

A-Engrossed
Senate Bill 714

Ordered by the Senate April 25
Including Senate Amendments dated April 25

Sponsored by COMMITTEE ON JUDICIARY

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.

[Decreases penalties for crime of cheating. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.]

Allows court to include reasonable residency restrictions as special condition of probation for person convicted of stalking or violating court's stalking protective order.

Allows State Board of Parole and Post-Prison Supervision or other supervisory authority to include reasonable residency restrictions as special condition of post-prison supervision for person convicted of stalking or violating court's stalking protective order.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; and amending ORS 137.540 and 144.102.

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 or alcohol use if the probationer has a history of
10 substance abuse or if there is a reasonable suspicion that the probationer has illegally used con-
11 trolled 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

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 the supervising officer if the supervising officer has reasonable grounds to believe that evidence of
2 a violation will be found, and submit to fingerprinting or photographing, or both, when requested
3 by the Department of Corrections or a county community corrections agency for supervision pur-
4 poses.

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

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

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

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

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

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

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

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

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

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

21 (A) When supervision begins;

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

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

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

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

28 (q) Submit to a risk and needs assessment as directed by the supervising officer.

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

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

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

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

42 (B) Comply with any special conditions of probation that are imposed by the supervising officer
43 in accordance with subsection [(8)] (9) of this section.

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

1 **(3)(a) If a person is released on probation following conviction of stalking under ORS**
2 **163.732 (2)(b) or violating a court’s stalking protective order under ORS 163.750 (2)(b), the**
3 **court may include as a special condition of the person’s probation reasonable residency re-**
4 **strictions.**

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

10 [(3)] (4) When a person who is a sex offender is released on probation, the court shall impose
11 as a special condition of probation that the person not reside in any dwelling in which another sex
12 offender who is on probation, parole or post-prison supervision resides, without the approval of the
13 person’s supervising parole and probation officer, or in which more than one other sex offender who
14 is on probation, parole or post-prison supervision resides, without the approval of the director of the
15 probation agency that is supervising the person or of the county manager of the Department of
16 Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole
17 and probation officer of a person subject to the requirements of this subsection shall review the
18 person’s living arrangement with the person’s sex offender treatment provider to ensure that the
19 arrangement supports the goals of offender rehabilitation and community safety. As used in this
20 subsection:

21 (a) “Dwelling” has the meaning given that term in ORS 469B.100.

22 (b) “Dwelling” does not include a residential treatment facility or a halfway house.

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

25 (d) “Sex offender” has the meaning given that term in ORS 163A.005.

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

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

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

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

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

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

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

1 [(5)] **(6)** When a person who is a sex offender, as defined in ORS 163A.005, is released on pro-
2 bation, the Department of Corrections or the county community corrections agency, whichever is
3 appropriate, shall notify the city police department, if the person is going to reside within a city,
4 and the county sheriff's office of the county in which the person is going to reside of the person's
5 release and the conditions of the person's release.

6 [(6)] **(7)** Failure to abide by all general and special conditions of probation may result in arrest,
7 modification of conditions, revocation of probation or imposition of structured, intermediate sanc-
8 tions in accordance with rules adopted under ORS 137.595.

9 [(7)] **(8)** The court may order that probation be supervised by the court. If the court orders that
10 probation be supervised by the court, the defendant shall pay a fee of \$100 to the court. Fees im-
11 posed under this subsection in the circuit court shall be deposited by the clerk of the court in the
12 General Fund. Fees imposed in a justice court under this subsection shall be paid to the county
13 treasurer. Fees imposed in a municipal court under this subsection shall be paid to the city treas-
14 urer.

15 [(8)(a)] **(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. If the district attor-
20 ney:

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

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

28 [(9)] **(10)** A court may not order revocation of probation as a result of the probationer's failure
29 to pay restitution unless the court determines from the totality of the circumstances that the pur-
30 poses of the probation are not being served.

31 [(10)] **(11)** It is not a cause for revocation of probation that the probationer failed to apply for
32 or accept employment at any workplace where there is a labor dispute in progress. As used in this
33 subsection, "labor dispute" has the meaning for that term provided in ORS 662.010.

34 [(11)(a)] **(12)(a)** If the court determines that a defendant has violated the terms of probation, the
35 court shall collect a \$25 fee from the defendant and may impose a fee for the costs of extraditing
36 the defendant to this state for the probation violation proceeding if the defendant left the state in
37 violation of the conditions of the defendant's probation. The fees imposed under this subsection be-
38 come part of the judgment and may be collected in the same manner as a fine.

39 (b) Probation violation fees collected under this subsection in the circuit court shall be depos-
40 ited by the clerk of the court in the General Fund. Extradition cost fees collected in the circuit
41 court under this subsection shall be deposited by the clerk of the court in the Arrest and Return
42 Account established by ORS 133.865. Fees collected in a justice court under this subsection shall
43 be paid to the county treasurer. Fees collected in a municipal court under this subsection shall be
44 paid to the city treasurer.

45 [(12)] **(13)** As used in this section, "attends," "institution of higher education," "works" and

1 “carries on a vocation” have the meanings given those terms in ORS 163A.005.

2 **SECTION 2.** ORS 144.102 is amended to read:

3 144.102. (1) The State Board of Parole and Post-Prison Supervision or local supervisory authority
4 responsible for correctional services for a person shall specify in writing the conditions of post-
5 prison supervision imposed under ORS 144.096. A copy of the conditions must be given to the person
6 upon release from prison or jail.

7 (2) The board or the supervisory authority shall determine, and may at any time modify, the
8 conditions of post-prison supervision, which may include, among other conditions, that the person
9 shall:

10 (a) Comply with the conditions of post-prison supervision as specified by the board or supervi-
11 sory authority.

12 (b) Be under the supervision of the Department of Corrections and its representatives or other
13 supervisory authority and abide by their direction and counsel.

14 (c) Answer all reasonable inquiries of the board, the department or the supervisory authority.

15 (d) Report to the parole officer as directed by the board, the department or the supervisory au-
16 thority.

17 (e) Not own, possess or be in control of any weapon.

18 (f) Respect and obey all municipal, county, state and federal laws.

19 (g) Understand that the board or supervisory authority may, at its discretion, punish violations
20 of post-prison supervision.

21 (h) Attend a victim impact treatment session in a county that has a victim impact program. If
22 the board or supervisory authority requires attendance under this paragraph, the board or supervi-
23 sory authority may require the person, as an additional condition of post-prison supervision, to pay
24 a reasonable fee to the victim impact program to offset the cost of the person’s participation. The
25 board or supervisory authority may not order a person to pay a fee in excess of \$5 under this par-
26 agraph.

27 (3) If the person is required to report as a sex offender under ORS 163A.010, the board or su-
28 pervisory authority shall include as a condition of post-prison supervision that the person report
29 with the Department of State Police, a city police department, a county sheriff’s office or the
30 supervising agency:

31 (a) When supervision begins;

32 (b) Within 10 days of a change in residence;

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

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

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

38 (4)(a) The board or supervisory authority may establish special conditions that the board or su-
39 pervisory authority considers necessary because of the individual circumstances of the person on
40 post-prison supervision.

41 (b) If the person is on post-prison supervision following conviction of a sex crime, as defined in
42 ORS 163A.005, the board or supervisory authority shall include all of the following as special con-
43 ditions of the person’s post-prison supervision:

44 (A) Agreement to comply with a curfew set by the board, the supervisory authority or the
45 supervising officer.

1 (B) A prohibition against contacting a person under 18 years of age without the prior written
2 approval of the board, supervisory authority or supervising officer.

3 (C) A prohibition against being present more than one time, without the prior written approval
4 of the board, supervisory authority or supervising officer, at a place where persons under 18 years
5 of age regularly congregate.

6 (D) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition
7 against being present, without the prior written approval of the board, supervisory authority or
8 supervising officer, at, or on property adjacent to, a school, child care center, playground or other
9 place intended for use primarily by persons under 18 years of age.

10 (E) A prohibition against working or volunteering at a school, child care center, park, play-
11 ground or other place where persons under 18 years of age regularly congregate.

12 (F) Entry into and completion of or successful discharge from a sex offender treatment program
13 approved by the board, supervisory authority or supervising officer. The program may include
14 polygraph and plethysmograph testing. The person is responsible for paying for the treatment pro-
15 gram.

16 (G) A prohibition against direct or indirect contact with the victim, unless approved by the
17 victim, the person's treatment provider and the board, supervisory authority or supervising officer.

18 (H) Unless otherwise indicated for the treatment required under subparagraph (F) of this para-
19 graph, a prohibition against viewing, listening to, owning or possessing sexually stimulating visual
20 or auditory materials that are relevant to the person's deviant behavior.

21 (I) Agreement to consent to a search of the person or the vehicle or residence of the person
22 upon the request of a representative of the board or supervisory authority if the representative has
23 reasonable grounds to believe that evidence of a violation of a condition of post-prison supervision
24 will be found.

25 (J) Participation in random polygraph examinations to obtain information for risk management
26 and treatment. The person is responsible for paying the expenses of the examinations. The results
27 of a polygraph examination under this subparagraph may not be used in evidence in a hearing to
28 prove a violation of post-prison supervision.

29 (K) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless
30 approved by the board, supervisory authority or supervising officer.

31 (L) A prohibition against using a post-office box unless approved by the board, supervisory au-
32 thority or supervising officer.

33 (M) A prohibition against residing in a dwelling in which another sex offender who is on pro-
34 bation, parole or post-prison supervision resides unless approved by the board, supervisory authority
35 or supervising officer, or in which more than one other sex offender who is on probation, parole or
36 post-prison supervision resides unless approved by the board or the director of the supervisory au-
37 thority, or a designee of the board or director. As soon as practicable, the supervising officer of a
38 person subject to the requirements of this subparagraph shall review the person's living arrange-
39 ment with the person's sex offender treatment provider to ensure that the arrangement supports the
40 goals of offender rehabilitation and community safety.

41 (c)(A) If the person is on post-prison supervision following conviction of a sex crime, as defined
42 in ORS 163A.005, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18
43 years of age, the board or supervisory authority, if requested by the victim, shall include as a special
44 condition of the person's post-prison supervision that the person not reside within three miles of the
45 victim unless:

1 (i) The victim resides in a county having a population of less than 130,000 and the person is
2 required to reside in that county under subsection (7) of this section;

3 (ii) The person demonstrates to the board or supervisory authority by a preponderance of the
4 evidence that no mental intimidation or pressure was brought to bear during the commission of the
5 crime;

6 (iii) The person demonstrates to the board or supervisory authority by a preponderance of the
7 evidence that imposition of the condition will deprive the person of a residence that would be
8 materially significant in aiding in the rehabilitation of the person or in the success of the post-prison
9 supervision; or

10 (iv) The person resides in a halfway house.

11 (B) A victim may request imposition of the special condition of post-prison supervision described
12 in this paragraph at the time of sentencing in person or through the prosecuting attorney. A victim's
13 request may be included in the judgment document.

14 (C) If the board or supervisory authority imposes the special condition of post-prison supervision
15 described in this paragraph and if at any time during the period of post-prison supervision the victim
16 moves to within three miles of the person's residence, the board or supervisory authority may not
17 require the person to change the person's residence in order to comply with the special condition
18 of post-prison supervision.

19 **(d)(A) If a person is on post-prison supervision following conviction of stalking under**
20 **ORS 163.732 (2)(b) or violating a court's stalking protective order under ORS 163.750 (2)(b),**
21 **the board or supervisory authority may include as a special condition of the person's post-**
22 **prison supervision reasonable residency restrictions.**

23 **(B) If the board or supervisory authority imposes the special condition of post-prison**
24 **supervision described in this paragraph and if at any time during the period of post-prison**
25 **supervision the victim moves to a location that causes the person to be in violation of the**
26 **special condition of post-prison supervision, the board or supervisory authority may not re-**
27 **quire the person to change the person's residence in order to comply with the special con-**
28 **dition of post-prison supervision.**

29 (5)(a) The board or supervisory authority may require the person to pay, as a condition of
30 post-prison supervision, compensatory fines, restitution or attorney fees:

31 (A) As determined, imposed or required by the sentencing court; or

32 (B) When previously required as a condition of any type of supervision that is later revoked.

33 (b) The board may require a person to pay restitution as a condition of post-prison supervision
34 imposed for an offense other than the offense for which the restitution was ordered if the person:

35 (A) Was ordered to pay restitution as a result of another conviction; and

36 (B) Has not fully paid the restitution by the time the person has completed the period of post-
37 prison supervision imposed for the offense for which the restitution was ordered.

38 (6) A person's failure to apply for or accept employment at a workplace where there is a labor
39 dispute in progress does not constitute a violation of the conditions of post-prison supervision.

40 (7)(a) When a person is released from imprisonment on post-prison supervision, the board shall
41 order as a condition of post-prison supervision that the person reside for the first six months after
42 release in the county that last supervised the person, if the person was on active supervision as an
43 adult for a felony at the time of the offense that resulted in the imprisonment.

44 (b) If the person was not on active supervision as an adult for a felony at the time of the offense
45 that resulted in the imprisonment, the board shall order as a condition of post-prison supervision

1 that the person reside for the first six months after release in the county where the person resided
2 at the time of the offense that resulted in the imprisonment.

3 (c) For purposes of paragraph (b) of this subsection:

4 (A) The board shall determine the county where the person resided at the time of the offense
5 by examining records such as:

- 6 (i) An Oregon driver license, regardless of its validity;
- 7 (ii) Records maintained by the Department of Revenue;
- 8 (iii) Records maintained by the Department of State Police;
- 9 (iv) Records maintained by the Department of Human Services;
- 10 (v) Records maintained by the Department of Corrections; and
- 11 (vi) Records maintained by the Oregon Health Authority.

12 (B) If the person did not have an identifiable address at the time of the offense, or the address
13 cannot be determined, the person is considered to have resided in the county where the offense oc-
14 curred.

15 (C) If the person is serving multiple sentences, the county of residence is determined according
16 to the date of the last arrest resulting in a conviction.

17 (D) In determining the person's county of residence, the board may not consider offenses com-
18 mitted by the person while the person was incarcerated in a Department of Corrections facility.

19 (d) Upon motion of the board, the supervisory authority, the person, a victim or a district at-
20 torney, the board may waive the residency condition under paragraph (b) of this subsection only
21 after making a finding that one of the following conditions has been met:

22 (A) The person provides proof of employment with no set ending date in a county other than the
23 county of residence determined under paragraph (c) of this section;

24 (B) The person is found to pose a significant danger to a victim of the person's crime residing
25 in the county of residence, or a victim or victim's family residing in the county of residence is found
26 to pose a significant danger to the person;

27 (C) The person has a spouse or biological or adoptive family residing in a county other than the
28 county of residence who will be materially significant in aiding in the rehabilitation of the person
29 and in the success of the post-prison supervision;

30 (D) As another condition of post-prison supervision, the person is required to participate in a
31 treatment program that is not available in the county of residence;

32 (E) The person requests release to another state; or

33 (F) The board finds other good cause for the waiver.

34 (8) As used in this section:

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

37 (b)(A) "Dwelling" has the meaning given that term in ORS 469B.100.

38 (B) "Dwelling" does not mean a residential treatment facility or a halfway house.

39 (c) "Halfway house" means a residential facility that provides rehabilitative care and treatment
40 for sex offenders.

41 (d) "Labor dispute" has the meaning given that term in ORS 662.010.

42 **SECTION 3. The amendments to ORS 137.540 and 144.102 by sections 1 and 2 of this 2017**
43 **Act apply to crimes committed on or after the effective date of this 2017 Act.**

44