

Senate Bill 1015

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**.

Allows trial court to retain jurisdiction of cases involving youth offenders for which mandatory minimum sentences may be imposed upon making certain findings.

A BILL FOR AN ACT

Relating to crime; creating new provisions; and amending ORS 137.705 and 137.707.

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

SECTION 1. If a person was 15, 16 or 17 years of age at the time an act was committed for which a mandatory sentence under ORS 137.707 may be imposed upon conviction, the trial court may not try the person as an adult on the charges in circuit court unless the trial court makes the following findings prior to trial:

(1) The youth at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved; and

(2) The court, after considering the following criteria, determines by a preponderance of the evidence that retaining jurisdiction serves the best interests of the youth and of society and therefore is justified:

(a) The amenability of the youth to treatment and rehabilitation, given the techniques, facilities and personnel for rehabilitation available to the criminal court and to the juvenile court that would have jurisdiction after transfer;

(b) The protection required by the community, given the seriousness of the offense alleged;

(c) The aggressive, violent, premeditated or willful manner in which the offense was alleged to have been committed;

(d) The previous history of the youth, including:

(A) Prior treatment efforts and out-of-home placements; and

(B) The physical, emotional and mental health of the youth;

(e) The youth's prior record of acts that would be crimes if committed by an adult;

(f) The gravity of the loss, damage or injury caused or attempted during the offense;

(g) The prosecutive merit of the case against the youth; and

(h) The desirability of disposing of all cases in one trial if there are adult co-offenders.

SECTION 2. ORS 137.705 is amended to read:

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

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

(B) "Prosecuted" includes pretrial and trial procedures, requirements and limitations provided

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 for in criminal cases.

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

4 (2)(a) Notwithstanding ORS 419B.100 and 419C.005, a person 15, 16 or 17 years of age at the time
5 of committing the offense may be charged with the commission of an offense listed in ORS 137.707
6 and may be prosecuted as an adult, **if the trial court makes the findings to retain jurisdiction**
7 **required by section 1 of this 2007 Act.**

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

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

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

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

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

26 **SECTION 3.** ORS 137.707 is amended to read:

27 137.707. (1)(a) **If the trial court makes the findings required under section 1 of this 2007**
28 **Act**, notwithstanding any other provision of law, when a person charged with aggravated murder,
29 as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is 15, 16 or 17 years
30 of age at the time the offense is committed, and the offense is committed on or after April 1, 1995,
31 or when a person charged with an offense listed in subsection (4)(b) of this section is 15, 16 or 17
32 years of age at the time the offense is committed, and the offense is committed on or after October
33 4, 1997, the person shall be prosecuted as an adult in criminal court.

34 (b) A district attorney, the Attorney General or a juvenile department counselor may not file in
35 juvenile court a petition alleging that a person has committed an act that, if committed by an adult,
36 would constitute aggravated murder or an offense listed in subsection (4) of this section if the person
37 was 15, 16 or 17 years of age at the time the act was committed, **unless the court fails to make**
38 **the findings to retain jurisdiction required under section 1 of this 2007 Act.**

39 (2) When a person charged under this section is convicted of an offense listed in subsection (4)
40 of this section, the court shall impose at least the presumptive term of imprisonment provided for
41 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
42 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
43 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
44 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-
45 tence for any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and

1 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated
2 murder under ORS 163.095 except that a person who was under 18 years of age at the time the of-
3 fense was committed is not subject to a sentence of death.

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

6 (4) The offenses to which this section applies and the presumptive sentences are:
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 - 9 (a)(A) Murder, as defined in
10 ORS 163.115.....300 months
 - 11 (B) Attempt or conspiracy
12 to commit aggravated
13 murder, as defined
14 in ORS 163.095.....120 months
 - 15 (C) Attempt or conspiracy
16 to commit murder, as
17 defined in ORS 163.11590 months
 - 18 (D) Manslaughter in the
19 first degree, as defined
20 in ORS 163.118.....120 months
 - 21 (E) Manslaughter in the
22 second degree, as defined
23 in ORS 163.125.....75 months
 - 24 (F) Assault in the first
25 degree, as defined
26 in ORS 163.185.....90 months
 - 27 (G) Assault in the second
28 degree, as defined
29 in ORS 163.175.....70 months
 - 30 (H) Kidnapping in the first
31 degree, as defined in
32 ORS 163.235.....90 months
 - 33 (I) Kidnapping in the second
34 degree, as defined in
35 ORS 163.225.....70 months
 - 36 (J) Rape in the first degree,
37 as defined in ORS 163.375.....100 months
 - 38 (K) Rape in the second
39 degree, as defined in
40 ORS 163.365.....75 months
 - 41 (L) Sodomy in the first
42 degree, as defined in
43 ORS 163.405.....100 months
 - 44 (M) Sodomy in the second
45 degree, as defined in

1 ORS 163.39575 months
2 (N) Unlawful sexual
3 penetration in the first
4 degree, as defined
5 in ORS 163.411100 months
6 (O) Unlawful sexual
7 penetration in the
8 second degree, as
9 defined in ORS 163.40875 months
10 (P) Sexual abuse in the first
11 degree, as defined in
12 ORS 163.42775 months
13 (Q) Robbery in the first
14 degree, as defined in
15 ORS 164.41590 months
16 (R) Robbery in the second
17 degree, as defined in
18 ORS 164.40570 months
19 (b)(A) Arson in the first degree,
20 as defined in
21 ORS 164.325, when
22 the offense represented
23 a threat of serious
24 physical injury.90 months
25 (B) Using a child in a display
26 of sexually explicit
27 conduct, as defined in
28 ORS 163.670.70 months
29 (C) Compelling prostitution,
30 as defined in ORS 167.017.70 months

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

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

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

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

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

45 (ii) Set forth in a memorandum any observations and recommendations that the court deems

1 appropriate; and

2 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
3 419C.067 and 419C.411.

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

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

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

9 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
10 419C.067 and 419C.411.

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

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

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

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

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

33 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
34 419C.067 and 419C.411.

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