

House Bill 2904

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**.

Provides that offenders sentenced to mandatory minimum terms of imprisonment for certain crimes committed when they were 15, 16 or 17 years of age are eligible for conditional release under certain circumstances.

A BILL FOR AN ACT

1
2 Relating to sentencing; creating new provisions; amending ORS 137.707, 420A.203 and 420A.206; and
3 providing for criminal sentence reduction that requires approval by a two-thirds majority.

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

5 **SECTION 1.** ORS 137.707 is amended to read:

6 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
7 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
8 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
9 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
10 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
11 on or after October 4, 1997, the person shall be prosecuted as an adult in criminal court.

12 (b) A district attorney, the Attorney General or a juvenile department counselor may not file in
13 juvenile court a petition alleging that a person has committed an act that, if committed by an adult,
14 would constitute aggravated murder or an offense listed in subsection (4) of this section if the person
15 was 15, 16 or 17 years of age at the time the act was committed.

16 (2)(a) When a person charged under this section is convicted of an offense listed in subsection
17 (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for
18 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
19 otherwise permitted by law, but may not impose a lesser term. [*The person is not, during the service*
20 *of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary*
21 *leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence*
22 *for any reason under ORS 421.121 or any other provision of law.] ORS 138.012, 163.105 and 163.150
23 apply to sentencing a person prosecuted under this section and convicted of aggravated murder
24 under ORS 163.095 except that a person who was under 18 years of age at the time the offense was
25 committed is not subject to a sentence of death.*

26 (b) **Except as otherwise provided in ORS 420A.203, a person sentenced under this sub-**
27 **section is not:**

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

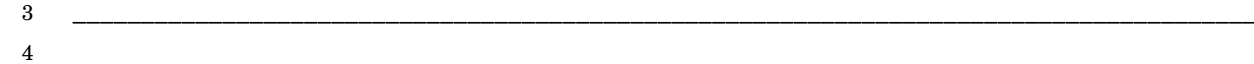
30 (B) **Eligible for any reduction in the minimum sentence for any reason.**

31 (3) The court shall commit the person to the legal and physical custody of the Department of

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 Corrections.

2 (4) The offenses to which this section applies and the presumptive sentences are:



- 5 (a)(A) Murder, as defined in
6 ORS 163.115300 months
- 7 (B) Attempt or conspiracy
8 to commit aggravated
9 murder, as defined
10 in ORS 163.095120 months
- 11 (C) Attempt or conspiracy
12 to commit murder, as
13 defined in ORS 163.11590 months
- 14 (D) Manslaughter in the
15 first degree, as defined
16 in ORS 163.118120 months
- 17 (E) Manslaughter in the
18 second degree, as defined
19 in ORS 163.12575 months
- 20 (F) Assault in the first
21 degree, as defined
22 in ORS 163.18590 months
- 23 (G) Assault in the second
24 degree, as defined
25 in ORS 163.17570 months
- 26 (H) Kidnapping in the first
27 degree, as defined in
28 ORS 163.23590 months
- 29 (I) Kidnapping in the second
30 degree, as defined in
31 ORS 163.22570 months
- 32 (J) Rape in the first degree,
33 as defined in ORS 163.375100 months
- 34 (K) Rape in the second
35 degree, as defined in
36 ORS 163.36575 months
- 37 (L) Sodomy in the first
38 degree, as defined in
39 ORS 163.405100 months
- 40 (M) Sodomy in the second
41 degree, as defined in
42 ORS 163.39575 months
- 43 (N) Unlawful sexual
44 penetration in the first
45 degree, as defined

- 1 in ORS 163.411.....100 months
- 2 (O) Unlawful sexual
- 3 penetration in the
- 4 second degree, as
- 5 defined in ORS 163.40875 months
- 6 (P) Sexual abuse in the first
- 7 degree, as defined in
- 8 ORS 163.427.....75 months
- 9 (Q) Robbery in the first
- 10 degree, as defined in
- 11 ORS 164.41590 months
- 12 (R) Robbery in the second
- 13 degree, as defined in
- 14 ORS 164.40570 months
- 15 (b)(A) Arson in the first degree,
- 16 as defined in
- 17 ORS 164.325, when
- 18 the offense represented
- 19 a threat of serious
- 20 physical injury.90 months
- 21 (B) Using a child in a display
- 22 of sexually explicit
- 23 conduct, as defined in
- 24 ORS 163.670.70 months
- 25 (C) Compelling prostitution,
- 26 as defined in ORS 167.017.....70 months

27
28

29 (5) If a person charged with an offense under this section is found guilty of a lesser included
30 offense and the lesser included offense is:

31 (a) An offense listed in subsection (4) of this section, the court shall sentence the person as
32 provided in subsection (2) of this section.

33 (b) Not an offense listed in subsection (4) of this section:

34 (A) But constitutes an offense for which waiver is authorized under ORS 419C.349, the court,
35 upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction
36 or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdic-
37 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdic-
38 tion, the court shall sentence the person as an adult under sentencing guidelines. If the court does
39 not retain jurisdiction, the court shall:

40 (i) Order that a presentence report be prepared;

41 (ii) Set forth in a memorandum any observations and recommendations that the court deems
42 appropriate; and

43 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
44 419C.067 and 419C.411.

45 (B) And is not an offense for which waiver is authorized under ORS 419C.349, the court may not

1 sentence the person. The court shall:

2 (i) Order that a presentence report be prepared;

3 (ii) Set forth in a memorandum any observations and recommendations that the court deems
4 appropriate; and

5 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
6 419C.067 and 419C.411.

7 (6) When a person is charged under this section, other offenses based on the same act or
8 transaction shall be charged as separate counts in the same accusatory instrument and consolidated
9 for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection
10 (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by
11 the joinder and consolidation of offenses, the court may order an election or separate trials of
12 counts or provide whatever other relief justice requires.

13 (7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty
14 of aggravated murder or an offense listed in subsection (4) of this section and one or more other
15 offenses, the court shall impose the sentence for aggravated murder or the offense listed in sub-
16 section (4) of this section as provided in subsection (2) of this section and shall impose sentences for
17 the other offenses as otherwise provided by law.

18 (b) If a person charged and tried as provided in subsection (6) of this section is not found guilty
19 of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one
20 of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349,
21 the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain
22 jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain
23 jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains
24 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court
25 does not retain jurisdiction, the court shall:

26 (A) Order that a presentence report be prepared;

27 (B) Set forth in a memorandum any observations and recommendations that the court deems
28 appropriate; and

29 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
30 419C.067 and 419C.411.

31 **SECTION 2.** ORS 420A.203 is amended to read:

32 420A.203. (1)(a) This section and ORS 420A.206 apply only to persons who were under 18 years
33 of age at the time of the commission of the offense for which the persons were sentenced to a term
34 of imprisonment, who committed the offense on or after June 30, 1995, and who were **sentenced to**
35 **a term of imprisonment:**

36 (A) [*Sentenced to a term of imprisonment*] Of at least 24 months following waiver under ORS
37 419C.349, 419C.352, 419C.364 or 419C.370; [*or*]

38 (B) [*Sentenced to a term of imprisonment*] Of at least 24 months under ORS 137.707 (5)(b)(A) or
39 (7)(b); **or**

40 (C) **Under ORS 137.707 (2) for an offense other than murder, attempt or conspiracy to**
41 **commit aggravated murder or assault in the first degree if the court found that the assault**
42 **resulted in permanent physical or mental disability to the victim.**

43 (b) When a person described in paragraph (a) of this subsection has served one-half of the sen-
44 tence imposed, the sentencing court shall determine what further commitment or disposition is ap-
45 propriate as provided in this section. As used in this subsection and subsection (2) of this section,

1 “sentence imposed” means the total period of mandatory incarceration imposed for all convictions
2 resulting from a single prosecution or criminal proceeding not including any reduction in the sen-
3 tence under ORS 421.121 or any other statute.

4 (2)(a) No more than 120 days and not less than 60 days before the date on which a person has
5 served one-half of the sentence imposed, the Oregon Youth Authority or the Department of Cor-
6 rections, whichever has physical custody of the person, shall file in the sentencing court a notice
7 and request that the court set a time and place for the hearing required under this section. The
8 youth authority or department shall serve the person with a copy of the notice and request for
9 hearing on or before the date of filing.

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

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

15 (A) The person and the person’s parents **if the person is a minor**;

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

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

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

21 (A) The victim and the victim’s parents or legal guardian **if the victim is a minor**; and

22 (B) Any other person who has filed a written request with the court to be notified of any hear-
23 ing concerning the transfer, discharge or release of the person.

24 (3) In a hearing under this section:

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

26 (b) The person has the right to appear with counsel. If the person requests that the court ap-
27 point counsel and the court determines that the person is financially eligible for appointed counsel
28 at state expense, the court shall order that counsel be appointed.

29 (c) The district attorney represents the state.

30 (d) The court shall determine admissibility of evidence as if the hearing were a sentencing pro-
31 ceeding.

32 (e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the
33 Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within
34 a reasonable time before the hearing, as determined by the court, the person must be given the op-
35 portunity to examine all reports and other documents concerning the person that the state, the
36 Oregon Youth Authority or the Department of Corrections intends to submit for consideration by
37 the court at the hearing.

38 (f) Except as otherwise provided by law or by order of the court based on good cause, the person
39 must be given access to the records maintained in the person’s case by the Oregon Youth Authority
40 and the Department of Corrections.

41 (g) The person may examine all of the witnesses called by the state, may subpoena and call
42 witnesses to testify on the person’s behalf and may present evidence and argument. The court may
43 permit witnesses to appear by telephone or other two-way electronic communication device.

44 (h) The hearing must be recorded.

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

1 (j) The question to be decided is which of the dispositions provided in subsection (4) of this
 2 section should be ordered in the case.

3 (k) The person has the burden of proving by clear and convincing evidence that the person has
 4 been rehabilitated and reformed, and if conditionally released, the person would not be a threat to
 5 the safety of the victim, the victim's family or the community and that the person would comply with
 6 the release conditions.

7 (4)(a) At the conclusion of the hearing and after considering and making findings regarding each
 8 of the factors in paragraph (b) of this subsection, the court shall order one of the following dispo-
 9 sitions:

10 (A) Order that the person serve the entire remainder of the sentence of imprisonment imposed,
 11 taking into account any reduction in the sentence under ORS 421.121 or any other statute **for which**
 12 **the person is eligible**, with the person's physical custody determined under ORS 137.124, 420.011
 13 and 420A.200.

14 (B) Order that the person be conditionally released under ORS 420A.206 at such time as the
 15 court may order, if the court finds that the person:

- 16 (i) Has been rehabilitated and reformed;
- 17 (ii) Is not a threat to the safety of the victim, the victim's family or the community; and
- 18 (iii) Will comply with the conditions of release.

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

20 (A) The experiences and character of the person before and after commitment to the Oregon
 21 Youth Authority or the Department of Corrections;

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

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

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

26 (E) The manner in which the person committed the criminal act for which the person was con-
 27 victed and sentenced;

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

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

31 (H) Whether the person demonstrates accountability and responsibility for past and future con-
 32 duct;

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

35 (J) Whether the person will comply with and benefit from all conditions that will be imposed if
 36 the person is conditionally released;

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

38 (L) The recommendations of the district attorney, the Oregon Youth Authority and the Depart-
 39 ment of Corrections; and

40 (M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Au-
 41 thority, the Department of Corrections or the person.

42 (5) The court shall provide copies of its disposition order under subsection (4) of this section to
 43 the parties, to the records supervisor of the correctional institution in which the person is
 44 incarcerated and to the manager of the institution-based records office of the Department of Cor-
 45 rections.

1 (6) The person or the state may appeal an order entered under this section. On appeal, the ap-
 2 pellate court's review is limited to claims that:

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

4 (b) The court failed to comply with the requirements of this section in imposing the disposition;

5 or

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

7 **SECTION 3.** ORS 420A.206 is amended to read:

8 420A.206. (1)(a) If, after the hearing required by ORS 420A.203, the court determines that con-
 9 ditional release is the appropriate disposition, the court shall direct the Department of Corrections
 10 to prepare a proposed release plan. The Department of Corrections shall submit the release plan no
 11 later than 45 days after completion of the hearing. The Department of Corrections shall incorporate
 12 any conditions recommended by the court and shall consider any recommendations made by the
 13 Oregon Youth Authority. The release plan submitted to the court must include:

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

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

16 (C) The level of supervision required;

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

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

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

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

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

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

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

32 (B) Be under the supervision of the Department of Corrections and its representatives and follow
 33 the direction and counsel of the Department of Corrections and its representatives;

34 (C) Answer all reasonable inquiries of the court or the supervisory authority of the Department
 35 of Corrections;

36 (D) Report to the supervision officer as directed by the court or the supervisory authority of the
 37 Department of Corrections;

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

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

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

42 (H) Pay any restitution, compensatory fine or attorney fees ordered and regularly perform any
 43 community service ordered.

44 (2) When the court has approved a final release plan, the court shall enter an order condi-
 45 tionally releasing the person. The order of conditional release shall:

- 1 (a) State the conditions of release;
- 2 (b) Require the person to comply fully with all of the conditions of release;
- 3 (c) Confirm that the person has been given a copy of the conditions of release;
- 4 (d) Continue the person’s commitment to the legal custody of the Department of Corrections;
- 5 (e) Provide that the Department of Corrections or its designee shall supervise the person;
- 6 (f) Provide that the period of supervision is the entire remainder of the sentence of imprisonment
- 7 imposed, taking into account any reduction in the sentence under ORS 421.121 or any other statute
- 8 **for which the person is eligible**, unless the conditional release is revoked or suspended; and
- 9 (g) Require that the Department of Corrections or its designee submit a report to the court no
- 10 later than 90 days after the person is conditionally released and at least every 180 days thereafter
- 11 informing the court of the person’s circumstances and progress on conditional release.

12 (3)(a) A person conditionally released under this section remains within the jurisdiction of the

13 sentencing court for the period of the conditional release.

14 (b) At any time after the entry of an order of conditional release, the court, on its own motion

15 or on motion of the Department of Corrections, may amend the conditional release order to modify

16 the conditions of the person’s release and supervision, providing that the modifications are consist-

17 ent with the requirements for conditions of release in subsections (1) and (2) of this section. Before

18 entering an amended order under this paragraph, the court shall provide the Department of Cor-

19 rections and the person with a reasonable amount of time to comment on the proposed modifications.

20 The court shall serve the Department of Corrections and the person with a copy of the amended

21 order at least 15 days before the order takes effect.

22 (c) The Department of Corrections and the supervisory authority may adjust the level of the

23 person’s supervision as is appropriate to the person’s progress and conduct in the community.

24 (4)(a) If an officer of the Department of Corrections or the supervisory authority or a law

25 enforcement officer has reasonable grounds to believe that a person released under this section has

26 violated a condition of the release, the officer may take the person into custody and detain the

27 person pending a hearing on the alleged violation as provided in paragraph (c) of this subsection.

28 No later than 24 hours after a person is taken into custody under this subsection, the Department

29 of Corrections or the supervisory authority shall file a notice and affidavit with the court as pro-

30 vided in paragraph (b) of this subsection and serve a copy of the notice and affidavit on the person.

31 (b) When a notice and affidavit is filed under paragraph (a) of this subsection and if the court

32 finds that the notice and affidavit state reasonable grounds to believe the person has violated a

33 condition of the release, the court shall issue an order that the person appear and show cause why

34 the conditional release should not be revoked or suspended as a sanction for the alleged violation.

35 When a court issues an order under this paragraph, the court shall:

- 36 (A) Serve a copy of the order to show cause on the person and the district attorney; and
- 37 (B) Provide the person with written notice containing the following information:
 - 38 (i) The time, place and purpose of the hearing;
 - 39 (ii) That the person has the right to have adverse witnesses present at the hearing for purpose
 - 40 of confrontation and cross-examination unless the court determines that good cause exists for not
 - 41 permitting confrontation;
 - 42 (iii) That the person has the right to subpoena witnesses and present documentary evidence and
 - 43 testimony of witnesses;
 - 44 (iv) That the person has the right to be represented by counsel and, if financially eligible, to
 - 45 have counsel appointed at state expense as provided in paragraph (d) of this subsection; and

1 (v) The possible sanction authorized if the court determines that the person has violated the
2 conditions of release.

3 (c) The court shall hold the hearing no more than 15 days after issuing the order to appear and
4 show cause. The court may order the person to be detained pending the hearing and disposition.

5 (d) In a hearing under this subsection:

6 (A) The person has the right to be represented by counsel and, if financially eligible, to have
7 counsel appointed at state expense if the court determines, after request, that the request is based
8 on a timely and colorable claim that:

9 (i) The person has not committed the alleged violation of the release conditions;

10 (ii) Even if the violation is a matter of public record or is uncontested, there are substantial
11 reasons that justify or mitigate the violation and make revocation inappropriate and the reasons are
12 complex or otherwise difficult to develop or present; or

13 (iii) The person, in doubtful cases, appears to be incapable of speaking effectively on the per-
14 son's own behalf;

15 (B) The Department of Corrections or the supervisory authority has the burden of proving the
16 alleged violation by a preponderance of the evidence;

17 (C) The state is a party and is represented by the district attorney;

18 (D) The standards for the introduction and admissibility of evidence in contested case hearings
19 under ORS 183.450 (1) and (2) apply in the hearing;

20 (E) If the court finds that the person has violated the conditions of release and that subsection
21 (5) of this section does not apply, the person has the burden of establishing good cause why the
22 conditional release should not be revoked or suspended; and

23 (F) At the conclusion of the hearing, the court shall enter an order containing findings of fact
24 and, if the court finds that the person violated a condition of release, stating what sanctions are
25 imposed.

26 (e) Except as provided in subsection (5) of this section, when the court finds that the person has
27 violated a condition of release, the court shall impose one or more of the following sanctions:

28 (A) Adjustments to the level of supervision;

29 (B) Modifications of the conditions of release;

30 (C) Any appropriate available local sanctions including, but not limited to, community service
31 work, house arrest, electronic surveillance, restitution centers, work release centers or day centers;

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

33 (E) Revocation of conditional release.

34 (5) At the conclusion of the hearing, the court shall revoke the person's conditional release and
35 order the person committed to the physical custody of the Department of Corrections to be confined
36 for the entire remainder of the sentence of imprisonment imposed, taking into account any reduction
37 in the sentence under ORS 421.121 or any other statute **for which the person is eligible**, if the
38 court finds that:

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

40 (b) The person has violated the condition prohibiting ownership, possession or control of a
41 dangerous weapon or deadly weapon, as those terms are defined in ORS 161.015, or a dangerous
42 animal; or

43 (c) The person's conditional release has been suspended twice under this section within the past
44 18 months.

45 (6)(a) The state, the Department of Corrections or the person may appeal from an order of con-

1 ditional release under this section. The appellate court's review is limited to claims that the court
2 failed to comply with the requirements of law in ordering the conditional release.

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

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

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

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

10 **SECTION 4. The amendments to ORS 137.707, 420A.203 and 420A.206 by sections 1 to 3**
11 **of this 2007 Act apply to persons sentenced for offenses committed on or after the effective**
12 **date of this 2007 Act.**

13 _____