

**A-Engrossed**  
**Senate Bill 651**

Ordered by the House May 25  
Including House Amendments dated May 25

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.

**Requires supervising officer to notify probationer of right to file objection and have hearing concerning officer's proposed modification to special conditions of probation.** [*Provides that*] **Authorizes** probationer [*or probationer's attorney may*] **to** file objection [*to proposed modification to special conditions of probation*].

**A BILL FOR AN ACT**

1  
2 Relating to probation conditions; amending ORS 137.540.

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

4 **SECTION 1.** ORS 137.540 is amended to read:

5 137.540. (1) The court may sentence the defendant to probation subject to the following general  
6 conditions unless specifically deleted by the court. The probationer shall:

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

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

9 (c) Submit to testing for controlled substance, cannabis or alcohol use if the probationer has a  
10 history of substance abuse or if there is a reasonable suspicion that the probationer has illegally  
11 used controlled substances.

12 (d) Participate in a substance abuse evaluation as directed by the supervising officer and follow  
13 the recommendations of the evaluator if there are reasonable grounds to believe there is a history  
14 of substance abuse.

15 (e) Remain in the State of Oregon until written permission to leave is granted by the Depart-  
16 ment of Corrections or a county community corrections agency.

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

20 (g) Change neither employment nor residence without prior permission from the Department of  
21 Corrections or a county community corrections agency.

22 (h) Permit the parole and probation officer to visit the probationer or the probationer's work  
23 site or residence and to conduct a walk-through of the common areas and of the rooms in the resi-  
24 dence occupied by or under the control of the probationer.

25 (i) Consent to the search of person, vehicle or premises upon the request of a representative of  
26 the supervising officer if the supervising officer has reasonable grounds to believe that evidence of  
27 a violation will be found, and submit to fingerprinting or photographing, or both, when requested

**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 by the Department of Corrections or a county community corrections agency for supervision pur-  
2 poses.

3 (j) Obey all laws, municipal, county, state and federal.

4 (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections  
5 or a county community corrections agency.

6 (L) Not possess weapons, firearms or dangerous animals.

7 (m) Report as required and abide by the direction of the supervising officer.

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

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

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

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

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

17 (p) If required to report as a sex offender under ORS 163A.015, report with the Department of  
18 State Police, a city police department, a county sheriff's office or the supervising agency:

19 (A) When supervision begins;

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

21 (C) Once each year within 10 days of the probationer's date of birth;

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

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

26 (q) Submit to a risk and needs assessment as directed by the supervising officer and follow  
27 reasonable recommendations resulting from the assessment.

28 (2) In addition to the general conditions, the court may impose any special conditions of pro-  
29 bation that are reasonably related to the crime of conviction or the needs of the probationer for the  
30 protection of the public or reformation of the probationer, or both, including, but not limited to, that  
31 the probationer shall:

32 (a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after  
33 November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence  
34 or to the premises thereof, or be subject to any combination of such confinement and restriction,  
35 such confinement or restriction or combination thereof to be for a period not to exceed one year  
36 or one-half of the maximum period of confinement that could be imposed for the offense for which  
37 the defendant is convicted, whichever is the lesser.

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

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

41 (B) Comply with any special conditions of probation that are imposed by the supervising officer  
42 in accordance with subsection (9) of this section.

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

45 (d) For crimes constituting delivery of a controlled substance, as those terms are defined in ORS

1 475.005, or for telephonic harassment under ORS 166.090, or for crimes involving domestic violence,  
2 as defined in ORS 135.230, be prohibited from using Internet websites that provide anonymous text  
3 message services.

4 (3)(a) If a person is released on probation following conviction of stalking under ORS 163.732  
5 (2)(b) or violating a court's stalking protective order under ORS 163.750 (2)(b), the court may include  
6 as a special condition of the person's probation reasonable residency restrictions.

7 (b) If the court imposes the special condition of probation described in this subsection and if at  
8 any time during the period of probation the victim moves to a location that causes the probationer  
9 to be in violation of the special condition of probation, the court may not require the probationer  
10 to change the probationer's residence in order to comply with the special condition of probation.

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

22 (a) "Dwelling" has the meaning given that term in ORS 469B.100.

23 (b) "Dwelling" does not include a residential treatment facility or a halfway house.

24 (c) "Halfway house" means a publicly or privately operated profit or nonprofit residential facil-  
25 ity that provides rehabilitative care and treatment for sex offenders.

26 (d) "Sex offender" has the meaning given that term in ORS 163A.005.

27 (5)(a) If the person is released on probation following conviction of a sex crime, as defined in  
28 ORS 163A.005, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18  
29 years of age, the court, if requested by the victim, shall include as a special condition of the person's  
30 probation that the person not reside within three miles of the victim unless:

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

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

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

38 (D) The person resides in a halfway house. As used in this subparagraph, "halfway house" means  
39 a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative  
40 care and treatment for sex offenders.

41 (b) A victim may request imposition of the special condition of probation described in this sub-  
42 section at the time of sentencing in person or through the prosecuting attorney.

43 (c) If the court imposes the special condition of probation described in this subsection and if at  
44 any time during the period of probation the victim moves to within three miles of the probationer's  
45 residence, the court may not require the probationer to change the probationer's residence in order

1 to comply with the special condition of probation.

2 (6) When a person who is a sex offender, as defined in ORS 163A.005, is released on probation,  
3 the Department of Corrections or the county community corrections agency, whichever is appropri-  
4 ate, shall notify the city police department, if the person is going to reside within a city, and the  
5 county sheriff's office of the county in which the person is going to reside of the person's release  
6 and the conditions of the person's release.

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

10 (8) The court may order that probation be supervised by the court. If the court orders that  
11 probation be supervised by the court, the defendant shall pay a fee of \$100 to the court. Fees im-  
12 posed under this subsection in the circuit court shall be deposited by the clerk of the court in the  
13 General Fund. Fees imposed in a justice court under this subsection shall be paid to the county  
14 treasurer. Fees imposed in a municipal court under this subsection shall be paid to the city treas-  
15 urer.

16 (9)(a) The court may at any time modify the conditions of probation.

17 (b) When the court orders a defendant placed under the supervision of the Department of Cor-  
18 rections or a community corrections agency, the supervising officer may file with the court a pro-  
19 posed modification to the special conditions of probation. The supervising officer shall provide a  
20 copy of the proposed modification to the district attorney and the probationer, **and shall notify the**  
21 **probationer of the right to file an objection and have a hearing as described in subparagraph**  
22 **(A) of this paragraph. The notice requirement may be satisfied by providing the probationer**  
23 **with a copy of a form developed in accordance with rules adopted under ORS 137.595 (2)(b)**  
24 **that describes the right to a hearing. If the district attorney or probationer:**

25 (A) Files an objection to the proposed modification less than five judicial days after the proposed  
26 modification was filed, the court shall schedule a hearing no later than 10 judicial days after the  
27 proposed modification was filed, unless the court finds good cause to schedule a hearing at a later  
28 time.

29 (B) Does not file an objection to the proposed modification less than five judicial days after the  
30 proposed modification was filed, the proposed modification becomes effective five judicial days after  
31 the proposed modification was filed.

32 (10) A court may not order revocation of probation as a result of the probationer's failure to  
33 pay restitution unless the court determines from the totality of the circumstances that the purposes  
34 of the probation are not being served.

35 (11) It is not a cause for revocation of probation that the probationer failed to apply for or ac-  
36 cept employment at any workplace where there is a labor dispute in progress. As used in this sub-  
37 section, "labor dispute" has the meaning for that term provided in ORS 662.010.

38 (12)(a) If the court determines that a defendant has violated the terms of probation, the court  
39 shall collect a \$25 fee from the defendant and may impose a fee for the costs of extraditing the de-  
40 fendant to this state for the probation violation proceeding if the defendant left the state in violation  
41 of the conditions of the defendant's probation. The fees imposed under this subsection become part  
42 of the judgment and may be collected in the same manner as a fine.

43 (b) Probation violation fees collected under this subsection in the circuit court shall be depos-  
44 ited by the clerk of the court in the General Fund. Extradition cost fees collected in the circuit  
45 court under this subsection shall be deposited by the clerk of the court in the Arrest and Return

1 Account established by ORS 133.865. Fees collected in a justice court under this subsection shall  
2 be paid to the county treasurer. Fees collected in a municipal court under this subsection shall be  
3 paid to the city treasurer.

4 (13) As used in this section, “attends,” “institution of higher education,” “works” and “carries  
5 on a vocation” have the meanings given those terms in ORS 163A.005.

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