

Requested by Representative MORGAN

**PROPOSED AMENDMENTS TO
SENATE BILL 651**

1 On page 1 of the printed bill, delete lines 4 through 31 and delete pages
2 2 through 4 and insert:

3 **“SECTION 1.** ORS 137.540 is amended to read:

4 “137.540. (1) The court may sentence the defendant to probation subject
5 to the following general conditions unless specifically deleted by the court.
6 The probationer shall:

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

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

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

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

17 “(e) Remain in the State of Oregon until written permission to leave is
18 granted by the Department of Corrections or a county community corrections
19 agency.

20 “(f) If physically able, find and maintain gainful full-time employment,
21 approved schooling, or a full-time combination of both. Any waiver of this

1 requirement must be based on a finding by the court stating the reasons for
2 the waiver.

3 “(g) Change neither employment nor residence without prior permission
4 from the Department of Corrections or a county community corrections
5 agency.

6 “(h) Permit the parole and probation officer to visit the probationer or
7 the probationer’s work site or residence and to conduct a walk-through of
8 the common areas and of the rooms in the residence occupied by or under
9 the control of the probationer.

10 “(i) Consent to the search of person, vehicle or premises upon the request
11 of a representative of the supervising officer if the supervising officer has
12 reasonable grounds to believe that evidence of a violation will be found, and
13 submit to fingerprinting or photographing, or both, when requested by the
14 Department of Corrections or a county community corrections agency for
15 supervision purposes.

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

17 “(k) Promptly and truthfully answer all reasonable inquiries by the De-
18 partment of Corrections or a county community corrections agency.

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

20 “(m) Report as required and abide by the direction of the supervising of-
21 ficer.

22 “(n) If recommended by the supervising officer, successfully complete a
23 sex offender treatment program approved by the supervising officer and
24 submit to polygraph examinations at the direction of the supervising officer
25 if the probationer:

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

27 “(B) Was previously convicted of a sex offense under ORS 163.305 to
28 163.467; or

29 “(C) Was previously convicted in another jurisdiction of an offense that
30 would constitute a sex offense under ORS 163.305 to 163.467 if committed in

1 this state.

2 “(o) Participate in a mental health evaluation as directed by the super-
3 vising officer and follow the recommendation of the evaluator.

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

7 “(A) When supervision begins;

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

9 “(C) Once each year within 10 days of the probationer’s date of birth;

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

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

14 “(q) Submit to a risk and needs assessment as directed by the supervising
15 officer and follow reasonable recommendations resulting from the assess-
16 ment.

17 “(2) In addition to the general conditions, the court may impose any spe-
18 cial conditions of probation that are reasonably related to the crime of con-
19 viction or the needs of the probationer for the protection of the public or
20 reformation of the probationer, or both, including, but not limited to, that
21 the probationer shall:

22 “(a) For crimes committed prior to November 1, 1989, and misdemeanors
23 committed on or after November 1, 1989, be confined to the county jail or
24 be restricted to the probationer’s own residence or to the premises thereof,
25 or be subject to any combination of such confinement and restriction, such
26 confinement or restriction or combination thereof to be for a period not to
27 exceed one year or one-half of the maximum period of confinement that could
28 be imposed for the offense for which the defendant is convicted, whichever
29 is the lesser.

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

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

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

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

9 “(d) For crimes constituting delivery of a controlled substance, as those
10 terms are defined in ORS 475.005, or for telephonic harassment under ORS
11 166.090, or for crimes involving domestic violence, as defined in ORS 135.230,
12 be prohibited from using Internet websites that provide anonymous text
13 message services.

14 “(3)(a) If a person is released on probation following conviction of stalk-
15 ing under ORS 163.732 (2)(b) or violating a court’s stalking protective order
16 under ORS 163.750 (2)(b), the court may include as a special condition of the
17 person’s probation reasonable residency restrictions.

18 “(b) If the court imposes the special condition of probation described in
19 this subsection and if at any time during the period of probation the victim
20 moves to a location that causes the probationer to be in violation of the
21 special condition of probation, the court may not require the probationer to
22 change the probationer’s residence in order to comply with the special con-
23 dition of probation.

24 “(4) When a person who is a sex offender is released on probation, the
25 court shall impose as a special condition of probation that the person not
26 reside in any dwelling in which another sex offender who is on probation,
27 parole or post-prison supervision resides, without the approval of the
28 person’s supervising parole and probation officer, or in which more than one
29 other sex offender who is on probation, parole or post-prison supervision re-
30 sides, without the approval of the director of the probation agency that is

1 supervising the person or of the county manager of the Department of Cor-
2 rections, or a designee of the director or manager. As soon as practicable,
3 the supervising parole and probation officer of a person subject to the re-
4 quirements of this subsection shall review the person's living arrangement
5 with the person's sex offender treatment provider to ensure that the ar-
6 rangement supports the goals of offender rehabilitation and community
7 safety. As used in this subsection:

8 “(a) ‘Dwelling’ has the meaning given that term in ORS 469B.100.

9 “(b) ‘Dwelling’ does not include a residential treatment facility or a
10 halfway house.

11 “(c) ‘Halfway house’ means a publicly or privately operated profit or
12 nonprofit residential facility that provides rehabilitative care and treatment
13 for sex offenders.

14 “(d) ‘Sex offender’ has the meaning given that term in ORS 163A.005.

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

20 “(A) The victim resides in a county having a population of less than
21 130,000 and the person is required to reside in that county;

22 “(B) The person demonstrates to the court by a preponderance of the ev-
23 idence that no mental intimidation or pressure was brought to bear during
24 the commission of the crime;

25 “(C) The person demonstrates to the court by a preponderance of the ev-
26 idence that imposition of the condition will deprive the person of a residence
27 that would be materially significant in aiding in the rehabilitation of the
28 person or in the success of the probation; or

29 “(D) The person resides in a halfway house. As used in this subparagraph,
30 ‘halfway house’ means a publicly or privately operated profit or nonprofit

1 residential facility that provides rehabilitative care and treatment for sex
2 offenders.

3 “(b) A victim may request imposition of the special condition of probation
4 described in this subsection at the time of sentencing in person or through
5 the prosecuting attorney.

6 “(c) If the court imposes the special condition of probation described in
7 this subsection and if at any time during the period of probation the victim
8 moves to within three miles of the probationer’s residence, the court may
9 not require the probationer to change the probationer’s residence in order
10 to comply with the special condition of probation.

11 “(6) When a person who is a sex offender, as defined in ORS 163A.005, is
12 released on probation, the Department of Corrections or the county commu-
13 nity corrections agency, whichever is appropriate, shall notify the city police
14 department, if the person is going to reside within a city, and the county
15 sheriff’s office of the county in which the person is going to reside of the
16 person’s release and the conditions of the person’s release.

17 “(7) Failure to abide by all general and special conditions of probation
18 may result in arrest, modification of conditions, revocation of probation or
19 imposition of structured, intermediate sanctions in accordance with rules
20 adopted under ORS 137.595.

21 “(8) The court may order that probation be supervised by the court. If the
22 court orders that probation be supervised by the court, the defendant shall
23 pay a fee of \$100 to the court. Fees imposed under this subsection in the
24 circuit court shall be deposited by the clerk of the court in the General
25 Fund. Fees imposed in a justice court under this subsection shall be paid to
26 the county treasurer. Fees imposed in a municipal court under this sub-
27 section shall be paid to the city treasurer.

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

29 “(b) When the court orders a defendant placed under the supervision of
30 the Department of Corrections or a community corrections agency, the

1 supervising officer may file with the court a proposed modification to the
2 special conditions of probation. The supervising officer shall provide a copy
3 of the proposed modification to the district attorney and the probationer,
4 **and shall notify the probationer of the right to file an objection and**
5 **have a hearing as described in subparagraph (A) of this paragraph. The**
6 **notice requirement may be satisfied by providing the probationer with**
7 **a copy of a form developed in accordance with rules adopted under**
8 **ORS 137.595 (2)(b) that describes the right to a hearing.** If the district
9 attorney **or probationer:**

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

14 “(B) Does not file an objection to the proposed modification less than five
15 judicial days after the proposed modification was filed, the proposed modifi-
16 cation becomes effective five judicial days after the proposed modification
17 was filed.

18 “(10) A court may not order revocation of probation as a result of the
19 probationer’s failure to pay restitution unless the court determines from the
20 totality of the circumstances that the purposes of the probation are not being
21 served.

22 “(11) It is not a cause for revocation of probation that the probationer
23 failed to apply for or accept employment at any workplace where there is a
24 labor dispute in progress. As used in this subsection, ‘labor dispute’ has the
25 meaning for that term provided in ORS 662.010.

26 “(12)(a) If the court determines that a defendant has violated the terms
27 of probation, the court shall collect a \$25 fee from the defendant and may
28 impose a fee for the costs of extraditing the defendant to this state for the
29 probation violation proceeding if the defendant left the state in violation of
30 the conditions of the defendant’s probation. The fees imposed under this

1 subsection become part of the judgment and may be collected in the same
2 manner as a fine.

3 “(b) Probation violation fees collected under this subsection in the circuit
4 court shall be deposited by the clerk of the court in the General Fund.
5 Extradition cost fees collected in the circuit court under this subsection
6 shall be deposited by the clerk of the court in the Arrest and Return Account
7 established by ORS 133.865. Fees collected in a justice court under this sub-
8 section shall be paid to the county treasurer. Fees collected in a municipal
9 court under this subsection shall be paid to the city treasurer.

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

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