

**B-Engrossed**  
**House Bill 2224**

Ordered by the Senate June 24  
Including House Amendments dated May 5 and Senate Amendments dated  
June 24

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

**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.

Requires appellate court, after reversing any count but not all counts on appeal, to remand case to trial court for resentencing on remaining count or counts **in felony cases**.

**A BILL FOR AN ACT**

1  
2 Relating to remands of criminal cases from appellate courts; creating new provisions; and amending  
3 ORS 138.222.

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

5 **SECTION 1.** ORS 138.222 is amended to read:

6 138.222. (1) Notwithstanding the provisions of ORS 138.040 and 138.050, a sentence imposed for  
7 a judgment of conviction entered for a felony committed on or after November 1, 1989, may be re-  
8 viewed only as provided by this section.

9 (2) Except as otherwise provided in subsection (4)(c) of this section, on appeal from a judgment  
10 of conviction entered for a felony committed on or after November 1, 1989, the appellate court may  
11 not review:

12 (a) Any sentence that is within the presumptive sentence prescribed by the rules of the Oregon  
13 Criminal Justice Commission.

14 (b) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe  
15 a presumptive sentence of imprisonment but allow a sentence of probation without departure.

16 (c) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission pre-  
17 scribe a presumptive sentence of imprisonment but allow a sentence of probation without departure.

18 (d) Any sentence resulting from a stipulated sentencing agreement between the state and the  
19 defendant which the sentencing court approves on the record.

20 (e) Except as authorized in subsections (3) and (4) of this section, any other issue related to  
21 sentencing.

22 (3) In any appeal from a judgment of conviction imposing a sentence that departs from the  
23 presumptive sentence prescribed by the rules of the Oregon Criminal Justice Commission, sentence  
24 review is limited to whether the sentencing court's findings of fact and reasons justifying a depar-  
25 ture from the sentence prescribed by the rules of the Oregon Criminal Justice Commission:

26 (a) Are supported by the evidence in the record; and

27 (b) Constitute substantial and compelling reasons for departure.

**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 (4) In any appeal, the appellate court may review a claim that:

2 (a) The sentencing court failed to comply with requirements of law in imposing or failing to  
3 impose a sentence;

4 (b) The sentencing court erred in ranking the crime seriousness classification of the current  
5 crime or in determining the appropriate classification of a prior conviction or juvenile adjudication  
6 for criminal history purposes; or

7 (c) The sentencing court erred in failing to impose a minimum sentence that is prescribed by  
8 ORS 137.700 or 137.707.

9 (5)(a) The appellate court may reverse or affirm the sentence. If the appellate court concludes  
10 that the trial court's factual findings are not supported by evidence in the record or do not establish  
11 substantial and compelling reasons for a departure, it shall remand the case to the trial court for  
12 resentencing. If the appellate court determines that the sentencing court, in imposing a sentence in  
13 the case, committed an error that requires resentencing, the appellate court shall remand the entire  
14 case for resentencing. The sentencing court may impose a new sentence for any conviction in the  
15 remanded case.

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

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

26 (7) Either the state or the defendant may appeal a judgment of conviction based on the sentence  
27 for a felony committed on or after November 1, 1989, to the Court of Appeals subject to the limita-  
28 tions of chapter 790, Oregon Laws 1989. The defendant may appeal under this subsection only upon  
29 showing a colorable claim of error in a proceeding if the appeal is from a proceeding in which:

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

31 (b) Probation was revoked, the period of probation was extended, a new condition of probation  
32 was imposed, an existing condition of probation was modified or a sentence suspension was revoked;  
33 or

34 (c) A sentence was entered subsequent to a resentencing ordered by an appellate court or a  
35 post-conviction relief court.

36 **SECTION 2. The amendments to ORS 138.222 by section 1 of this 2005 Act apply to ap-**  
37 **peals filed on or after the effective date of this 2005 Act.**

38