

Senate Bill 1007

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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 **as introduced**.

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

1
2 Relating to crime; creating new provisions; amending ORS 421.121 and sections 48 and 49, chapter
3 660, Oregon Laws 2009; and declaring an emergency.

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

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

7 421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the
8 Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a
9 reduction in the term of incarceration for:

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

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

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

16 ~~[(2)]~~**(2)(a)** The maximum amount of time credits earned for appropriate institutional behavior, for
17 participation in the adult basic skills development program described in ORS 421.084 or for obtain-
18 ing a diploma, certificate or degree described in subsection (1)(b)(B) of this section may not exceed
19 ~~[20]~~ **30** percent of the total term of incarceration in a Department of Corrections institution.

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

23 **(A) A crime listed in ORS 137.700;**

24 **(B) Criminally negligent homicide under ORS 163.145;**

25 **(C) Assault in the fourth degree under ORS 163.160 (3);**

26 **(D) Assault in the third degree under ORS 163.165;**

27 **(E) Criminal mistreatment in the first degree under ORS 163.205;**

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 **(F) Assaulting a public safety officer under ORS 163.208;**
 2 **(G) Subjecting another person to involuntary servitude in the second degree under ORS**
 3 **163.263;**
 4 **(H) Subjecting another person to involuntary servitude in the first degree under ORS**
 5 **163.264;**
 6 **(I) Trafficking in persons under ORS 163.266;**
 7 **(J) Custodial sexual misconduct in the first degree under ORS 163.452;**
 8 **(K) Unlawful contact with a child under ORS 163.479;**
 9 **(L) Child neglect in the first degree under ORS 163.547;**
 10 **(M) Aggravated theft in the first degree under ORS 164.057, if:**
 11 **(i) The victim of the theft was 65 years of age or older at the time of the commission of**
 12 **the offense; and**
 13 **(ii) The value of the property stolen from the victim described in sub-subparagraph (i)**
 14 **of this subparagraph, in a single or aggregate transaction, is \$10,000 or more.**
 15 **(N) Burglary in the first degree under ORS 164.225, if any of the following factors were**
 16 **included in the commission of the offense:**
 17 **(i) The offender was armed with a deadly weapon;**
 18 **(ii) The offender caused, threatened or attempted physical injury to the victim; or**
 19 **(iii) The offense was committed in an occupied dwelling.**
 20 **(O) Arson in the first degree under ORS 164.325;**
 21 **(P) Treason under ORS 166.005;**
 22 **(Q) Abuse of corpse in the second degree under ORS 166.085;**
 23 **(R) Abuse of corpse in the first degree under ORS 166.087;**
 24 **(S) Unlawful use of a weapon under ORS 166.220 (1)(a);**
 25 **(T) A violation of ORS 166.275;**
 26 **(U) Racketeering activities under ORS 166.720;**
 27 **(V) A sex crime as defined in ORS 181.594;**
 28 **(W) Failure to perform the duties of a driver to injured persons under ORS 811.705;**
 29 **(X) Driving while under the influence of intoxicants under ORS 813.010, if the offense is**
 30 **classified as a felony and involves injury or death to a person other than the offender;**
 31 **(Y) An attempt, conspiracy or solicitation to commit a crime described in subparagraphs**
 32 **(A) to (X) of this paragraph; or**
 33 **(Z) An offense to which the parties stipulate that the maximum amount of time credits**
 34 **earned may not exceed 20 percent of the total term of incarceration in a department insti-**
 35 **tution.**
 36 (3) The time credits may not be used to shorten the term of actual prison confinement to less
 37 than six months.
 38 (4) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183
 39 to establish a process for granting, retracting and restoring the time credits earned by the offender
 40 as allowed in subsections (1) to (3) of this section.
 41 **SECTION 2.** Section 48, chapter 660, Oregon Laws 2009, is amended to read:
 42 **Sec. 48.** (1)(a) Section 18, **chapter 660, Oregon Laws 2009**, [of this 2009 Act] becomes operative
 43 on the date that is 60 days after [the effective date of this 2009 Act] **July 1, 2009.**
 44 (b) The Department of Corrections, the Judicial Department, the State Board of Parole and
 45 Post-Prison Supervision and the district attorneys of this state may take any action before the op-

1 erative date specified in paragraph (a) of this subsection that is necessary to enable the depart-
 2 ments, board or district attorneys to exercise, on or after the operative date specified in paragraph
 3 (a) of this subsection, all the duties, functions and powers conferred on the departments, board or
 4 district attorneys by *[this 2009 Act]* **chapter 660, Oregon Laws 2009**.

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

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

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

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

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

15 **Sec. 49.** (1) *[Section 1 of this 2009 Act]* **ORS 144.285** applies to prisoners convicted of aggravated
 16 murder or murder that was committed before, on or after *[the effective date of this 2009 Act]* **July**
 17 **1, 2009**, and whose petition for a change in the terms of confinement is denied on or after January
 18 1, 2010.

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

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

23 (a) Whose release date is postponed under ORS 144.125 on or after January 1, 2010.

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

26 (4) The amendments to ORS 137.717, 137.721 and 164.162 by sections 8, 9 and 15, **chapter 660,**
 27 **Oregon Laws 2009**, *[of this 2009 Act]* apply to sentences imposed:

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

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

30 (5) *[Section 10 of this 2009 Act]* **ORS 475.933** and the amendments to ORS 137.717, 137.721 and
 31 164.162 by sections 11, 14 and 16, **chapter 660, Oregon Laws 2009**, *[of this 2009 Act]* apply to sen-
 32 tences imposed for crimes committed on or after January 1, 2012.

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

35 (a) Are sentenced on or after *[the effective date of this 2009 Act]* **July 1, 2009**, for crimes com-
 36 mitted before *[July 1, 2013]* **the effective date of this 2010 Act**; and

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

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

41 (a) Are sentenced for a crime committed on or after *[July 1, 2013]* **the effective date of this**
 42 **2010 Act**; and

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

45 (8) The amendments to ORS 137.545 by section 20, **chapter 660, Oregon Laws 2009**, *[of this 2009*

1 *Act*] apply to crimes committed before July 1, 2011.

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

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

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

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

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

8 (b) Before January 1, 2012.

9 (11) The amendments to ORS 137.545 by section 32, **chapter 660, Oregon Laws 2009**, *[of this*
10 *2009 Act]* apply to crimes committed on or after July 1, 2011.

11 (12) *[Section 40 of this 2009 Act]* **ORS 163.168** and the amendments to ORS 163.165 and 163.235
12 by sections 39 and 43, **chapter 660, Oregon Laws 2009**, *[of this 2009 Act]* apply to conduct occur-
13 ring on or after *[the effective date of this 2009 Act]* **July 1, 2009**.

14 (13) Except as provided in subsection (14) of this section, section 23, **chapter 660, Oregon Laws**
15 **2009**, *[of this 2009 Act]* applies to persons:

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

17 (b) Sentenced to the legal and physical custody of the supervisory authority under ORS 137.124
18 (2).

19 (14)(a) A person sentenced to the legal and physical custody of a supervisory authority under
20 ORS 137.124 (2) shall serve an active period of post-prison supervision of at least two additional
21 months if, on *[the effective date of this 2009 Act]* **July 1, 2009**, the person has served:

22 (A) Four months or more of active post-prison supervision for crimes in crime categories 1 to
23 3; or

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

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

28 (c) At any time before the date that is two months after *[the effective date of this 2009 Act]* **July**
29 **1, 2009**:

30 (A) The parole and probation officer responsible for supervising an offender described in para-
31 graph (a) of this subsection may send a report described in section 23 (3), **chapter 660, Oregon**
32 **Laws 2009**, *[of this 2009 Act]* to the supervisory authority for review; and

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

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

41 **SECTION 4.** ORS 421.121, as amended by section 19, chapter 660, Oregon Laws 2009, and sec-
42 tion 1 of this 2010 Act, is amended to read:

43 421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the
44 Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a
45 reduction in the term of incarceration for:

1 (a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and
 2 (b)(A) Participation in the adult basic skills development program described in ORS 421.084; or
 3 (B) Obtaining a high school diploma, a General Educational Development (GED) certificate, a
 4 certificate or degree from a post-secondary education institution as defined in ORS 337.511 or a
 5 journey level certification from a registered apprenticeship program as defined in ORS 660.010. The
 6 reduction described in this subparagraph may not exceed a period of 60 days.

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

11 [(b) Notwithstanding paragraph (a) of this subsection, the maximum amount of time credits earned
 12 under this section may not exceed 20 percent of the total term of incarceration in a Department of
 13 Corrections 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 second degree under ORS 163.263;]

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

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

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

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

25 [(L) Child neglect in the first degree under ORS 163.547;]

26 [(M) Aggravated theft in the first degree under ORS 164.057, if:]

27 [(i) The victim of the theft was 65 years of age or older at the time of the commission of the offense;
 28 and]

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

31 [(N) Burglary in the first degree under ORS 164.225, if any of the following factors were included
 32 in the commission of the offense:]

33 [(i) The offender was armed with a deadly weapon;]

34 [(ii) The offender caused, threatened or attempted physical injury to the victim; or]

35 [(iii) The offense was committed in an occupied dwelling.]

36 [(O) Arson in the first degree under ORS 164.325;]

37 [(P) Treason under ORS 166.005;]

38 [(Q) Abuse of corpse in the second degree under ORS 166.085;]

39 [(R) Abuse of corpse in the first degree under ORS 166.087;]

40 [(S) Unlawful use of a weapon under ORS 166.220 (1)(a);]

41 [(T) A violation of ORS 166.275;]

42 [(U) Racketeering activities under ORS 166.720;]

43 [(V) A sex crime as defined in ORS 181.594;]

44 [(W) Failure to perform the duties of a driver to injured persons under ORS 811.705;]

45 [(X) Driving while under the influence of intoxicants under ORS 813.010, if the offense is classified

1 as a felony and involves injury or death to a person other than the offender;]

2 [(Y) An attempt, conspiracy or solicitation to commit a crime described in subparagraphs (A) to (X)
3 of this paragraph; or]

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

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

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

11 **SECTION 5. The amendments to ORS 421.121 by section 4 of this 2010 Act become oper-**
12 **ative on July 1, 2013.**

13 **SECTION 6. The amendments to ORS 421.121 by section 4 of this 2010 Act apply to in-**
14 **mates who:**

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

16 (2) Are not prohibited under any other provision of law from obtaining a reduction in the
17 term of incarceration under ORS 421.121.

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

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

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

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

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

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

38 **SECTION 9. This 2010 Act being necessary for the immediate preservation of the public**
39 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
40 **on its passage.**