

Senate Bill 918

Sponsored by COMMITTEE ON JUDICIARY

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**.

Requires appellate court, after concluding that some reasons set forth by trial court for departure sentence are substantial and compelling, to affirm sentence even if appellate court concludes that other reasons set forth for departure sentence are not substantial and compelling.

A BILL FOR AN ACT

1
2 Relating to appellate criminal procedure; creating new provisions; and amending ORS 138.222.

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

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

5 138.222. (1) Notwithstanding the provisions of ORS 138.040 and 138.050, a sentence imposed for
6 a judgment of conviction entered for a felony committed on or after November 1, 1989, may be re-
7 viewed only as provided by this section.

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

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

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

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

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

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 for criminal history purposes; or

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

4 (5)(a) The appellate court may reverse or affirm the sentence. If the appellate court concludes
 5 that the trial court’s factual findings are not supported by evidence in the record or do not establish
 6 substantial and compelling reasons for a departure, it shall remand the case to the trial court for
 7 resentencing. **The appellate court shall affirm a departure sentence and not remand the case
 8 if the appellate court concludes that:**

9 **(A) The trial court’s factual findings establish that some of the reasons that the trial
 10 court set forth as the basis for the departure sentence are substantial and compelling rea-
 11 sons; and**

12 **(B) The substantial and compelling reasons that are established are legally sufficient to
 13 support the departure.**

14 (b) If the appellate court determines that the sentencing court, in imposing a sentence in the
 15 case, committed an error that requires resentencing, the appellate court shall remand the entire
 16 case for resentencing. The sentencing court may impose a new sentence for any conviction in the
 17 remanded case.

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

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

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

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

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

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