

Senate Bill 497

Sponsored by Senator GORSEK (Presession 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**.

Requires court to indicate in judgment document when person is convicted of designated person misdemeanor involving domestic violence.

Provides that county, for purposes of grant-in-aid funding from Department of Corrections for community corrections, is responsible for supervision, sanctions and services for offenders convicted of designated person misdemeanors.

Provides that person convicted of designated person misdemeanors qualifies for earned reduction in term of probation. Provides that justice courts and municipal courts do not have jurisdiction over designated person misdemeanors.

A BILL FOR AN ACT

1
2 Relating to designated person misdemeanors; amending ORS 51.050, 137.633, 163.160, 163.190, 221.339,
3 423.478 and 423.525.

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

5 **SECTION 1.** ORS 163.160 is amended to read:

6 163.160. (1) A person commits the crime of assault in the fourth degree if the person:

7 (a) Intentionally, knowingly or recklessly causes physical injury to another;

8 (b) With criminal negligence causes physical injury to another by means of a deadly weapon;

9 or

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

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

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

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

19 (b) The person has been previously convicted of violating this section or ORS 163.165, 163.175,
20 163.185, 163.187 or 163.190, or of committing an equivalent crime in another jurisdiction, and the
21 victim in the previous conviction is the same person who is the victim of the current crime;

22 (c) The person has at least three previous convictions for violating this section or ORS 163.165,
23 163.175, 163.185, 163.187 or 163.190 or for committing an equivalent crime in another jurisdiction, in
24 any combination; or

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

26 **(4) If a person is convicted of misdemeanor assault in the fourth degree constituting**
27 **domestic violence as defined in ORS 135.230, the court shall ensure that the judgment docu-**
28 **ment reflects that the conviction qualifies as a designated person misdemeanor as defined in**

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 **ORS 423.478.**

2 [(4)] (5) For purposes of subsection (3) of this section, an assault is witnessed if the assault is
 3 seen or directly perceived in any other manner by the child.

4 **SECTION 2.** ORS 163.190 is amended to read:

5 163.190. (1) A person commits the crime of menacing if by word or conduct the person inten-
 6 tionally attempts to place another person in fear of imminent serious physical injury.

7 (2) Menacing is a Class A misdemeanor.

8 **(3) If a person is convicted of menacing constituting domestic violence as defined in ORS**
 9 **135.230, the court shall ensure that the judgment document reflects that the conviction**
 10 **qualifies as a designated person misdemeanor as defined in ORS 423.478.**

11 **SECTION 3.** ORS 423.478 is amended to read:

12 423.478. (1) The Department of Corrections shall:

13 (a) Operate prisons for offenders sentenced to terms of incarceration for more than 12 months;

14 (b) Provide central information and data services sufficient to:

15 (A) Allow tracking of offenders; and

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

18 (c) Provide interstate compact administration and jail inspections.

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

22 (a) On parole;

23 (b) On probation;

24 (c) On post-prison supervision;

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

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

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

30 (3) Notwithstanding the fact that the court has sentenced a person to a term of incarceration,
 31 when an offender is committed to the custody of the supervisory authority of a county under ORS
 32 137.124 (2) or (4), the supervisory authority may execute the sentence by imposing sanctions other
 33 than incarceration if deemed appropriate by the supervisory authority. If the supervisory authority
 34 releases a person from custody under this subsection and the person is required to report as a sex
 35 offender under ORS 163A.010, the supervisory authority, as a condition of release, shall order the
 36 person to report to the Department of State Police, a city police department or a county sheriff's
 37 office or to the supervising agency, if any:

38 (a) When the person is released;

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

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

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

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

45 (4) As used in this section:

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

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

4 (A) Unlawful possession of a Schedule I controlled substance under ORS 475.752 (3)(a);

5 (B) Unlawful possession of a Schedule II controlled substance under ORS 475.752 (3)(b);

6 (C) Unlawful possession of methadone under ORS 475.824 (2)(a);

7 (D) Unlawful possession of oxycodone under ORS 475.834 (2)(a);

8 (E) Unlawful possession of heroin under ORS 475.854 (2)(a);

9 (F) Unlawful possession of 3,4-methylenedioxymethamphetamine under ORS 475.874 (2)(a);

10 (G) Unlawful possession of cocaine under ORS 475.884 (2)(a); or

11 (H) Unlawful possession of methamphetamine under ORS 475.894 (2)(a).

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

13 (A) **Assault in the fourth degree constituting domestic violence as described in ORS**
14 **163.160 (4);**

15 (B) **Menacing constituting domestic violence as described in ORS 163.190 (3); or**

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

17 **SECTION 4.** ORS 423.525 is amended to read:

18 423.525. (1) A county, group of counties or intergovernmental corrections entity shall apply to
19 the Director of the Department of Corrections in a manner and form prescribed by the director for
20 funding made available under ORS 423.500 to 423.560. The application shall include a community
21 corrections plan. The Department of Corrections shall provide consultation and technical assistance
22 to counties to aid in the development and implementation of community corrections plans.

23 (2)(a) From July 1, 1995, until June 30, 1999, a county, group of counties or intergovernmental
24 corrections entity may make application requesting funding for the construction, acquisition, ex-
25 pansion or remodeling of correctional facilities to serve the county, group of counties or intergov-
26 ernmental corrections entity. The department shall review the application for funding of
27 correctional facilities in accordance with criteria that consider design, cost, capacity, need, operat-
28 ing efficiency and viability based on the county's, group of counties' or intergovernmental cor-
29 rections entity's ability to provide for ongoing operations.

30 (b)(A) If the application is approved, the department shall present the application with a request
31 to finance the facility with financing agreements to the State Treasurer and the Director of the
32 Oregon Department of Administrative Services. Except as otherwise provided in subparagraph (B)
33 of this paragraph, upon approval of the request by the State Treasurer and the Director of the
34 Oregon Department of Administrative Services, the facility may be financed with financing agree-
35 ments, and certificates of participation issued pursuant thereto, as provided in ORS 283.085 to
36 283.092. All decisions approving or denying applications and requests for financing under this sec-
37 tion are final. No such decision is subject to judicial review of any kind.

38 (B) If requests to finance county correctional facility projects are submitted after February 22,
39 1996, and the requests have not been approved by the department on the date a session of the
40 Legislative Assembly convenes, the requests are also subject to the approval of the Legislative As-
41 sembly.

42 (c) After approval but prior to the solicitation of bids or proposals for the construction of a
43 project, the county, group of counties or intergovernmental corrections entity and the department
44 shall enter into a written agreement that determines the procedures, and the parties responsible, for
45 the awarding of contracts and the administration of the construction project for the approved

1 correctional facility. If the parties are unable to agree on the terms of the written agreement, the
2 Governor shall decide the terms of the agreement. The Governor's decision is final.

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

14 (3) Notwithstanding ORS 283.085, for purposes of this section, "financing agreement" means a
15 lease purchase agreement, an installment sale agreement, a loan agreement or any other agreement
16 to finance a correctional facility described in this section, or to refinance a previously executed fi-
17 nancing agreement for the financing of a correctional facility. The state is not required to own or
18 operate a correctional facility in order to finance it under ORS 283.085 to 283.092 and this section.
19 The state, an intergovernmental corrections entity, county or group of counties may enter into any
20 agreements, including, but not limited to, leases and subleases, that are reasonably necessary or
21 generally accepted by the financial community for purposes of acquiring or securing financing as
22 authorized by this section. In financing county correctional facilities under this section, "property
23 rights" as used in ORS 283.085 includes leasehold mortgages of the state's rights under leases of
24 correctional facilities from counties.

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

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

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

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

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

16 (a) On parole;

17 (b) On probation;

18 (c) On post-prison supervision;

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

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

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

24 (9) All community corrections plans shall designate a community corrections manager of the
 25 county or counties and shall provide that the administration of community corrections under ORS
 26 423.500 to 423.560 shall be under such manager.

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

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

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

34 (a) Evaluate the community corrections policy established in ORS 423.475, 423.478, 423.483 and
 35 423.500 to 423.560; and

36 (b) Assess the effectiveness of local revocation options.

37 (13) As used in this section, “designated drug-related misdemeanor” **and “designated person**
 38 **misdemeanor”** *[has the meaning given that term]* **have the meanings given those terms** in ORS
 39 423.478.

40 **SECTION 5.** ORS 137.633 is amended to read:

41 137.633. (1) A person convicted of a felony, *[or]* a designated drug-related misdemeanor **or a**
 42 **designated person misdemeanor** and sentenced to probation or to the legal and physical custody
 43 of the supervisory authority under ORS 137.124 (2) is eligible for a reduction in the period of pro-
 44 bation or local control post-prison supervision for complying with terms of probation or post-prison
 45 supervision, including the payment of restitution and participation in recidivism reduction programs.

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

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

5 (4)(a) The Department of Corrections shall adopt rules to carry out the provisions of this sec-
6 tion.

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

8 (5) As used in this section:

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

10 **(b) "Designated person misdemeanor" has the meaning given that term in ORS 423.478.**

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

13 **SECTION 6.** ORS 51.050 is amended to read:

14 51.050. (1) Except as otherwise provided in this section, in addition to the criminal jurisdiction
15 of justice courts already conferred upon and exercised by them, justice courts have jurisdiction of
16 all offenses committed or triable in their respective counties. The jurisdiction conveyed by this
17 section is concurrent with any jurisdiction that may be exercised by a circuit court or municipal
18 court.

19 (2) In any justice court that has not become a court of record under ORS 51.025, a defendant
20 charged with a misdemeanor shall be notified immediately after entering a plea of not guilty of the
21 right of the defendant to have the matter transferred to the circuit court for the county where the
22 justice court is located. The election shall be made within 10 days after the plea of not guilty is
23 entered, and the justice shall immediately transfer the case to the appropriate court.

24 (3) A justice court does not have jurisdiction over the trial of any felony, [or a] designated
25 drug-related misdemeanor **or designated person misdemeanor** [as defined in ORS 423.478]. Except
26 as provided in ORS 51.037, a justice court does not have jurisdiction over offenses created by the
27 charter or ordinance of any city.

28 **(4) As used in this section, "designated drug-related misdemeanor" and "designated per-**
29 **son misdemeanor" have the meanings given those terms in ORS 423.478.**

30 **SECTION 7.** ORS 221.339 is amended to read:

31 221.339. (1) A municipal court has concurrent jurisdiction with circuit courts and justice courts
32 over all violations committed or triable in the city where the court is located.

33 (2) Except as provided in subsections (3) and (4) of this section, municipal courts have concur-
34 rent jurisdiction with circuit courts and justice courts over misdemeanors committed or triable in
35 the city. Municipal courts may exercise the jurisdiction conveyed by this section without a charter
36 provision or ordinance authorizing that exercise.

37 (3) Municipal courts have no jurisdiction over felonies, [or] designated drug-related
38 misdemeanors **or designated person misdemeanors** [as defined in ORS 423.478].

39 (4) A city may limit the exercise of jurisdiction over misdemeanors by a municipal court under
40 this section by the adoption of a charter provision or ordinance, except that municipal courts must
41 retain concurrent jurisdiction with circuit courts over:

42 (a) Misdemeanors created by the city's own charter or by ordinances adopted by the city, as
43 provided in ORS 3.132; and

44 (b) Traffic crimes as defined by ORS 801.545.

45 (5) Subject to the powers and duties of the Attorney General under ORS 180.060, the city at-

1 torney has authority to prosecute a violation of any offense created by statute that is subject to the
2 jurisdiction of a municipal court, including any appeal, if the offense is committed or triable in the
3 city. The prosecution shall be in the name of the state. The city attorney shall have all powers of
4 a district attorney in prosecutions under this subsection.

5 **(6) As used in this section, “designated drug-related misdemeanor” and “designated per-**
6 **son misdemeanor” have the meanings given those terms in ORS 423.478.**

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