

House Bill 3417

Sponsored by Representative KITTS; Representatives ANDERSON, BOQUIST, FLORES, HANNA, SCHAUFLE, SCOTT, THATCHER, Senator B STARR

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**.

Establishes mandatory minimum sentences for possession and discharge of firearm during commission of felony.

A BILL FOR AN ACT

1
2 Relating to firearms; amending ORS 144.122, 144.126 and 161.610.

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

4 **SECTION 1.** ORS 161.610 is amended to read:

5 161.610. (1) As used in this section: [,]

6 (a) "Firearm" means a weapon [*which*] **that** is designed to expel a projectile by the action of
7 black powder or smokeless powder.

8 (b) "**Possess**" means to carry on the person or have within immediate physical reach with
9 **ready access**.

10 (c) "**Serious physical injury**" has the meaning given that term in ORS 161.015.

11 (2) The [*use or threatened use*] **possession** of a firearm[, *whether operable or inoperable,*] by a
12 defendant during the commission of a felony may be pleaded in the accusatory instrument and
13 proved at trial as an element in aggravation of the crime as provided in this section. When a crime
14 is so pleaded, the aggravated nature of the crime may be indicated by adding the words "with a
15 firearm" to the title of the offense. The unaggravated crime [*shall be considered*] **is** a lesser included
16 offense.

17 (3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise pro-
18 vided in subsection [(6)] (7) of this section, if a defendant is convicted of a felony having as an ele-
19 ment the defendant's [*use or threatened use*] **possession** of a firearm during the commission of the
20 crime, the court shall impose at least the minimum term of imprisonment as provided in subsection
21 (4) of this section. Except as provided in ORS 144.122 and 144.126 [*and subsection (5) of this*
22 *section*], in no case [*shall any*] **is** a person punishable under this [*section become*] **subsection** eligible
23 for work release, parole, temporary leave or terminal leave until the minimum term of imprisonment
24 is served, less a period of time equivalent to any reduction of imprisonment granted for good time
25 served or time credits earned under ORS 421.121, nor [*shall*] **may** the execution of the sentence
26 imposed upon [*such*] **the** person be suspended by the court.

27 (4) The minimum terms of imprisonment for felonies having as an element the defendant's [*use*
28 *or threatened use*] **possession** of a firearm in the commission of the crime [*shall be as follows*] **are:**

29 (a) [*Except as provided in subsection (5) of this section,*] Upon the first conviction for such felony,
30 [*five*] **10** years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shot-
31 gun or is equipped with a firearms silencer, the term of imprisonment [*shall be 10*] **is 15** years.

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 (b) Upon conviction for such felony committed after [*punishment*] **imprisonment** pursuant to
 2 paragraph (a) of this subsection, [10] **15** years, except that if the firearm is a machine gun, short-
 3 barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of
 4 imprisonment shall be 20 years.

5 (c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of
 6 this subsection, 30 years.

7 [*(5) If it is the first time that the defendant is subject to punishment under this section, rather than*
 8 *impose the sentence otherwise required by subsection (4)(a) of this section, the court may:]*

9 [*(a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or*
 10 *impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justify-*
 11 *ing such lesser sentence and sets forth those circumstances in its statement on sentencing; or]*

12 [*(b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance*
 13 *with the rules of the Oregon Criminal Justice Commission.]*

14 **(5) Notwithstanding the provisions of ORS 161.605 and except as otherwise provided in**
 15 **subsection (7) of this section, if a defendant is convicted of a felony having as an element the**
 16 **defendant's possession of a firearm during the commission of the crime and the defendant**
 17 **discharged the firearm during the commission of the crime, the court shall impose, and the**
 18 **defendant shall serve, a term of imprisonment of at least 20 years. A person punishable un-**
 19 **der this subsection is not, during the service of the term of imprisonment, eligible for release**
 20 **on post-prison supervision or any form of temporary leave from custody. The person is not**
 21 **eligible for any reduction in, or based on, the minimum sentence for any reason whatsoever**
 22 **under ORS 421.121. The court may impose a greater sentence if otherwise permitted by law,**
 23 **but may not impose a lower sentence than the sentence specified in this subsection.**

24 **(6)(a) Notwithstanding the provisions of ORS 161.605 and except as otherwise provided in**
 25 **subsection (7) of this section, if a defendant is convicted of a felony having as an element the**
 26 **defendant's possession of a firearm during the commission of the crime and the defendant**
 27 **intentionally discharged the firearm during the commission of the crime causing serious**
 28 **physical injury to another person, the court shall impose a term of imprisonment for life.**

29 **(b) When a defendant is sentenced to imprisonment for life under this subsection, the**
 30 **court shall order that the defendant shall be confined for a minimum of 20 years without**
 31 **possibility of release on post-prison supervision, release on work release or any form of**
 32 **temporary leave or employment at a forest or work camp.**

33 **(c) At any time after completion of a minimum period of confinement under paragraph**
 34 **(b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the peti-**
 35 **tion of a prisoner so confined, shall hold a hearing to determine whether the prisoner is**
 36 **likely to be rehabilitated within a reasonable period of time. The sole issue is whether or not**
 37 **the prisoner is likely to be rehabilitated within a reasonable period of time. The proceeding**
 38 **shall be conducted in the manner prescribed for a contested case hearing under ORS chapter**
 39 **183 except that:**

40 **(A) The prisoner has the burden of proving by a preponderance of the evidence the like-**
 41 **lihood of rehabilitation within a reasonable period of time; and**

42 **(B) The prisoner has the right, if the prisoner is without sufficient funds to employ an**
 43 **attorney, to be represented by legal counsel, appointed by the board at board expense.**

44 **(d) If, after hearing all of the evidence, the board, upon a unanimous vote of all of its**
 45 **members, finds that the prisoner is likely to be rehabilitated within a reasonable period of**

1 **time and that the terms of the prisoner's confinement should be changed to life**
 2 **imprisonment with the possibility of release on post-prison supervision or work release, the**
 3 **board shall enter an order to that effect. If the board enters the order, the order converts**
 4 **the terms of the prisoner's confinement to life imprisonment with the possibility of release**
 5 **on post-prison supervision or work release and the board may set a release date. Otherwise,**
 6 **the board shall deny the relief sought in the petition.**

7 **(e) Not less than two years after the denial of the relief sought in a petition under par-**
 8 **agraph (c) of this subsection, the prisoner may petition again for a change in the terms of**
 9 **confinement. Further petitions for a change may be filed at intervals of not less than two**
 10 **years.**

11 [(6)] (7) When a defendant who is convicted of a felony having as an element the defendant's
 12 [use or threatened use] **possession** of a firearm during the commission of the crime is a person who
 13 was waived from juvenile court under ORS 137.707 (5)(b)(A), 419C.349, 419C.352, 419C.364 or
 14 419C.370, the court is not required to impose a minimum term of imprisonment under this section.

15 **SECTION 2.** ORS 144.122 is amended to read:

16 144.122. (1) After the initial parole release date has been set under ORS 144.120 and after a
 17 minimum period of time established by the State Board of Parole and Post-Prison Supervision under
 18 subsection (2)(a) of this section, the prisoner may request that the parole release date be reset to
 19 an earlier date. The board may grant the request upon a determination by the board that continued
 20 incarceration is cruel and inhumane and that resetting the release date to an earlier date is not
 21 incompatible with the best interests of the prisoner and society and that the prisoner:

22 (a) Has demonstrated an extended course of conduct indicating outstanding reformation;

23 (b) Suffers from a severe medical condition including terminal illness; or

24 (c) Is elderly and is permanently incapacitated in such a manner that the prisoner is unable to
 25 move from place to place without the assistance of another person.

26 (2) The Advisory Commission on Prison Terms and Parole Standards may propose to the board
 27 and the board shall adopt rules:

28 (a) Establishing minimum periods of time to be served by prisoners before application may be
 29 made for a reset of release date under subsection (1) of this section;

30 (b) Detailing the criteria set forth under subsection (1) of this section for the resetting of a
 31 parole release date; and

32 (c) Establishing criteria for parole release plans for prisoners released under this section that,
 33 at a minimum, must insure appropriate supervision and services for the person released.

34 (3) The provisions of subsection (1)(b) of this section apply to prisoners sentenced in accordance
 35 with ORS 161.610 (3).

36 (4) The provisions of this section do not apply to prisoners sentenced to life imprisonment
 37 without the possibility of release or parole under ORS 138.012 or 163.150.

38 **SECTION 3.** ORS 144.126 is amended to read:

39 144.126. (1) The State Board of Parole and Post-Prison Supervision may advance the release date
 40 of a prisoner who was sentenced in accordance with rules of the Oregon Criminal Justice Commis-
 41 sion or ORS 161.610 (3). The release date may be advanced if the board determines that continued
 42 incarceration is cruel and inhumane and that advancing the release date of the prisoner is not in-
 43 compatible with the best interests of the prisoner and society and that the prisoner is:

44 (a) Suffering from a severe medical condition including terminal illness; or

45 (b) Elderly and permanently incapacitated in such a manner that the prisoner is unable to move

1 from place to place without the assistance of another person.

2 (2) The board shall adopt rules establishing criteria for release plans for prisoners released un-
3 der this section that, at a minimum, must insure appropriate supervision and services for the person
4 released.

5 (3) The provisions of this section do not apply to prisoners sentenced to life imprisonment
6 without the possibility of release or parole under ORS 138.012 or 163.150.

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