

HB 4041 -1 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 2/9

WHAT THE MEASURE DOES:

The measure is a public safety omnibus that includes placeholder language related to credit for time served and post-conviction relief, the addition of exposure to an unlawful controlled substance in the crime of criminal mistreatment, new requirements for recording grand jury proceedings, changes to whose consent is needed to enter a conditional plea, judicial discretion to reduce certain crimes from misdemeanors to violations, and an increase in the dollar amount required for the varying degrees of theft and criminal mischief.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 The amendment replaces the measure with a public safety omnibus that includes a reduction of two categories of driving while suspended from a misdemeanor to a violation; an increase in the presumptive sentence for felony fleeing or attempting to elude a police officer in a vehicle for either repeat offenses or causing physical injury to another person; new procedural requirements for petitions for post-conviction relief on nonunanimous jury verdicts; new procedures for sentence computations and to address erroneous releases; and an increase of the dollar amounts for theft in the first, second, and third degrees and criminal mischief in the first and second degrees. The amendment declares an emergency and is effective on passage but delays the effective date of some sections.

Detailed Summary

Driving While Suspended (Sections 1–2)

Removes suspensions or revocations based on *criminal mischief* and *reckless driving* from the methods of committing criminal driving while suspended or revoked. Delays operation of this section to January 1, 2027.

Felony Fleeing or Attempt to Elude (Sections 3–4)

Requires the Criminal Justice Commission (CJC) to classify felony *fleeing or attempting to elude a police officer* in a vehicle as a crime category six in the sentencing guidelines when the defendant has a prior conviction for felony *fleeing or attempting to elude a police officer* in a vehicle. Requires the CJC to classify the crime as a person crime and a category six, if the defendant's act results in physical injury another person, or eight if the act results in serious physical injury to another person. Delays operation of this section to January 1, 2027.

Post-Conviction Relief for Nonunanimous Jury Verdicts (Sections 5–6)

Requires a petition for post-conviction relief for convictions by a nonunanimous jury verdict to be filed no later than 120 days after the effective date of the measure. Creates procedures, including establishing burden of proof and limiting admissible evidence, for petitions for post-conviction relief for convictions by a nonunanimous jury verdict.

Sentence Recalculations (Sections 7–12)

Allows the Department of Corrections to petition the court to allow a person to be returned to custody if the department released the person due to an error in sentence calculation. Provides for procedural requirements for

the petition, including appointment of counsel, hearing timelines and possible detention of the person pending the hearing, and victim notification. Applies these provisions to persons released on or after July 10, 2025. §§7, 8.

Adds the ability of a trial court to delete or modify an "ambiguous" term in an entry of judgment of conviction or supplemental judgment (in addition to erroneous terms). Requires the court to appoint counsel for the person and hold a hearing unless either are waived and requires the court to only make modifications that are supported by the record from the original sentencing proceeding. §9.

Prohibits the Department of Corrections from applying more presentence incarceration credit (sometimes called "credit for time served") to a person's sentence than the person actually served in custody unless expressly ordered by the court. Prohibits crediting presentence incarceration credit to more than one consecutive sentence unless expressly ordered by the court in the judgment. §§10, 11.

Requires the Department of Corrections to notify the court and others if, after the initial 140 days of a person's sentence, the department recomputes the amount of presentence incarceration credit the person should have and the recalculation results in a projected release date different from the previously computed projected release date. Provides for the procedures of the notice. §10.

Theft and Criminal Mischief Dollar Amounts (Sections 13–18)

Increases the dollar amount required for several degrees of theft and criminal mischief as follows:

- *Theft in the third degree*: changes the total property value from "less than \$100" to "less than \$150"
- Theft in the second degree: changes the total property value from "\$100 or more and less than \$1,000" to "\$150 or more and less than \$1,500"
- Theft in the first degree: changes the total property value from "\$1,000 or more" to "\$1,500 or more"
- Criminal mischief in the second degree: changes the property damage amount from \$500 to \$750
- Criminal mischief in the first degree: changes the property damage amount from \$1,000 to \$1,500

Delays operation of these sections to January 1, 2027.

BACKGROUND:

Driving While Suspended

Driving while suspended or revoked, a crime in Oregon, can be either a violation (Ors 811.175), a misdemeanor (ORS 811.182(4)), or a felony (ORS 811.182(3)). To be a misdemeanor, a person must drive while their license is either suspended or revoked and the suspension or revocation is based on one of the listed reasons, many of which are the commission of other vehicular crimes. Examples of those reasons include suspensions for *recklessly endangering another person* resulting from operating a motor vehicle, for *reckless driving*, and for *fleeing or attempting to elude a police officer*. If the conduct doesn't qualify as a misdemeanor or felony under ORS 811.182, then the *driving while suspended* is a Class A violation under ORS 811.175.

Felony Fleeing or Attempt to Elude

A person can commit the crime of *fleeing or attempting to elude a police officer* by operating a motor vehicle and knowingly fleeing or attempting to elude a police officer who has given them a visible or audible signal to stop. If the person gets out of the vehicle after being asked to stop and then flees, the crime is a Class A misdemeanor. If the person stays in the vehicle and flees in the vehicle, it is a Class C felony. ORS 811.540.

Post-Conviction Relief for Nonunanimous Jury Verdicts

Article I, Section 11, was adopted into the Oregon Constitution in 1934 and states that, in the circuit court, ten members of the jury may render a verdict of guilty or not guilty for serious offenses, except for the crime of first degree murder, which shall be found only by a unanimous verdict. As a result, from 1934 to April 2020, juries in

Oregon were instructed that to reach a verdict of guilty in criminal cases, at least 10 out of 12 jurors must agree upon the verdict. In *Ramos v. Louisiana*, the U.S. Supreme Court held in 2020 that the Sixth Amendment's unanimous verdict requirement to convict a defendant of a serious offense applies to state and federal criminal trials equally by way of the Fourteenth Amendment, rendering nonunanimous jury verdicts unconstitutional. In a subsequent case, *Edwards v. Vannoy*, the U.S. Supreme Court held that the *Ramos* jury unanimity rule did not apply retroactively on federal collateral review. However, the court noted that states may choose whether to allow retroactivity for state post-conviction cases. In 2022, the Oregon Supreme Court held in *Watkins v. Ackley* that the *Ramos* jury unanimity rule does apply retroactively under state law, meaning that anyone who had a nonunanimous jury conviction is entitled to a new trial. To get a new trial, an individual must file a post-conviction relief claim. [SB 321 \(2023\)](#) established a process for people convicted or found guilty except for insanity by a nonunanimous jury verdict to petition the court for post-conviction relief.