



Oregon Department of Corrections

Memorandum

DATE: March 4, 2009

TO: Defense Attorneys

FROM: Max Williams

SUBJECT: Legislative Changes to Alternative Incarceration Program

In 2008, the Oregon Legislature passed House Bill 3638, thereby creating new provisions for Alternative Incarceration Program (AIP) eligibility.

House Bill 3638 amends ORS 421.508 to restrict the Department of Corrections from releasing an offender onto post-prison supervision following AIP unless the court authorizes the defendant's eligibility under 421.508(4). The court may authorize the defendant's eligibility only if, after a hearing, the court finds a number of eligibility requirements. A few of these eligibility requirements are the following:

- The harm or loss caused by the crime is not greater than usual for that type of crime;
- The crime was not part of an organized criminal operation;
- After considering the nature of the offense and the harm to the victim, the defendant's successful completion of the program would: increase public safety, enhance the likelihood that the defendant would be rehabilitated; and not unduly reduce the appropriate punishment.

The Department of Corrections will fully rely on the court to make the determinations listed above and will assume that the above criteria are met if a judgment order approves AIP participation. The department will continue to screen for all other statute eligibility requirements to ensure all inmates placed in AIP are statutorily eligible.

The following is a summary of other changes to AIP eligibility due to House Bill 3638:

- Increases the list of ineligible crimes to include 1) all ORS 137.700/137.707 (Measure 11) offenses, even if the inmate was sentenced in excess of the ORS 137.700 minimum term or to less than the ORS 137.700 minimum pursuant to ORS 137.712; 2) Aggravated Murder (ORS 163.095); and 3) any sex crime, including attempts, listed in ORS 181.594(4);
- Requires the court to make certain findings of the inmate's AIP eligibility, but the parties may also stipulate to the inmate's eligibility with some limitations;
- Requires the inmate to serve at least one-year of incarceration prior to releasing onto post-prison supervision;
- Allows a maximum sentence reduction for AIP of 20% off the sentence remaining after earned time.

As a result of House Bill 3638, the Department of Corrections will need specific language in the judgment for an inmate to be eligible for AIP. A letter from the department was sent to judges detailing the necessary language – I have attached this letter so you also have the information. If you have any questions regarding eligibility, please call Bethany Smith at 503 570-6923.

Attachment

c: file



Oregon

Theodore R. Kulongoski, Governor

Department of Corrections
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Sentence Computation
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December 16, 2008



RE: **Legislative Changes to Alternative Incarceration Programs
Effective for Crimes Committed on or after January 1, 2009**

In 2008, the Oregon Legislature passed House Bill 3638, thereby creating new provisions for Alternative Incarceration Programs (AIP) and limiting the participation of offenders.

One of the major changes stemming from HB 3638 concerns the necessary language provided in the judgment if an offender is ordered eligible for AIP by the court. Currently, AIP is included in ORS 137.750, which requires the courts to state affirmatively in the order if an offender is considered eligible for AIP or other sentence modifications. The affirmative language is not described in statute, however, and the Oregon Department of Corrections (ODOC) receives a variety of ORS 137.750 language.

As a result of HB 3638, however, effective January 1, 2009, AIP is no longer part of ORS 137.750. Rather, for crimes committed on or after January 1, 2009, the court must order in the judgment that the ODOC may "release the defendant on post-prison supervision under ORS 421.508(4)" for an inmate to be eligible for AIP. Because of the specificity in HB 3638, the ODOC will need this exact language in the judgments for inmates with crime commit dates on or after January 1, 2009, to be considered for AIP. Without this language, we will code the inmate's sentence as ineligible for AIP. If the judgment appears to indicate eligibility for AIP but does not use the language quoted above, we will notify the court of the need for an amended judgment.

It is of course our desire to carry out the intention of the court when inmates are sentenced to ODOC. Therefore, we appreciate your efforts to ensure that judgments for inmates sentenced in your court for crimes committed on or after January 1, 2009, include the necessary language if the inmates are ordered eligible for AIP.

If I can be of assistance, please do not hesitate to contact me.

Sincerely,

Bethany Smith
Policy Manager