

B-Engrossed
Senate Bill 339

Ordered by the House May 11
Including Senate Amendments dated March 22 and House Amendments
dated May 11

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation)

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.

Authorizes court to require as condition of probation [*for person convicted of harassment*] completion of sex offender treatment program and submission to polygraph examinations, if recommended by probation officer and if **probationer is on supervision for any sex crime or harassment** [*involved*] **involving** touching of sexual or intimate parts of another person, **or was previously convicted of any sex crime.**

A BILL FOR AN ACT

1
2 Relating to crime; amending ORS 137.540.

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

4 **SECTION 1.** ORS 137.540, as amended by section 10, chapter 78, Oregon Laws 2022, is amended
5 to read:

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

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

9 (b) 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 (c) 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 (d) 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 (e) Not change residence without prior permission from the Department of Corrections or a
18 county community corrections agency and inform the parole and probation officer of any change in
19 employment.

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

23 (g) Consent to the search of person, vehicle or premises upon the request of a representative
24 of the supervising officer if the supervising officer has reasonable grounds to believe that evidence
25 of 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 (h) Obey all laws, municipal, county, state and federal, and in circumstances in which state and
4 federal law conflict, obey state law.

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

7 (j) Not possess weapons, firearms or dangerous animals.

8 (k) Report as required and abide by the direction of the supervising officer.

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

12 (A) Is under supervision for a sex [offense under ORS 163.305 to 163.467] **crime as defined in**
13 **ORS 163A.005 or harassment under ORS 166.065 (4)(a)(A);**

14 (B) Was previously convicted of a sex [offense under ORS 163.305 to 163.467] **crime as defined**
15 **in ORS 163A.005;** or

16 (C) Was previously convicted in another jurisdiction of an offense that would constitute a sex
17 [offense under ORS 163.305 to 163.467] **crime as defined in ORS 163A.005** if committed in this state.

18 (m) Participate in a mental health evaluation as directed by the supervising officer and follow
19 the recommendation of the evaluator.

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

22 (A) When supervision begins;

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

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

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

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

29 (o) Submit to a risk and needs assessment as directed by the supervising officer and follow
30 reasonable recommendations resulting from the assessment.

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

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

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

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

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

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

3 (d) For crimes constituting delivery of a controlled substance, as those terms are defined in ORS
4 475.005, or for telephonic harassment under ORS 166.090, or for crimes involving domestic violence,
5 as defined in ORS 135.230, be prohibited from using Internet websites that provide anonymous text
6 message services.

7 (e) Not use or possess controlled substances except pursuant to a medical prescription.

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) A victim may request imposition of the special condition of probation described in this sub-

1 section at the time of sentencing in person or through the prosecuting attorney.

2 (c) If the court imposes the special condition of probation described in this subsection and if at
3 any time during the period of probation the victim moves to within three miles of the probationer's
4 residence, the court may not require the probationer to change the probationer's residence in order
5 to comply with the special condition of probation.

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

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

14 (8) The court may order that probation be supervised by the court.

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

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

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

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

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

34 (11) If the court ordered as a special condition of probation that the probationer find and
35 maintain employment, it is not a cause for revocation of probation that the probationer failed to
36 apply for or accept employment at any workplace where there is a labor dispute in progress. As used
37 in this subsection, "labor dispute" has the meaning for that term provided in ORS 662.010.

38 (12) As used in this section, "attends," "institution of higher education," "works" and "carries
39 on a vocation" have the meanings given those terms in ORS 163A.005.

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