

DRAFT

SUMMARY

Modifies class of inmates eligible for increased reduction in term of incarceration for appropriate institutional behavior and participation in, or completion of, certain educational programs.

Sunsets increase on July 1, 2013.

Prohibits Department of Corrections from initiating resentencing proceedings related to increased reduction in term of incarceration unless and until increased reduction may result in earlier release of inmate from physical custody.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to crime; creating new provisions; amending ORS 421.121 and sections 48 and 49, chapter 660, Oregon Laws 2009; and declaring an emergency.

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

SECTION 1. ORS 421.121, as amended by section 19, chapter 660, Oregon Laws 2009, is amended to read:

421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a reduction in the term of incarceration for:

(a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and

(b)(A) Participation in the adult basic skills development program described in ORS 421.084; or

(B) Obtaining a high school diploma, a General Educational Development (GED) certificate, a certificate or degree from a post-secondary education

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 institution as defined in ORS 337.511 or a journey level certification from a
2 registered apprenticeship program as defined in ORS 660.010. The reduction
3 described in this subparagraph may not exceed a period of 60 days.

4 ~~[(2)]~~**(2)(a)** The maximum amount of time credits earned for appropriate
5 institutional behavior, for participation in the adult basic skills development
6 program described in ORS 421.084 or for obtaining a diploma, certificate or
7 degree described in subsection (1)(b)(B) of this section may not exceed ~~[20]~~
8 **30** percent of the total term of incarceration in a Department of Corrections
9 institution.

10 **(b) Notwithstanding paragraph (a) of this subsection, the maximum**
11 **amount of time credits earned under this section may not exceed 20**
12 **percent of the total term of incarceration in a Department of Cor-**
13 **rections institution if the sentence is for conviction of:**

- 14 **(A) A crime listed in ORS 137.700;**
- 15 **(B) Criminally negligent homicide under ORS 163.145;**
- 16 **(C) Assault in the fourth degree under ORS 163.160 (3);**
- 17 **(D) Assault in the third degree under ORS 163.165;**
- 18 **(E) Criminal mistreatment in the first degree under ORS 163.205;**
- 19 **(F) Assaulting a public safety officer under ORS 163.208;**
- 20 **(G) Subjecting another person to involuntary servitude in the sec-**
21 **ond degree under ORS 163.263;**
- 22 **(H) Subjecting another person to involuntary servitude in the first**
23 **degree under ORS 163.264;**
- 24 **(I) Trafficking in persons under ORS 163.266;**
- 25 **(J) Custodial sexual misconduct in the first degree under ORS**
26 **163.452;**
- 27 **(K) Unlawful contact with a child under ORS 163.479;**
- 28 **(L) Child neglect in the first degree under ORS 163.547;**
- 29 **(M) Aggravated theft in the first degree under ORS 164.057, if:**
30 **(i) The victim of the theft was 65 years of age or older at the time**
31 **of the commission of the offense; and**

1 (ii) The value of the property stolen from the victim described in
2 sub-subparagraph (i) of this subparagraph, in a single or aggregate
3 transaction, is \$10,000 or more.

4 (N) Burglary in the first degree under ORS 164.225, if any of the
5 following factors were included in the commission of the offense:

6 (i) The offender was armed with a deadly weapon;

7 (ii) The offender caused, threatened or attempted physical injury
8 to the victim; or

9 (iii) The offense was committed in an occupied dwelling.

10 (O) Arson in the first degree under ORS 164.325;

11 (P) Treason under ORS 166.005;

12 (Q) Abuse of corpse in the second degree under ORS 166.085;

13 (R) Abuse of corpse in the first degree under ORS 166.087;

14 (S) Unlawful use of a weapon under ORS 166.220 (1)(a);

15 (T) A violation of ORS 166.275;

16 (U) Racketeering activities under ORS 166.720;

17 (V) A sex crime as defined in ORS 181.594;

18 (W) Failure to perform the duties of a driver to injured persons
19 under ORS 811.705;

20 (X) Driving while under the influence of intoxicants under ORS
21 813.010, if the offense is classified as a felony and involves injury or
22 death to a person other than the offender;

23 (Y) An attempt, conspiracy or solicitation to commit a crime de-
24 scribed in subparagraphs (A) to (X) of this paragraph; or

25 (Z) An offense to which the parties stipulate that the maximum
26 amount of time credits earned may not exceed 20 percent of the total
27 term of incarceration in a department institution.

28 (3) The time credits may not be used to shorten the term of actual prison
29 confinement to less than six months.

30 (4) The department shall adopt rules pursuant to the rulemaking pro-
31 visions of ORS chapter 183 to establish a process for granting, retracting and

1 restoring the time credits earned by the offender as allowed in subsections
2 (1) to (3) of this section.

3 **SECTION 2.** Section 48, chapter 660, Oregon Laws 2009, is amended to
4 read:

5 **Sec. 48.** (1)(a) Section 18, **chapter 660, Oregon Laws 2009**, [*of this 2009*
6 *Act*] becomes operative on the date that is 60 days after [*the effective date*
7 *of this 2009 Act*] **July 1, 2009.**

8 (b) The Department of Corrections, the Judicial Department, the State
9 Board of Parole and Post-Prison Supervision and the district attorneys of
10 this state may take any action before the operative date specified in para-
11 graph (a) of this subsection that is necessary to enable the departments,
12 board or district attorneys to exercise, on or after the operative date speci-
13 fied in paragraph (a) of this subsection, all the duties, functions and powers
14 conferred on the departments, board or district attorneys by [*this 2009 Act*]
15 **chapter 660, Oregon Laws 2009.**

16 (2) The amendments to ORS 137.545 by section 32, **chapter 660, Oregon**
17 **Laws 2009**, [*of this 2009 Act*] become operative on July 1, 2011.

18 (3) The amendments to ORS 137.717, 137.721 and 164.162 by sections 8, 9
19 and 15, **chapter 660, Oregon Laws 2009**, [*of this 2009 Act*] become operative
20 on February 15, 2010.

21 (4) [*Sections 10, 12 and 13 of this 2009 Act*] **ORS 144.730, 423.150 and**
22 **475.933** and the amendments to ORS 137.717, 137.721 and 164.162 by sections
23 11, 14 and 16, **chapter 660, Oregon Laws 2009**, [*of this 2009 Act*] become
24 operative on January 1, 2012.

25 (5) The amendments to ORS 421.121 by [*section 19 of this 2009 Act*] **section**
26 **1 of this 2010 Act** become operative on [*July 1, 2013*] **the effective date**
27 **of this 2010 Act.**

28 **SECTION 3.** Section 49, chapter 660, Oregon Laws 2009, is amended to
29 read:

30 **Sec. 49.** (1) [*Section 1 of this 2009 Act*] **ORS 144.285** applies to prisoners
31 convicted of aggravated murder or murder that was committed before, on or

1 after *[the effective date of this 2009 Act]* **July 1, 2009**, and whose petition for
2 a change in the terms of confinement is denied on or after January 1, 2010.

3 (2) *[Section 2 of this 2009 Act]* **ORS 144.280** applies to prisoners sentenced
4 for a crime committed prior to November 1, 1989, and who are denied parole
5 on or after January 1, 2010.

6 (3) The amendments to ORS 144.125, 144.228 and 144.232 by sections 3 to
7 5, **chapter 660, Oregon Laws 2009**, *[of this 2009 Act]* apply to prisoners:

8 (a) Whose release date is postponed under ORS 144.125 on or after Janu-
9 ary 1, 2010.

10 (b) For whom the State Board of Parole and Post-Prison Supervision is
11 unable to set a release date under ORS 144.228 or 144.232 on or after January
12 1, 2010.

13 (4) The amendments to ORS 137.717, 137.721 and 164.162 by sections 8, 9
14 and 15, **chapter 660, Oregon Laws 2009**, *[of this 2009 Act]* apply to sen-
15 tences imposed:

16 (a) On or after February 15, 2010; and

17 (b) For crimes committed on or after January 1, 2009, and before January
18 1, 2012.

19 (5) *[Section 10 of this 2009 Act]* **ORS 475.933** and the amendments to ORS
20 137.717, 137.721 and 164.162 by sections 11, 14 and 16, **chapter 660, Oregon**
21 **Laws 2009**, *[of this 2009 Act]* apply to sentences imposed for crimes commit-
22 ted on or after January 1, 2012.

23 (6) The amendments to ORS 421.121 by section 17, **chapter 660, Oregon**
24 **Laws 2009**, *[of this 2009 Act]* apply to inmates who:

25 (a) Are sentenced on or after *[the effective date of this 2009 Act]* **July 1,**
26 **2009**, for crimes committed before *[July 1, 2013]* **the effective date of this**
27 **2010 Act**; and

28 (b) Are not prohibited by any other provision of law from obtaining a
29 reduction in the term of incarceration under ORS 421.121.

30 (7) The amendments to ORS 421.121 by *[section 19 of this 2009 Act]* **section**
31 **1 of this 2010 Act** apply to inmates who:

1 (a) Are sentenced for a crime committed on or after [July 1, 2013] the
2 **effective date of this 2010 Act**; and

3 (b) Are not prohibited by any other provision of law from obtaining a
4 reduction in the term of incarceration under ORS 421.121.

5 (8) The amendments to ORS 137.545 by section 20, **chapter 660, Oregon**
6 **Laws 2009**, [of this 2009 Act] apply to crimes committed before July 1, 2011.

7 (9) Section 21, **chapter 660, Oregon Laws 2009**, [of this 2009 Act] applies
8 to persons:

9 (a) Convicted of a crime committed before July 1, 2011; and

10 (b) Who are on probation on or after the effective date of the rules
11 adopted by the Department of Corrections under section 21 (3), **chapter 660,**
12 **Oregon Laws 2009**, [of this 2009 Act].

13 (10) Section 31, **chapter 660, Oregon Laws 2009**, [of this 2009 Act] applies
14 to crimes committed:

15 (a) On or after February 15, 2010; and

16 (b) Before January 1, 2012.

17 (11) The amendments to ORS 137.545 by section 32, **chapter 660, Oregon**
18 **Laws 2009**, [of this 2009 Act] apply to crimes committed on or after July 1,
19 2011.

20 (12) [Section 40 of this 2009 Act] **ORS 163.168** and the amendments to ORS
21 163.165 and 163.235 by sections 39 and 43, **chapter 660, Oregon Laws 2009**,
22 [of this 2009 Act] apply to conduct occurring on or after [the effective date
23 of this 2009 Act] **July 1, 2009**.

24 (13) Except as provided in subsection (14) of this section, section 23,
25 **chapter 660, Oregon Laws 2009**, [of this 2009 Act] applies to persons:

26 (a) Convicted of a crime committed before July 1, 2011; and

27 (b) Sentenced to the legal and physical custody of the supervisory au-
28 thority under ORS 137.124 (2).

29 (14)(a) A person sentenced to the legal and physical custody of a super-
30 visory authority under ORS 137.124 (2) shall serve an active period of post-
31 prison supervision of at least two additional months if, on [the effective date

1 *of this 2009 Act*] **July 1, 2009**, the person has served:

2 (A) Four months or more of active post-prison supervision for crimes in
3 crime categories 1 to 3; or

4 (B) Ten months or more of active post-prison supervision for crimes in
5 crime categories 4 to 10.

6 (b) Except as provided in paragraph (c) of this subsection, the supervisory
7 authority shall place an offender described in paragraph (a) of this sub-
8 section on inactive supervision status on the date that is two months after
9 *[the effective date of this 2009 Act]* **July 1, 2009**.

10 (c) At any time before the date that is two months after *[the effective date*
11 *of this 2009 Act]* **July 1, 2009**:

12 (A) The parole and probation officer responsible for supervising an
13 offender described in paragraph (a) of this subsection may send a report de-
14 scribed in section 23 (3), **chapter 660, Oregon Laws 2009**, *[of this 2009*
15 *Act]* to the supervisory authority for review; and

16 (B) After reviewing the report, the supervisory authority may extend the
17 active post-prison supervision period in accordance with section 23 (4),
18 **chapter 660, Oregon Laws 2009** *[of this 2009 Act]*.

19 (d) Section 23, **chapter 660, Oregon Laws 2009**, *[of this 2009 Act]* and the
20 provisions of this subsection and subsection (13) of this section do not apply
21 to a person sentenced to the legal and physical custody of a supervisory au-
22 thority under ORS 137.124 (2) whose term of active post-prison supervision
23 imposed by the sentencing court expires on or before the date that is two
24 months after *[the effective date of this 2009 Act]* **July 1, 2009**.

25 **SECTION 4.** ORS 421.121, as amended by section 19, chapter 660, Oregon
26 Laws 2009, and section 1 of this 2010 Act, is amended to read:

27 421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to
28 the custody of the Department of Corrections for felonies committed on or
29 after November 1, 1989, is eligible for a reduction in the term of incarcer-
30 ation for:

31 (a) Appropriate institutional behavior, as defined by rule of the Depart-

1 ment of Corrections; and

2 (b)(A) Participation in the adult basic skills development program de-
3 scribed in ORS 421.084; or

4 (B) Obtaining a high school diploma, a General Educational Development
5 (GED) certificate, a certificate or degree from a post-secondary education
6 institution as defined in ORS 337.511 or a journey level certification from a
7 registered apprenticeship program as defined in ORS 660.010. The reduction
8 described in this subparagraph may not exceed a period of 60 days.

9 [(2)(a)] (2) The maximum amount of time credits earned for appropriate
10 institutional behavior, for participation in the adult basic skills development
11 program described in ORS 421.084 or for obtaining a diploma, certificate or
12 degree described in subsection (1)(b)(B) of this section may not exceed [30]
13 20 percent of the total term of incarceration in a Department of Corrections
14 institution.

15 [(b) Notwithstanding paragraph (a) of this subsection, the maximum
16 amount of time credits earned under this section may not exceed 20 percent of
17 the total term of incarceration in a Department of Corrections institution if the
18 sentence is for conviction of:]

19 [(A) A crime listed in ORS 137.700;]

20 [(B) Criminally negligent homicide under ORS 163.145;]

21 [(C) Assault in the fourth degree under ORS 163.160 (3);]

22 [(D) Assault in the third degree under ORS 163.165;]

23 [(E) Criminal mistreatment in the first degree under ORS 163.205;]

24 [(F) Assaulting a public safety officer under ORS 163.208;]

25 [(G) Subjecting another person to involuntary servitude in the second degree
26 under ORS 163.263;]

27 [(H) Subjecting another person to involuntary servitude in the first degree
28 under ORS 163.264;]

29 [(I) Trafficking in persons under ORS 163.266;]

30 [(J) Custodial sexual misconduct in the first degree under ORS 163.452;]

31 [(K) Unlawful contact with a child under ORS 163.479;]

- 1 [(L) *Child neglect in the first degree under ORS 163.547;*]
2 [(M) *Aggravated theft in the first degree under ORS 164.057, if:*]
3 [(i) *The victim of the theft was 65 years of age or older at the time of the*
4 *commission of the offense; and*]
5 [(ii) *The value of the property stolen from the victim described in sub-*
6 *paragraph (i) of this subparagraph, in a single or aggregate transaction,*
7 *is \$10,000 or more.*]
8 [(N) *Burglary in the first degree under ORS 164.225, if any of the following*
9 *factors were included in the commission of the offense:*]
10 [(i) *The offender was armed with a deadly weapon;*]
11 [(ii) *The offender caused, threatened or attempted physical injury to the*
12 *victim; or*]
13 [(iii) *The offense was committed in an occupied dwelling.*]
14 [(O) *Arson in the first degree under ORS 164.325;*]
15 [(P) *Treason under ORS 166.005;*]
16 [(Q) *Abuse of corpse in the second degree under ORS 166.085;*]
17 [(R) *Abuse of corpse in the first degree under ORS 166.087;*]
18 [(S) *Unlawful use of a weapon under ORS 166.220 (1)(a);*]
19 [(T) *A violation of ORS 166.275;*]
20 [(U) *Racketeering activities under ORS 166.720;*]
21 [(V) *A sex crime as defined in ORS 181.594;*]
22 [(W) *Failure to perform the duties of a driver to injured persons under*
23 *ORS 811.705;*]
24 [(X) *Driving while under the influence of intoxicants under ORS 813.010,*
25 *if the offense is classified as a felony and involves injury or death to a person*
26 *other than the offender;*]
27 [(Y) *An attempt, conspiracy or solicitation to commit a crime described in*
28 *subparagraphs (A) to (X) of this paragraph; or*]
29 [(Z) *An offense to which the parties stipulate that the maximum amount*
30 *of time credits earned may not exceed 20 percent of the total term of incarceration*
31 *in a department institution.*]

1 (3) The time credits may not be used to shorten the term of actual prison
2 confinement to less than six months.

3 (4) The department shall adopt rules pursuant to the rulemaking pro-
4 visions of ORS chapter 183 to establish a process for granting, retracting and
5 restoring the time credits earned by the offender as allowed in subsections
6 (1) to (3) of this section.

7 **SECTION 5.** The amendments to ORS 421.121 by section 4 of this
8 2010 Act become operative on July 1, 2013.

9 **SECTION 6.** The amendments to ORS 421.121 by section 4 of this
10 2010 Act apply to inmates who:

11 (1) Are sentenced for a crime committed on or after July 1, 2013;
12 and

13 (2) Are not prohibited under any other provision of law from ob-
14 taining a reduction in the term of incarceration under ORS 421.121.

15 **SECTION 7.** (1) The Department of Corrections may not make the
16 notifications described in section 18 (2), chapter 660, Oregon Laws 2009,
17 unless and until:

18 (a) An inmate described in section 18 (1)(a), chapter 660, Oregon
19 Laws 2009, begins serving a sentence for a conviction that is eligible
20 for a reduction in the term of incarceration under ORS 421.121 that
21 exceeds 20 percent of the total term of incarceration in a department
22 institution; and

23 (b) A reduction in the term of incarceration under ORS 421.121 that
24 exceeds 20 percent of the total term of incarceration in a department
25 institution may result in the inmate's release from physical custody
26 at an earlier date.

27 (2) Notwithstanding the repeal of section 18, chapter 660, Oregon
28 Laws 2009, by section 47 (4), chapter 660, Oregon Laws 2009, the pro-
29 visions of section 18, chapter 660, Oregon Laws 2009, apply when the
30 department makes the notifications described in section 18 (2), chapter
31 660, Oregon Laws 2009, on or after July 1, 2013.

1 **(3) This section applies only to inmates described in section 18**
2 **(1)(a), chapter 660, Oregon Laws 2009, for whom the department has**
3 **not made the notifications described in section 18 (2), chapter 660,**
4 **Oregon Laws 2009, on or before the effective date of this 2010 Act.**

5 **SECTION 8.** **The Oregon Criminal Justice Commission shall conduct**
6 **a study that includes an assessment of the effects of the amendments**
7 **to ORS 421.121 by section 1 of this 2010 Act on reducing recidivism. The**
8 **commission shall include the results of the study in the report to the**
9 **Legislative Assembly described in section 18 (13), chapter 660, Oregon**
10 **Laws 2009.**

11 **SECTION 9.** **This 2010 Act being necessary for the immediate pres-**
12 **ervation of the public peace, health and safety, an emergency is de-**
13 **clared to exist, and this 2010 Act takes effect on its passage.**

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