

# House Bill 2355

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim 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**.

Modifies mandatory minimum sentences for specified crimes.

### A BILL FOR AN ACT

Relating to criminal sentences; creating new provisions; amending ORS 137.700 and 137.707; 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.** ORS 137.700 is amended to read:

137.700. (1) 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, or of the offense described in subsection (2)(c) of this section and the offense was committed on or after January 1, 2008, 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.

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

- 
- (a)(A) Murder, as defined in  
ORS 163.115 .....300 months
  - (B) Attempt or conspiracy  
to commit aggravated  
murder, as defined  
in ORS 163.095 .....120 months
  - (C) Attempt or conspiracy  
to commit murder, as  
defined in ORS 163.115. ....90 months
  - (D) Manslaughter in the  
first degree, as defined

**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           in ORS 163.118.....120 months
- 2       (E)   Manslaughter in the
- 3           second degree, as defined
- 4           in ORS 163.125.....75 months
- 5       (F)   Assault in the first
- 6           degree, as defined in
- 7           ORS 163.185.....90 months
- 8       (G)   Assault in the second
- 9           degree, as defined in
- 10          ORS 163.175.....[70] **58** months
- 11       (H)   Except as provided in
- 12           paragraph (b)(G) of
- 13           this subsection,
- 14           kidnapping in the first
- 15           degree, as defined
- 16           in ORS 163.235.....90 months
- 17       (I)   Kidnapping in the second
- 18           degree, as defined in
- 19           ORS 163.225.....[70] **58** months
- 20       (J)   Rape in the first degree,
- 21           as defined in ORS 163.375
- 22           (1)(a), (c) or (d).....[100] **120** months
- 23       (K)   Rape in the second degree,
- 24           as defined in ORS 163.365.....75 months
- 25       (L)   Sodomy in the first degree,
- 26           as defined in ORS 163.405
- 27           (1)(a), (c) or (d).....[100] **120** months
- 28       (M)   Sodomy in the second
- 29           degree, as defined in
- 30           ORS 163.395.....75 months
- 31       (N)   Unlawful sexual penetration
- 32           in the first degree, as
- 33           defined in ORS 163.411
- 34           (1)(a) or (c).....[100] **120** months
- 35       (O)   Unlawful sexual penetration
- 36           in the second degree, as
- 37           defined in ORS 163.408. ....75 months
- 38       (P)   Sexual abuse in the first
- 39           degree, as defined in
- 40           ORS 163.427.....75 months
- 41       (Q)   Robbery in the first degree,
- 42           as defined in ORS 164.415.....90 months
- 43       (R)   Robbery in the second
- 44           degree, as defined in
- 45           ORS 164.405.....[70] **58** months

- 1 (b)(A) Arson in the first degree,
- 2 as defined in ORS 164.325,
- 3 when the offense represented
- 4 a threat of serious
- 5 physical injury. ....90 months
- 6 (B) Using a child in a display
- 7 of sexually explicit
- 8 conduct, as defined in
- 9 ORS 163.670. ....70 months
- 10 (C) Compelling prostitution,
- 11 as defined in ORS 167.017. ....70 months
- 12 (D) Rape in the first degree,
- 13 as defined in
- 14 ORS 163.375 (1)(b). ....300 months
- 15 (E) Sodomy in the first degree,
- 16 as defined in
- 17 ORS 163.405 (1)(b). ....300 months
- 18 (F) Unlawful sexual penetration
- 19 in the first degree, as
- 20 defined in
- 21 ORS 163.411 (1)(b). ....300 months
- 22 (G) Kidnapping in the first
- 23 degree, as defined in
- 24 ORS 163.235, when the
- 25 offense is committed in
- 26 furtherance of the commission
- 27 or attempted commission of an
- 28 offense listed in subparagraph
- 29 (D), (E) or (F) of
- 30 this paragraph. ....300 months
- 31 (c) Aggravated vehicular
- 32 homicide, as defined in
- 33 ORS 163.149. ....240 months

34

35

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

37 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-  
 38 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is  
 39 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or  
 40 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-  
 41 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed  
 42 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)  
 43 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is  
 44 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

45 (b) A district attorney, the Attorney General or a juvenile department counselor may not file in

1 juvenile court a petition alleging that a person has committed an act that, if committed by an adult,  
2 would constitute aggravated murder or an offense listed in subsection (4) of this section if the person  
3 was 15, 16 or 17 years of age at the time the act was committed.

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

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

16 (4) The offenses to which this section applies and the presumptive sentences are:  
17



- 18
- 19 (a)(A) Murder, as defined in
- 20 ORS 163.115.....300 months
- 21 (B) Attempt or conspiracy
- 22 to commit aggravated
- 23 murder, as defined
- 24 in ORS 163.095.....120 months
- 25 (C) Attempt or conspiracy
- 26 to commit murder, as
- 27 defined in ORS 163.115 .....90 months
- 28 (D) Manslaughter in the
- 29 first degree, as defined
- 30 in ORS 163.118.....120 months
- 31 (E) Manslaughter in the
- 32 second degree, as defined
- 33 in ORS 163.125.....75 months
- 34 (F) Assault in the first
- 35 degree, as defined
- 36 in ORS 163.185.....90 months
- 37 (G) Assault in the second
- 38 degree, as defined
- 39 in ORS 163.175.....[70] 58 months
- 40 (H) Kidnapping in the first
- 41 degree, as defined in
- 42 ORS 163.235.....90 months
- 43 (I) Kidnapping in the second
- 44 degree, as defined in
- 45 ORS 163.225.....[70] 58 months

- 1 (J) Rape in the first degree,  
2 as defined in  
3 ORS 163.375 .....[100] **120** months
- 4 (K) Rape in the second  
5 degree, as defined in  
6 ORS 163.365 .....75 months
- 7 (L) Sodomy in the first  
8 degree, as defined in  
9 ORS 163.405 .....[100] **120** months
- 10 (M) Sodomy in the second  
11 degree, as defined in  
12 ORS 163.395 .....75 months
- 13 (N) Unlawful sexual  
14 penetration in the first  
15 degree, as defined  
16 in ORS 163.411 .....[100] **120** months
- 17 (O) Unlawful sexual  
18 penetration in the  
19 second degree, as  
20 defined in ORS 163.408 .....75 months
- 21 (P) Sexual abuse in the first  
22 degree, as defined in  
23 ORS 163.427 .....75 months
- 24 (Q) Robbery in the first  
25 degree, as defined in  
26 ORS 164.415 .....90 months
- 27 (R) Robbery in the second  
28 degree, as defined in  
29 ORS 164.405 .....[70] **58** months
- 30 (b)(A) Arson in the first degree,  
31 as defined in  
32 ORS 164.325, when  
33 the offense represented  
34 a threat of serious  
35 physical injury. ....90 months
- 36 (B) Using a child in a display  
37 of sexually explicit  
38 conduct, as defined in  
39 ORS 163.670 .....70 months
- 40 (C) Compelling prostitution,  
41 as defined in ORS 167.017 .....70 months
- 42 (c) Aggravated vehicular  
43 homicide, as defined in  
44 ORS 163.149 .....240 months

45

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

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

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

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

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

(i) Order that a presentence report be prepared;

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

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

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

(i) Order that a presentence report be prepared;

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

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

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

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

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

(A) Order that a presentence report be prepared;

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

1 appropriate; and

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

4 **SECTION 3. The amendments to ORS 137.700 and 137.707 by sections 1 and 2 of this 2009**  
5 **Act apply to offenses committed on or after the effective date of this 2009 Act.**

6

---