the person's birth date;

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

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

(4) As used in this section:

(a) "Attends," "institution of higher education," "works" and "carries on a vocation" have the meanings given those terms in ORS 163A.005.

(b) "Designated drug-related misdemeanor" means:

(A) Unlawful possession of methadone under ORS 475.824 (2)(c);

(B) Unlawful possession of oxycodone under ORS 475.834 (2)(c);

(C) Unlawful possession of heroin under ORS 475.854 (2)(c);

(D) Unlawful possession of 3,4-methylenedioxymethamphetamine under ORS 475.874 (2)(c);

(E) Unlawful possession of cocaine under ORS 475.884 (2)(c); or

(F) Unlawful possession of methamphetamine under ORS 475.894 (2)(c).

(c) "**Designated person misdemeanor**" means:

(A) **Assault in the fourth degree constituting domestic violence if the judgment document is as described in ORS 163.160 (4);**

(B) Menacing constituting domestic violence if the judgment document is as described in ORS 163.190 (3); or

(C) Sexual abuse in the third degree under ORS 163.415.

SECTION 4. ORS 423.525 is amended to read:

423.525. (1) A county, group of counties or intergovernmental corrections entity shall apply to the Director of the Department of Corrections in a manner and form prescribed by the director for funding made available under ORS 423.500 to 423.560. The application shall include a community corrections plan. The Department of Corrections shall provide consultation and technical assistance to counties to aid in the development and implementation of community corrections plans.

(2)(a) From July 1, 1995, until June 30, 1999, a county, group of counties or intergovernmental corrections entity may make application requesting funding for the construction, acquisition, expansion or remodeling of correctional facilities to serve the county, group of counties or intergovernmental corrections entity. The department shall review the application for funding of correctional facilities in accordance with criteria that consider design, cost, capacity, need, operating efficiency and viability based on the county's, group of counties' or intergovernmental corrections entity's ability to provide for ongoing operations.

(b)(A) If the application is approved, the department shall present the application with a request to finance the facility with financing agreements to the State Treasurer and the Director of the Oregon Department of Administrative Services. Except as otherwise provided in subparagraph (B) of this paragraph, upon approval of the request by the State Treasurer and the Director of the Oregon Department of Administrative Services, the facility may be financed with financing agreements, and certificates of participation issued pursuant thereto, as provided in ORS 283.085 to 283.092. All decisions approving or denying applications and requests for financing under this section are final. No such decision is subject to judicial review of any kind.

(B) If requests to finance county correctional facility projects are submitted after February 22, 1996, and the requests have not been approved by the department on the date a session of the Legislative Assembly convenes, the requests are also subject to the approval of the Legislative Assembly.

(c) After approval but prior to the solicitation of bids or proposals for the construction of a project, the county, group of counties or intergovernmental corrections entity and the department shall enter into a written agreement that determines the procedures, and the parties responsible, for the awarding of contracts and the administration of the construction project for the approved correctional facility. If the parties are unable to agree on the terms of the written agreement, the Governor shall decide the terms of the agreement. The Governor's decision is final.

(d) After approval of a construction project, the administration of the project shall be conducted as provided in the agreement required by paragraph (c) of this subsection. The agreement must require at a minimum that the county, group of counties or intergovernmental corrections entity shall submit to the department any change order or alteration of the design of the project that, singly or in the aggregate, reduces the capacity of the correctional facility or materially changes the services or functions of the project. The change order or alteration is not effective until approved by the department. In reviewing the change order or alteration, the department shall consider whether the implementation of the change order or alteration will have any material adverse impact on the parties to any financing agreements or the holders of any certificates of participation issued to fund county correctional facilities under this section. In making its decision, the department may rely on the opinions of the Department of Justice, bond counsel or professional financial advisers.

(3) Notwithstanding ORS 283.085, for purposes of this section, "financing agreement" means a lease purchase agreement, an installment sale agreement, a loan agreement or any other agreement to finance a correctional facility described in this section, or to refinance a previously executed financing agreement for the financing of a correctional facility. The state is not required to own or operate a correctional facility in order to finance it under ORS 283.085 to 283.092 and this section. The state, an intergovernmental corrections entity, county or group of counties may enter into any agreements, including, but not limited to, leases and subleases, that are reasonably necessary or

generally accepted by the financial community for purposes of acquiring or securing financing as authorized by this section. In financing county correctional facilities under this section, "property rights" as used in ORS 283.085 includes leasehold mortgages of the state's rights under leases of correctional facilities from counties.

(4) Notwithstanding any other provision of state law, county charter or ordinance, a county may convey or lease to the State of Oregon, acting by and through the Department of Corrections, title to interests in, or a lease of, any real property, facilities or personal property owned by the county for the purpose of financing the construction, acquisition, expansion or remodeling of a correctional facility. Upon the payment of all principal and interest on, or upon any other satisfaction of, the financing agreement used to finance the construction, acquisition, expansion or remodeling of a correctional facility, the state shall reconvey its interest in, or terminate and surrender its leasehold of, the property or facilities, including the financed construction, acquisition, expansion or remodeling, to the county. In addition to any authority granted by ORS 283.089, for the purposes of obtaining financing, the state may enter into agreements under which the state may grant to trustees or lenders leases, subleases and other security interests in county property conveyed or leased to the state under this subsection and in the property or facilities financed by financing agreements.

(5) In connection with the financing of correctional facilities, the Director of the Oregon Department of Administrative Services may bill the Department of Corrections, and the Department of Corrections shall pay the amounts billed, in the same manner as provided in ORS 283.089. As required by ORS 283.091, the Department of Corrections and the Oregon Department of Administrative Services shall include in the Governor's budget all amounts that will be due in each fiscal period under financing agreements for correctional facilities. Amounts payable by the state under a financing agreement for the construction, acquisition, expansion or remodeling of a correctional facility are limited to available funds as defined in ORS 283.085, and no lender, trustee, certificate holder or county has any claim or recourse against any funds of the state other than available funds.

(6) The director shall adopt rules that may be necessary for the administration, evaluation and implementation of ORS 423.500 to 423.560. The standards shall be sufficiently flexible to foster the development of new and improved supervision or rehabilitative practices and maximize local control.

(7) When a county assumes responsibility under ORS 423.500 to 423.560 for correctional services previously provided by the department, the county and the department shall enter into an intergovernmental agreement that includes a local community corrections plan consisting of program descriptions, budget allocation, performance objectives and methods of evaluating each correctional service to be provided by the county. The performance objectives must include in dominant part reducing future criminal conduct. The methods of evaluating services must include, to the extent of available information systems resources, the collection and analysis of data sufficient to determine the apparent effect of the services on future criminal conduct.

(8) All community corrections plans shall comply with rules adopted pursuant to ORS 423.500 to 423.560, and shall include but need not be limited to an outline of the basic structure and the supervision, services and local sanctions to be applied to offenders convicted of felonies, *[and]* designated drug-related misdemeanors **and designated person misdemeanors** who are:

- (a) On parole;
- (b) On probation;
- (c) On post-prison supervision;
- (d) Sentenced, on or after January 1, 1997, to 12 months or less incarceration;
- (e) Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-Prison Supervision to 12 months or less incarceration for a violation of a condition of parole, probation or post-prison supervision; and
- (f) On conditional release under ORS 420A.206.

(9) All community corrections plans shall designate a community corrections manager of the county or counties and shall provide that the administration of community corrections under ORS 423.500 to 423.560 shall be under such manager.

(10) No amendment to or modification of a county-approved community corrections plan shall be placed in effect without prior notice to the director for purposes of statewide data collection and reporting.

(11) The obligation of the state to provide funding and the scheduling for providing funding of a project approved under this section is dependent upon the ability of the state to access public security markets to sell financing agreements.

(12) No later than January 1 of each odd-numbered year, the Department of Corrections shall:

(a) Evaluate the community corrections policy established in ORS 423.475, 423.478, 423.483 and 423.500 to 423.560; and

(b) Assess the effectiveness of local revocation options.

(13) As used in this section, “designated drug-related misdemeanor” and “designated person misdemeanor” [has the meaning given that term] have the meanings given those terms in ORS 423.478.

SECTION 5. ORS 137.633 is amended to read:

137.633. (1) A person convicted of a felony, [or] a designated drug-related misdemeanor **or a designated person misdemeanor** and sentenced to probation or to the legal and physical custody of the supervisory authority under ORS 137.124 (2) is eligible for a reduction in the period of probation or local control post-prison supervision for complying with terms of probation or post-prison supervision, including the payment of restitution and participation in recidivism reduction programs.

(2) The maximum reduction under this section may not exceed 50 percent of the period of probation or local control post-prison supervision imposed.

(3) A reduction under this section may not be used to shorten the period of probation or local control post-prison supervision to less than six months.

(4)(a) The Department of Corrections shall adopt rules to carry out the provisions of this section.

(b) The supervisory authority shall comply with the rules adopted under this section.

(5) As used in this section:

(a) “Designated drug-related misdemeanor” has the meaning given that term in ORS 423.478.

(b) “Designated person misdemeanor” has the meaning given that term in ORS 423.478.

[(b)] (c) “Local control post-prison supervision” means post-prison supervision that is supervised by a local supervisory authority pursuant to ORS 144.101.

SECTION 6. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Corrections by section 1 (4), chapter _____, Oregon Laws 2021 (Enrolled House Bill 5004), for the biennium beginning July 1, 2021, for community corrections, is increased by \$7,060,171, in order to implement the amendments to ORS 423.478 by section 3 of this 2021 Act.

Passed by Senate June 16, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 22, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State