

# House Bill 2880

Sponsored by Representative LIM

## 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**.

Provides that offenders who have served one-half of mandatory minimum term of imprisonment for specified crimes are eligible for conditional release under certain circumstances.

### A BILL FOR AN ACT

Relating to conditional release; creating new provisions; amending ORS 137.700; and providing for criminal sentence reduction that requires approval by a two-thirds majority.

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

**SECTION 1. Sections 3 and 4 of this 2007 Act shall be known and may be cited as the "Second Chance Act."**

**SECTION 2.** ORS 137.700, as amended by section 1, chapter 1, Oregon Laws 2006, is amended to read:

137.700. (1)(a) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995, or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on or after October 4, 1997, the court shall impose, and the person shall serve, at least the entire term of imprisonment listed in subsection (2) of this section. *[The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute.]* The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in subsection (2) of this section.

**(b) Except as otherwise provided in section 3 or 4 of this 2007 Act, a person sentenced under this subsection is not:**

**(A) During the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody; or**

**(B) Eligible for any reduction in the minimum sentence for any reason.**

(2) The offenses to which subsection (1) of this section applies and the applicable mandatory minimum sentences are:

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- (a)(A) Murder, as defined in  
ORS 163.115 .....300 months

- (B) Attempt or conspiracy

**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 to commit aggravated
- 2 murder, as defined
- 3 in ORS 163.095.....120 months
- 4 (C) Attempt or conspiracy
- 5 to commit murder, as
- 6 defined in ORS 163.115. ....90 months
- 7 (D) Manslaughter in the
- 8 first degree, as defined
- 9 in ORS 163.118.....120 months
- 10 (E) Manslaughter in the
- 11 second degree, as defined
- 12 in ORS 163.125.....75 months
- 13 (F) Assault in the first
- 14 degree, as defined in
- 15 ORS 163.185.....90 months
- 16 (G) Assault in the second
- 17 degree, as defined in
- 18 ORS 163.175.....70 months
- 19 (H) Except as provided in
- 20 paragraph (b)(G) of
- 21 this subsection,
- 22 kidnapping in the first
- 23 degree, as defined
- 24 in ORS 163.235.....90 months
- 25 (I) Kidnapping in the second
- 26 degree, as defined in
- 27 ORS 163.225.....70 months
- 28 (J) Rape in the first degree,
- 29 as defined in ORS 163.375
- 30 (1)(a), (c) or (d).....100 months
- 31 (K) Rape in the second degree,
- 32 as defined in ORS 163.365.....75 months
- 33 (L) Sodomy in the first degree,
- 34 as defined in ORS 163.405
- 35 (1)(a), (c) or (d).....100 months
- 36 (M) Sodomy in the second
- 37 degree, as defined in
- 38 ORS 163.395.....75 months
- 39 (N) Unlawful sexual penetration
- 40 in the first degree, as
- 41 defined in ORS 163.411
- 42 (1)(a) or (c). ....100 months
- 43 (O) Unlawful sexual penetration
- 44 in the second degree, as
- 45 defined in ORS 163.408. ....75 months

- 1 (P) Sexual abuse in the first
- 2 degree, as defined in
- 3 ORS 163.427.....75 months
- 4 (Q) Robbery in the first degree,
- 5 as defined in ORS 164.415.....90 months
- 6 (R) Robbery in the second
- 7 degree, as defined in
- 8 ORS 164.405.....70 months
- 9 (b)(A) Arson in the first degree,
- 10 as defined in ORS 164.325,
- 11 when the offense represented
- 12 a threat of serious
- 13 physical injury.....90 months
- 14 (B) Using a child in a display
- 15 of sexually explicit
- 16 conduct, as defined in
- 17 ORS 163.670.....70 months
- 18 (C) Compelling prostitution,
- 19 as defined in ORS 167.017.....70 months
- 20 (D) Rape in the first degree,
- 21 as defined in
- 22 ORS 163.375 (1)(b). ....300 months
- 23 (E) Sodomy in the first degree,
- 24 as defined in
- 25 ORS 163.405 (1)(b). ....300 months
- 26 (F) Unlawful sexual penetration
- 27 in the first degree, as
- 28 defined in
- 29 ORS 163.411 (1)(b). ....300 months
- 30 (G) Kidnapping in the first
- 31 degree, as defined in
- 32 ORS 163.235, when the
- 33 offense is committed in
- 34 furtherance of the commission
- 35 or attempted commission of an
- 36 offense listed in subparagraph
- 37 (D), (E) or (F) of
- 38 this paragraph.....300 months

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**SECTION 3. (1) As used in this section:**

**(a) "Eligible inmate" means a person:**

**(A) Who has been sentenced to a term of imprisonment under ORS 137.700 for an offense other than murder; and**

**(B) Who has been convicted of crimes only in the prosecution or criminal proceeding that**

1 resulted in the conviction described in subparagraph (A) of this paragraph.

2 (b) "Sentence imposed" means the total period of mandatory incarceration imposed for  
 3 all convictions resulting from a single prosecution or criminal proceeding not including any  
 4 reduction in the sentence under ORS 421.121 or any other statute.

5 (2) When an eligible inmate has served one-half of the sentence imposed, the sentencing  
 6 court shall determine what further commitment or disposition is appropriate as provided in  
 7 this section.

8 (3)(a) No more than 120 days and not less than 60 days before the date on which a person  
 9 has served one-half of the sentence imposed, the Department of Corrections shall file in the  
 10 sentencing court a notice and request that the court set a time and place for the hearing  
 11 required under this section. The department shall serve the person with a copy of the notice  
 12 and request for hearing on or before the date of filing.

13 (b) Upon receiving the notice and request for a hearing under paragraph (a) of this sub-  
 14 section, the sentencing court shall schedule a hearing for a date not more than 30 days after  
 15 the date on which the person will have served one-half of the sentence imposed or such later  
 16 date as is agreed upon by the parties.

17 (c) The court shall notify the following of the time and place of the hearing:

18 (A) The person;

19 (B) The records supervisor of the correctional institution in which the person is  
 20 incarcerated; and

21 (C) The district attorney who prosecuted the case.

22 (d) The court shall make reasonable efforts to notify the following of the time and place  
 23 of the hearing:

24 (A) The victim and the victim's parents or legal guardian if the victim is a minor; and

25 (B) Any other person who has filed a written request with the court to be notified of any  
 26 hearing concerning the transfer, discharge or release of the person.

27 (4) In a hearing under this section:

28 (a) The person and the state are parties to the proceeding.

29 (b) The person has the right to appear with counsel. If the person requests that the court  
 30 appoint counsel and the court determines that the person is financially eligible for appointed  
 31 counsel at state expense, the court shall order that counsel be appointed.

32 (c) The district attorney represents the state.

33 (d) The court shall determine admissibility of evidence as if the hearing were a sentenc-  
 34 ing proceeding.

35 (e) The court may consider, when relevant, written reports of the Department of Cor-  
 36 rections concerning the person's behavior while incarcerated, the opinions of qualified ex-  
 37 perts and the testimony of any other witnesses. Within a reasonable time before the hearing  
 38 the person must be given the opportunity to examine all reports and other documents con-  
 39 cerning the person that the state or the Department of Corrections intends to submit for  
 40 consideration by the court at the hearing.

41 (f) Except as otherwise provided by law or by order of the court based on good cause, the  
 42 person must be given access to the records maintained in the person's case by the Depart-  
 43 ment of Corrections.

44 (g) The person may examine all of the witnesses called by the state, may subpoena and  
 45 call witnesses to testify on the person's behalf and may present evidence and argument. The

1 court may permit witnesses to appear by telephone or other two-way electronic communi-  
 2 cation device.

3 (h) The hearing must be recorded.

4 (i) The hearing and the record of the hearing are open to the public.

5 (j) The question to be decided is which of the dispositions provided in subsection (5) of  
 6 this section should be ordered in the case.

7 (k) The person has the burden of proving by clear and convincing evidence that the per-  
 8 son has been rehabilitated and reformed, and if conditionally released, the person would not  
 9 be a threat to the safety of the victim, the victim's family or the community and that the  
 10 person would comply with the release conditions.

11 (5)(a) At the conclusion of the hearing and after considering and making findings re-  
 12 garding each of the factors in paragraph (b) of this subsection, the court shall order one of  
 13 the following dispositions:

14 (A) Order that the person serve the entire remainder of the sentence of imprisonment  
 15 imposed, taking into account any reduction in the sentence under ORS 421.121 or any other  
 16 statute for which the person is eligible.

17 (B) Order that the person be conditionally released under section 4 of this 2007 Act at  
 18 such time as the court may order, if the court finds that the person:

19 (i) Has been rehabilitated and reformed;

20 (ii) Is not a threat to the safety of the victim, the victim's family or the community; and

21 (iii) Will comply with the conditions of release.

22 (b) In making the determination under this section, the court shall consider:

23 (A) The experiences and character of the person before and after commitment to the  
 24 Department of Corrections;

25 (B) The person's juvenile and criminal records;

26 (C) The person's mental, emotional and physical health;

27 (D) The gravity of the loss, damage or injury caused or attempted, during or as part of  
 28 the criminal act for which the person was convicted and sentenced;

29 (E) The manner in which the person committed the criminal act for which the person  
 30 was convicted and sentenced;

31 (F) The person's efforts, participation and progress in rehabilitation programs since the  
 32 person's conviction;

33 (G) The results of any mental health or substance abuse treatment;

34 (H) Whether the person demonstrates accountability and responsibility for past and fu-  
 35 ture conduct;

36 (I) Whether the person has made and will continue to make restitution to the victim and  
 37 the community;

38 (J) Whether the person will comply with and benefit from all conditions that will be im-  
 39 posed if the person is conditionally released;

40 (K) The safety of the victim, the victim's family and the community;

41 (L) The recommendations of the district attorney and the Department of Corrections;  
 42 and

43 (M) Any other relevant factors or circumstances raised by the state, the Department of  
 44 Corrections or the person.

45 (6) The court shall provide copies of its disposition order under subsection (5) of this

1 section to the parties, to the records supervisor of the correctional institution in which the  
 2 person is incarcerated and to the manager of the institution-based records office of the De-  
 3 partment of Corrections.

4 (7) The person or the state may appeal an order entered under this section. On appeal,  
 5 the appellate court's review is limited to claims that:

6 (a) The disposition is not authorized under this section;

7 (b) The court failed to comply with the requirements of this section in imposing the dis-  
 8 position; or

9 (c) The findings of the court are not supported by substantial evidence in the record.

10 **SECTION 4.** (1)(a) If, after the hearing required by section 3 of this 2007 Act, the court  
 11 determines that conditional release is the appropriate disposition, the court shall direct the  
 12 Department of Corrections to prepare a proposed release plan. The Department of Cor-  
 13 rections shall submit the release plan no later than 45 days after completion of the hearing.  
 14 The Department of Corrections shall incorporate any conditions recommended by the court.  
 15 The release plan submitted to the court must include:

16 (A) A description of support services and program opportunities available to the person;

17 (B) The recommended conditions of the release and supervision;

18 (C) The level of supervision required;

19 (D) Conditions or requirements that provide for the safety of the victim, the victim's  
 20 family and the community;

21 (E) For persons whose sentences include a requirement to make restitution or to pay  
 22 compensatory fines or attorney fees and who have not yet made full payment, a payment  
 23 schedule;

24 (F) Any conditions reasonably necessary to further the reform and rehabilitation of the  
 25 person and to ensure compliance with the other conditions imposed; and

26 (G) Any special conditions necessary because of the person's individual circumstances.

27 (b) If the court does not approve the proposed release plan, the court shall return the  
 28 plan to the Department of Corrections with recommended modifications and additions. The  
 29 Department of Corrections shall submit a revised plan to the court no later than 15 days  
 30 after receipt of the court's recommended modifications and additions.

31 (c) If the court does not approve the revised plan, the court shall make any changes that  
 32 the court deems appropriate and prepare the final release plan. The final release plan must  
 33 require, in addition to any other conditions, that the person:

34 (A) Comply with the conditions of post-release supervision;

35 (B) Be under the supervision of the Department of Corrections and its representatives  
 36 and follow the direction and counsel of the Department of Corrections and its represen-  
 37 tatives;

38 (C) Answer all reasonable inquiries of the court or the supervisory authority of the De-  
 39 partment of Corrections;

40 (D) Report to the supervision officer as directed by the court or the supervisory au-  
 41 thority of the Department of Corrections;

42 (E) Not own, possess or be in control of any dangerous weapon or deadly weapon, as  
 43 those terms are defined in ORS 161.015, or any dangerous animal;

44 (F) Respect and obey all municipal, county, state and federal laws;

45 (G) Participate in a victim impact treatment program; and

1 (H) Pay any restitution, compensatory fine or attorney fees ordered and regularly per-  
 2 form any community service ordered.

3 (2) When the court has approved a final release plan, the court shall enter an order  
 4 conditionally releasing the person. The order of conditional release shall:

5 (a) State the conditions of release;

6 (b) Require the person to comply fully with all of the conditions of release;

7 (c) Confirm that the person has been given a copy of the conditions of release;

8 (d) Continue the person's commitment to the legal custody of the Department of Cor-  
 9 rections;

10 (e) Provide that the Department of Corrections or its designee shall supervise the person;

11 (f) Provide that the period of supervision is the entire remainder of the sentence of  
 12 imprisonment imposed, taking into account any reduction in the sentence under ORS 421.121  
 13 or any other statute for which the person is eligible, unless the conditional release is revoked  
 14 or suspended; and

15 (g) Require that the Department of Corrections or its designee submit a report to the  
 16 court no later than 90 days after the person is conditionally released and at least every 180  
 17 days thereafter informing the court of the person's circumstances and progress on condi-  
 18 tional release.

19 (3)(a) A person conditionally released under this section remains within the jurisdiction  
 20 of the sentencing court for the period of the conditional release.

21 (b) At any time after the entry of an order of conditional release, the court, on its own  
 22 motion or on motion of the Department of Corrections, may amend the conditional release  
 23 order to modify the conditions of the person's release and supervision, providing that the  
 24 modifications are consistent with the requirements for conditions of release in subsections  
 25 (1) and (2) of this section. Before entering an amended order under this paragraph, the court  
 26 shall provide the Department of Corrections and the person with a reasonable amount of  
 27 time to comment on the proposed modifications. The court shall serve the Department of  
 28 Corrections and the person with a copy of the amended order at least 15 days before the  
 29 order takes effect.

30 (c) The Department of Corrections and the supervisory authority may adjust the level  
 31 of the person's supervision as is appropriate to the person's progress and conduct in the  
 32 community.

33 (4)(a) If an officer of the Department of Corrections or the supervisory authority or a law  
 34 enforcement officer has reasonable grounds to believe that a person released under this  
 35 section has violated a condition of the release, the officer may take the person into custody  
 36 and detain the person pending a hearing on the alleged violation as provided in paragraph (c)  
 37 of this subsection. No later than 24 hours after a person is taken into custody under this  
 38 subsection, the Department of Corrections or the supervisory authority shall file a notice  
 39 and affidavit with the court as provided in paragraph (b) of this subsection and serve a copy  
 40 of the notice and affidavit on the person.

41 (b) When a notice and affidavit is filed under paragraph (a) of this subsection and if the  
 42 court finds that the notice and affidavit state reasonable grounds to believe the person has  
 43 violated a condition of the release, the court shall issue an order that the person appear and  
 44 show cause why the conditional release should not be revoked or suspended as a sanction for  
 45 the alleged violation. When a court issues an order under this paragraph, the court shall:

- 1 (A) Serve a copy of the order to show cause on the person and the district attorney; and  
 2 (B) Provide the person with written notice containing the following information:  
 3 (i) The time, place and purpose of the hearing;  
 4 (ii) That the person has the right to have adverse witnesses present at the hearing for  
 5 purpose of confrontation and cross-examination unless the court determines that good cause  
 6 exists for not permitting confrontation;  
 7 (iii) That the person has the right to subpoena witnesses and present documentary evi-  
 8 dence and testimony of witnesses;  
 9 (iv) That the person has the right to be represented by counsel and, if financially eligible,  
 10 to have counsel appointed at state expense as provided in paragraph (d) of this subsection;  
 11 and  
 12 (v) The possible sanction authorized if the court determines that the person has violated  
 13 the conditions of release.  
 14 (c) The court shall hold the hearing no more than 15 days after issuing the order to ap-  
 15 pear and show cause. The court may order the person to be detained pending the hearing  
 16 and disposition.  
 17 (d) In a hearing under this subsection:  
 18 (A) The person has the right to be represented by counsel and, if financially eligible, to  
 19 have counsel appointed at state expense if the court determines, after request, that the re-  
 20 quest is based on a timely and colorable claim that:  
 21 (i) The person has not committed the alleged violation of the release conditions;  
 22 (ii) Even if the violation is a matter of public record or is uncontested, there are sub-  
 23 stantial reasons that justify or mitigate the violation and make revocation inappropriate and  
 24 the reasons are complex or otherwise difficult to develop or present; or  
 25 (iii) The person, in doubtful cases, appears to be incapable of speaking effectively on the  
 26 person's own behalf;  
 27 (B) The Department of Corrections or the supervisory authority has the burden of  
 28 proving the alleged violation by a preponderance of the evidence;  
 29 (C) The state is a party and is represented by the district attorney;  
 30 (D) The standards for the introduction and admissibility of evidence in contested case  
 31 hearings under ORS 183.450 (1) and (2) apply in the hearing;  
 32 (E) If the court finds that the person has violated the conditions of release and that  
 33 subsection (5) of this section does not apply, the person has the burden of establishing good  
 34 cause why the conditional release should not be revoked or suspended; and  
 35 (F) At the conclusion of the hearing, the court shall enter an order containing findings  
 36 of fact and, if the court finds that the person violated a condition of release, stating what  
 37 sanctions are imposed.  
 38 (e) Except as provided in subsection (5) of this section, when the court finds that the  
 39 person has violated a condition of release, the court shall impose one or more of the follow-  
 40 ing sanctions:  
 41 (A) Adjustments to the level of supervision;  
 42 (B) Modifications of the conditions of release;  
 43 (C) Any appropriate available local sanctions including, but not limited to, community  
 44 service work, house arrest, electronic surveillance, restitution centers, work release centers  
 45 or day centers;



1 (D) Suspension of conditional release for up to 180 days; or

2 (E) Revocation of conditional release.

3 (5) At the conclusion of the hearing, the court shall revoke the person's conditional re-  
4 lease and order the person committed to the physical custody of the Department of Cor-  
5 rections to be confined for the entire remainder of the sentence of imprisonment imposed,  
6 taking into account any reduction in the sentence under ORS 421.121 or any other statute  
7 for which the person is eligible, if the court finds that:

8 (a) The person has been convicted of a new criminal offense;

9 (b) The person has violated the condition prohibiting ownership, possession or control of  
10 a dangerous weapon or deadly weapon, as those terms are defined in ORS 161.015, or a dan-  
11 gerous animal; or

12 (c) The person's conditional release has been suspended twice under this section within  
13 the past 18 months.

14 (6)(a) The state, the Department of Corrections or the person may appeal from an order  
15 of conditional release under this section. The appellate court's review is limited to claims  
16 that the court failed to comply with the requirements of law in ordering the conditional re-  
17 lease.

18 (b) The state, the Department of Corrections or the person may appeal from an order  
19 of the court entered under subsection (4) or (5) of this section. The appellate court's review  
20 is limited to claims that:

21 (A) The disposition is not authorized under this section;

22 (B) The court failed to comply with the requirements of law; and

23 (C) The finding of the court that the person did or did not violate a condition of release  
24 is not supported by substantial evidence in the record.

25 **SECTION 5.** Sections 3 and 4 of this 2007 Act and the amendments to ORS 137.700 by  
26 section 2 of this 2007 Act apply to persons sentenced for offenses committed on or after the  
27 effective date of this 2007 Act.

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