

Corrected Title

Senate Bill 1014

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 courts to determine whether person 15, 16 or 17 years of age charged with specified crimes should be prosecuted in adult court.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 137.705 and 137.707; and providing for
3 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. (1) When a person charged with aggravated murder, as defined in ORS**
6 **163.095, or an offense listed in ORS 137.707 (4) is 15, 16 or 17 years of age at the time the**
7 **offense is committed, the criminal court having jurisdiction shall hold a hearing to determine**
8 **if the proceeding should be continued in juvenile court.**

9 **(2) The person shall have the burden of proving, by a preponderance of the evidence, that**
10 **either:**

11 **(a) At the time of the alleged offense, the person was not of sufficient sophistication and**
12 **maturity to appreciate the quality of the conduct involved; or**

13 **(b) Retaining jurisdiction does not serve the best interests of the person or society.**

14 **(3) In making a finding under subsection (2)(b) of this section, the court shall consider**
15 **the factors described in ORS 419C.349 (4).**

16 **(4) If the court makes either of the findings described in subsection (2) of this section,**
17 **the court shall enter an order remanding the person to juvenile court for proceedings con-**
18 **sistent with ORS chapter 419C. Otherwise, the court shall continue the proceeding in the**
19 **criminal court.**

20 **SECTION 2. ORS 137.707 is amended to read:**

21 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
22 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
23 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
24 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
25 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
26 on or after October 4, 1997, the person shall be **granted a hearing in accordance with section 1**
27 **of this 2007 Act** [*prosecuted as an adult in criminal court*].

28 (b) A district attorney, the Attorney General or a juvenile department counselor may not file in
29 juvenile court a petition alleging that a person has committed an act that, if committed by an adult,
30 would constitute aggravated murder or an offense listed in subsection (4) of this section if the person

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 was 15, 16 or 17 years of age at the time the act was committed **unless a court enters an order**
2 **remanding the person to juvenile court under section 1 of this 2007 Act.**

3 (2) When a person charged under this section is convicted of an offense listed in subsection (4)
4 of this section, the court shall impose at least the presumptive term of imprisonment provided for
5 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
6 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
7 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
8 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-
9 tence for any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and
10 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated
11 murder under ORS 163.095 except that a person who was under 18 years of age at the time the of-
12 fense was committed is not subject to a sentence of death.

13 (3) The court shall commit the person to the legal and physical custody of the Department of
14 Corrections.

15 (4) The offenses to which this section applies and the presumptive sentences are:
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- 17
 - 18 (a)(A) Murder, as defined in
 - 19 ORS 163.115300 months
 - 20 (B) Attempt or conspiracy
 - 21 to commit aggravated
 - 22 murder, as defined
 - 23 in ORS 163.095120 months
 - 24 (C) Attempt or conspiracy
 - 25 to commit murder, as
 - 26 defined in ORS 163.11590 months
 - 27 (D) Manslaughter in the
 - 28 first degree, as defined
 - 29 in ORS 163.118120 months
 - 30 (E) Manslaughter in the
 - 31 second degree, as defined
 - 32 in ORS 163.12575 months
 - 33 (F) Assault in the first
 - 34 degree, as defined
 - 35 in ORS 163.18590 months
 - 36 (G) Assault in the second
 - 37 degree, as defined
 - 38 in ORS 163.17570 months
 - 39 (H) Kidnapping in the first
 - 40 degree, as defined in
 - 41 ORS 163.23590 months
 - 42 (I) Kidnapping in the second
 - 43 degree, as defined in
 - 44 ORS 163.22570 months
 - 45 (J) Rape in the first degree,

- 1 as defined in ORS 163.375.....100 months
- 2 (K) Rape in the second
- 3 degree, as defined in
- 4 ORS 163.36575 months
- 5 (L) Sodomy in the first
- 6 degree, as defined in
- 7 ORS 163.405100 months
- 8 (M) Sodomy in the second
- 9 degree, as defined in
- 10 ORS 163.39575 months
- 11 (N) Unlawful sexual
- 12 penetration in the first
- 13 degree, as defined
- 14 in ORS 163.411100 months
- 15 (O) Unlawful sexual
- 16 penetration in the
- 17 second degree, as
- 18 defined in ORS 163.40875 months
- 19 (P) Sexual abuse in the first
- 20 degree, as defined in
- 21 ORS 163.42775 months
- 22 (Q) Robbery in the first
- 23 degree, as defined in
- 24 ORS 164.41590 months
- 25 (R) Robbery in the second
- 26 degree, as defined in
- 27 ORS 164.40570 months
- 28 (b)(A) Arson in the first degree,
- 29 as defined in
- 30 ORS 164.325, when
- 31 the offense represented
- 32 a threat of serious
- 33 physical injury.90 months
- 34 (B) Using a child in a display
- 35 of sexually explicit
- 36 conduct, as defined in
- 37 ORS 163.67070 months
- 38 (C) Compelling prostitution,
- 39 as defined in ORS 167.01770 months

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42 (5) If a person charged with an offense under this section is found guilty of a lesser included

43 offense and the lesser included offense is:

44 (a) An offense listed in subsection (4) of this section, the court shall sentence the person as

45 provided in subsection (2) of this section.

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

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

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

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

11 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 12 419C.067 and 419C.411.

13 (B) And is not an offense for which waiver is authorized under ORS 419C.349, the court may not
 14 sentence the person. The court shall:

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

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

18 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 19 419C.067 and 419C.411.

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

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

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

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

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

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

44 **SECTION 3.** ORS 137.705 is amended to read:

45 137.705. (1)(a) As used in this section and ORS 137.707:

1 (A) "Charged" means the filing of an accusatory instrument in a court of criminal jurisdiction
 2 alleging the commission of an offense listed in ORS 137.707.

3 (B) "Prosecuted" includes pretrial and trial procedures, requirements and limitations provided
 4 for in criminal cases.

5 (b) Unless otherwise provided in ORS 137.707, ORS chapters 137 and 138 apply to proceedings
 6 under ORS 137.707.

7 (2)(a) Notwithstanding ORS 419B.100 and 419C.005, a person 15, 16 or 17 years of age at the time
 8 of committing the offense may be charged with the commission of an offense listed in ORS 137.707
 9 and may be prosecuted as an adult **unless a court enters an order remanding the person to**
 10 **juvenile court under section 1 of this 2007 Act.**

11 (b) The district attorney shall notify the juvenile court and the juvenile department when a
 12 person under 18 years of age is charged with an offense listed in ORS 137.707.

13 (c) The filing of an accusatory instrument in a criminal court under ORS 137.707 divests the
 14 juvenile court of jurisdiction in the matter if juvenile court jurisdiction is based on the conduct al-
 15 leged in the accusatory instrument or any conduct arising out of the same act or transaction. Upon
 16 receiving notice from the district attorney under paragraph (b) of this subsection, the juvenile court
 17 shall dismiss, without prejudice, the juvenile court proceeding and enter any order necessary to
 18 transfer the matter or transport the person to the criminal court for further proceedings. Nothing
 19 in this paragraph affects the authority or jurisdiction of the juvenile court with respect to other
 20 matters or conduct.

21 (3)(a) A person charged with a crime under ORS 137.707 who is 16 or 17 years of age shall be
 22 detained in custody in a jail or other place where adults are detained subject to release on the same
 23 terms and conditions as for adults.

24 (b) Notwithstanding paragraph (a) of this subsection, the sheriff and the director of the county
 25 juvenile department may agree to detain the person charged in a place other than the county jail.

26 (c) If a person charged with a crime under ORS 137.707 is under 16 years of age, the person
 27 may not be detained, either before conviction or after conviction but before execution of the sen-
 28 tence, in a jail or other place where adults are detained.

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