

# **ALTERNATIVE INCARCERATION PROGRAM ELIGIBILITY**

**291-062-0130**

## **Inmate Eligibility**

(1) The Department will identify inmates eligible to participate in alternative incarceration programs. To be eligible to participate in the program an inmate must:

- (a) Be sentenced to the legal and physical custody of the Department and be subject to a term of post-prison supervision upon satisfaction of a term of physical confinement in a Department of Corrections facility;
- (b) Be at least 18 years of age at the time of entry into the program, or may be under 18 years of age and have been convicted of a crime upon remand from juvenile court; and
- (c) Be assigned Level 1 or Level 2 in accordance with the Department's rule on Classification (Inmate) (OAR 291-104) and have no more than 36 months to serve at the time of program entry.

(2) An inmate is not eligible to participate in alternative incarceration programs during service of a sentence for conviction of a crime described in:

- (a) ORS 163.095 (Aggravated Murder);
- (b) ORS 163.115 (Murder);
- (c) ORS 163.118 (Manslaughter I);
- (d) ORS 163.235 (Kidnapping I);
- (e) ORS 163.355 (Rape III);
- (f) ORS 163.365 (Rape II);
- (g) ORS 163.375 (Rape I);
- (h) ORS 163.385 (Sodomy III);
- (i) ORS 163.395 (Sodomy II);
- (j) ORS 163.405 (Sodomy I);
- (k) ORS 163.408 (Unlawful Sexual Penetration II);

- (l) ORS 163.411 (Unlawful Sexual Penetration I);
- (m) ORS 163.415 (Sexual Abuse III);
- (n) ORS 163.425 (Sexual Abuse II);
- (o) ORS 163.427 (Sexual Abuse I);
- (p) ORS 163.435 (Contributing to the Delinquency of a Minor);
- (q) ORS 163.525 (Incest);
- (r) ORS 164.325 (Arson I); or
- (s) ORS 164.415 (Robbery I).

(3) An inmate who is serving a sentence, including a sentence imposed under ORS 137.712, for a crime listed in 137.700, 137.707, 163.095, or 181.594(4) committed on or after January 1, 2009, is not eligible to participate in alternative incarceration programs.

(4) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 137.635.

(5) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under ORS 161.610 until the inmate completes the minimum incarceration term imposed by the court less earned time under 421.121.

(6) An inmate is not eligible to participate in alternative incarceration programs if the inmate:

(a) Has an adult conviction for felony escape which was committed within three years prior to the time of program entry, or has a conviction for unauthorized departure from the legal and/or physical custody of the Oregon Department of Corrections or its authorized agents which was committed within three years prior to the time of program entry.

(b) Is serving non-sentencing guidelines prison terms (sentences with crime dates prior to November 1, 1989), or has unresolved criminal prosecutions, consecutive county jail terms, or any other circumstances that would conflict with his/her release from prison upon satisfactory completion of an alternative incarceration program.

(c) Has a current detainer.

(A) Inmates who are serving a sentence for a crime committed prior to January 1, 2009, and who have detainers lodged with the Department after they have been selected and assigned to one of the programs, and the detainer is discovered after the inmate has completed approximately one-half of the program may be permitted to continue their participation in the program at the discretion of the functional unit manager or designee based on their program performance to date.

(B) Inmates who are serving a sentence for a crime committed on or after January 1, 2009, and who have a current detainer from any jurisdiction that will not expire prior to the inmate's calculated date of release onto post-prison supervision are not eligible for, and shall not be permitted to continue participation in, an alternative incarceration program.

(d) Is currently assigned to special security housing for reasons of protective custody, and the inmate's assignment to the program is otherwise determined by Department officials to pose a threat to the safe, secure and orderly operation and management of the program, including the safety of Department staff and inmates.

(e) Has less than ten months to serve from the first day of program entry. Inmates that have between nine and ten months to serve may participate in alternative incarceration programs with the functional unit manager's or designee's approval.

(f) Is serving a parole or post-prison supervision violation sanction pursuant to ORS 421.168(1) and 144.108(3)(b).

(7) For sentences imposed for crimes committed prior to January 1, 2009, an inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provision of ORS 137.700 or 137.707 until completion of the mandatory minimum incarceration term. For sentences imposed for crimes committed on or after December 5, 1996, the inmate is eligible after completion of the mandatory minimum incarceration term only upon order of the sentencing court as ordered in a judgment pursuant to 137.750.

(8) For sentences imposed for crimes committed prior to January 1, 2009, an inmate is not eligible to participate in alternative incarceration programs if the inmate, on or after April 1, 1995, commits and is convicted of:

(a) Assault II as defined in ORS 163.175(1)(b) (Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon);

(b) Kidnapping II (ORS 163.225); or

(c) Robbery II (ORS 164.405); unless the sentencing court, notwithstanding 137.700 and 137.707, has imposed a lesser sentence pursuant to 137.712 and (for crimes committed on or after December 5, 1996 and prior to January 1, 2009) only upon order of the sentencing court as directed in the judgment pursuant to 137.750.

(9) For sentences imposed for crimes committed prior to January 1, 2009, an inmate is not eligible to participate in alternative incarceration programs if the inmate on or after October 23, 1999, commits and is convicted of Manslaughter II as defined in ORS 163.125, unless the sentencing court, notwithstanding 137.700 and 137.707, has imposed a lesser sentence pursuant to 137.712 and only upon order of the sentencing court as directed in the judgment pursuant to 137.750.

(10) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 161.725 or 161.737 (dangerous offenders) for a crime committed

on or after November 1, 1989. An inmate shall not be allowed to participate in alternative incarceration programs even after completion of the required minimum incarceration term (determinate sentence) even if the Board of Parole and Post-Prison Supervision finds that the person is no longer dangerous or finds that the person remains dangerous but can be adequately controlled with supervision and mental health treatment and sets a post-prison supervision release date.

(11) If otherwise eligible under Oregon law, any person sentenced for a crime committed on or after December 5, 1996 and prior to January 1, 2009, may be considered for alternative incarceration programs only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(12) If otherwise eligible under Oregon law, an inmate sentenced for a crime committed on or after January 1, 2009, may be considered for short-term transitional leave and release onto post-prison supervision only upon order of the sentencing court as directed in a judgment pursuant to ORS 421.508(4).

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075 & OL Ch. 35

Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075

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