

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2224

By COMMITTEE ON JUDICIARY

June 24

- 1 In line 3 of the printed A-engrossed bill, delete "138.240" and insert "138.222".
- 2 Delete lines 5 through 10 and insert:
- 3 "**SECTION 1.** ORS 138.222 is amended to read:
- 4 "138.222. (1) Notwithstanding the provisions of ORS 138.040 and 138.050, a sentence imposed for
- 5 a judgment of conviction entered for a felony committed on or after November 1, 1989, may be re-
- 6 viewed only as provided by this section.
- 7 "(2) Except as otherwise provided in subsection (4)(c) of this section, on appeal from a judgment
- 8 of conviction entered for a felony committed on or after November 1, 1989, the appellate court may
- 9 not review:
- 10 "(a) Any sentence that is within the presumptive sentence prescribed by the rules of the Oregon
- 11 Criminal Justice Commission.
- 12 "(b) A sentence of probation when the rules of the Oregon Criminal Justice Commission pre-
- 13 scribe a presumptive sentence of imprisonment but allow a sentence of probation without departure.
- 14 "(c) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission
- 15 prescribe a presumptive sentence of imprisonment but allow a sentence of probation without depar-
- 16 ture.
- 17 "(d) Any sentence resulting from a stipulated sentencing agreement between the state and the
- 18 defendant which the sentencing court approves on the record.
- 19 "(e) Except as authorized in subsections (3) and (4) of this section, any other issue related to
- 20 sentencing.
- 21 "(3) In any appeal from a judgment of conviction imposing a sentence that departs from the
- 22 presumptive sentence prescribed by the rules of the Oregon Criminal Justice Commission, sentence
- 23 review is limited to whether the sentencing court's findings of fact and reasons justifying a depar-
- 24 ture from the sentence prescribed by the rules of the Oregon Criminal Justice Commission:
- 25 "(a) Are supported by the evidence in the record; and
- 26 "(b) Constitute substantial and compelling reasons for departure.
- 27 "(4) In any appeal, the appellate court may review a claim that:
- 28 "(a) The sentencing court failed to comply with requirements of law in imposing or failing to
- 29 impose a sentence;
- 30 "(b) The sentencing court erred in ranking the crime seriousness classification of the current
- 31 crime or in determining the appropriate classification of a prior conviction or juvenile adjudication
- 32 for criminal history purposes; or
- 33 "(c) The sentencing court erred in failing to impose a minimum sentence that is prescribed by
- 34 ORS 137.700 or 137.707.
- 35 "(5)(a) The appellate court may reverse or affirm the sentence. If the appellate court concludes

1 that the trial court's factual findings are not supported by evidence in the record or do not establish
2 substantial and compelling reasons for a departure, it shall remand the case to the trial court for
3 resentencing. If the appellate court determines that the sentencing court, in imposing a sentence in
4 the case, committed an error that requires resentencing, the appellate court shall remand the entire
5 case for resentencing. The sentencing court may impose a new sentence for any conviction in the
6 remanded case.

7 **“(b) If the appellate court, in a case involving multiple counts of which at least one is a**
8 **felony, reverses the judgment of conviction on any count and affirms other counts, the ap-**
9 **pellate court shall remand the case to the trial court for resentencing on the affirmed count**
10 **or counts.**

11 “(6) The appellate court shall issue a written opinion whenever the judgment of the sentencing
12 court is reversed and may issue a written opinion in any other case when the appellate court be-
13 lieves that a written opinion will provide guidance to sentencing judges and others in implementing
14 the sentencing guidelines adopted by the Oregon Criminal Justice Commission provided that the
15 appellate courts may provide by rule for summary disposition of cases arising under this section
16 when no substantial question is presented by the appeal.

17 “(7) Either the state or the defendant may appeal a judgment of conviction based on the sen-
18 tence for a felony committed on or after November 1, 1989, to the Court of Appeals subject to the
19 limitations of chapter 790, Oregon Laws 1989. The defendant may appeal under this subsection only
20 upon showing a colorable claim of error in a proceeding if the appeal is from a proceeding in which:

21 “(a) A sentence was entered subsequent to a plea of guilty or no contest;

22 “(b) Probation was revoked, the period of probation was extended, a new condition of probation
23 was imposed, an existing condition of probation was modified or a sentence suspension was revoked;
24 or

25 “(c) A sentence was entered subsequent to a resentencing ordered by an appellate court or a
26 post-conviction relief court.”.

27 In line 11, delete “138.240” and insert “138.222”.
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