

Senate Bill 682

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 court to determine if person sentenced to mandatory minimum term of imprisonment for crime committed when 15, 16 or 17 years of age may be conditionally released after serving half of sentence imposed.

A BILL FOR AN ACT

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

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

6 **SECTION 1.** ORS 420A.203 is amended to read:

7 420A.203. (1)(a) This section and ORS 420A.206 apply only to persons who were under 18 years
8 of age at the time of the commission of the offense for which the persons were sentenced to a term
9 of imprisonment, who committed the offense on or after June 30, 1995, and who were **sentenced to**
10 **a term of imprisonment:**

11 (A) [*Sentenced to a term of imprisonment*] Of at least 24 months following waiver under ORS
12 419C.349, 419C.352, 419C.364 or 419C.370; or

13 (B) [*Sentenced to a term of imprisonment*] Of at least 24 months under ORS 137.707 **(2)**, (5)(b)(A)
14 or (7)(b).

15 (b) When a person described in paragraph (a) of this subsection has served one-half of the sen-
16 tence imposed, the sentencing court shall determine what further commitment or disposition is ap-
17 propriate as provided in this section. As used in this subsection and subsection (2) of this section,
18 "sentence imposed" means the total period of mandatory incarceration imposed for all convictions
19 resulting from a single prosecution or criminal proceeding not including any reduction in the sen-
20 tence under ORS 421.121 or any other statute.

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

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

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

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 (A) The person and, **if the person is a minor**, the person’s parents;
- 2 (B) The records supervisor of the correctional institution in which the person is incarcerated;
- 3 and
- 4 (C) The district attorney who prosecuted the case.
- 5 (d) The court shall make reasonable efforts to notify the following of the time and place of the
- 6 hearing:
- 7 (A) The victim and, **if the victim is a minor**, the victim’s parents or legal guardian; and
- 8 (B) Any other person who has filed a written request with the court to be notified of any hear-
- 9 ing concerning the transfer, discharge or release of the person.
- 10 (3) In a hearing under this section:
- 11 (a) The person and the state are parties to the proceeding.
- 12 (b) The person has the right to appear with counsel. If the person requests that the court ap-
- 13 point counsel and the court determines that the person is financially eligible for appointed counsel
- 14 at state expense, the court shall order that counsel be appointed.
- 15 (c) The district attorney represents the state.
- 16 (d) The court shall determine admissibility of evidence as if the hearing were a sentencing pro-
- 17 ceeding.
- 18 (e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the
- 19 Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within
- 20 a reasonable time before the hearing, as determined by the court, the person must be given the op-
- 21 portunity to examine all reports and other documents concerning the person that the state, the
- 22 Oregon Youth Authority or the Department of Corrections intends to submit for consideration by
- 23 the court at the hearing.
- 24 (f) Except as otherwise provided by law or by order of the court based on good cause, the person
- 25 must be given access to the records maintained in the person’s case by the Oregon Youth Authority
- 26 and the Department of Corrections.
- 27 (g) The person may examine all of the witnesses called by the state, may subpoena and call
- 28 witnesses to testify on the person’s behalf and may present evidence and argument. The court may
- 29 permit witnesses to appear by telephone or other two-way electronic communication device.
- 30 (h) The hearing must be recorded.
- 31 (i) The hearing and the record of the hearing are open to the public.
- 32 (j) The question to be decided is which of the dispositions provided in subsection (4) of this
- 33 section should be ordered in the case.
- 34 (k) The person has the burden of proving by clear and convincing evidence that the person has
- 35 been rehabilitated and reformed, and if conditionally released, the person would not be a threat to
- 36 the safety of the victim, the victim’s family or the community and that the person would comply with
- 37 the release conditions.
- 38 (4)(a) At the conclusion of the hearing and after considering and making findings regarding each
- 39 of the factors in paragraph (b) of this subsection, the court shall order one of the following dispo-
- 40 sitions:
- 41 (A) Order that the person serve the entire remainder of the sentence of imprisonment imposed,
- 42 taking into account any reduction in the sentence **for which the person is eligible** under ORS
- 43 421.121 or any other statute, with the person’s physical custody determined under ORS 137.124,
- 44 420.011 and 420A.200.
- 45 (B) Order that the person be conditionally released under ORS 420A.206 at such time as the

1 court may order, if the court finds that the person:

2 (i) Has been rehabilitated and reformed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 or

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

38 **SECTION 2.** ORS 420A.206 is amended to read:

39 420A.206. (1)(a) If, after the hearing required by ORS 420A.203, the court determines that con-
40 ditional release is the appropriate disposition, the court shall direct the Department of Corrections
41 to prepare a proposed release plan. The Department of Corrections shall submit the release plan no
42 later than 45 days after completion of the hearing. The Department of Corrections shall incorporate
43 any conditions recommended by the court and shall consider any recommendations made by the
44 Oregon Youth Authority. The release plan submitted to the court must include:

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

- 1 (B) The recommended conditions of the release and supervision;
 2 (C) The level of supervision required;
 3 (D) Conditions or requirements that provide for the safety of the victim, the victim's family and
 4 the community;
 5 (E) For persons whose sentences include a requirement to make restitution or to pay
 6 compensatory fines or attorney fees and who have not yet made full payment, a payment schedule;
 7 (F) Any conditions reasonably necessary to further the reform and rehabilitation of the person
 8 and to ensure compliance with the other conditions imposed; and
 9 (G) Any special conditions necessary because of the person's individual circumstances.
- 10 (b) If the court does not approve the proposed release plan, the court shall return the plan to
 11 the Department of Corrections with recommended modifications and additions. The Department of
 12 Corrections shall submit a revised plan to the court no later than 15 days after receipt of the court's
 13 recommended modifications and additions.
- 14 (c) If the court does not approve the revised plan, the court shall make any changes that the
 15 court deems appropriate and prepare the final release plan. The final release plan must require, in
 16 addition to any other conditions, that the person:
- 17 (A) Comply with the conditions of post-release supervision;
 18 (B) Be under the supervision of the Department of Corrections and its representatives and follow
 19 the direction and counsel of the Department of Corrections and its representatives;
 20 (C) Answer all reasonable inquiries of the court or the supervisory authority of the Department
 21 of Corrections;
 22 (D) Report to the supervision officer as directed by the court or the supervisory authority of the
 23 Department of Corrections;
 24 (E) Not own, possess or be in control of any dangerous weapon or deadly weapon, as those terms
 25 are defined in ORS 161.015, or any dangerous animal;
 26 (F) Respect and obey all municipal, county, state and federal laws;
 27 (G) Participate in a victim impact treatment program; and
 28 (H) Pay any restitution, compensatory fine or attorney fees ordered and regularly perform any
 29 community service ordered.
- 30 (2) When the court has approved a final release plan, the court shall enter an order condi-
 31 tionally releasing the person. The order of conditional release shall:
- 32 (a) State the conditions of release;
 33 (b) Require the person to comply fully with all of the conditions of release;
 34 (c) Confirm that the person has been given a copy of the conditions of release;
 35 (d) Continue the person's commitment to the legal custody of the Department of Corrections;
 36 (e) Provide that the Department of Corrections or its designee shall supervise the person;
 37 (f) Provide that the period of supervision is the entire remainder of the sentence of imprisonment
 38 imposed, taking into account any reduction in the sentence **for which the person is eligible** under
 39 ORS 421.121 or any other statute, unless the conditional release is revoked or suspended; and
 40 (g) Require that the Department of Corrections or its designee submit a report to the court no
 41 later than 90 days after the person is conditionally released and at least every 180 days thereafter
 42 informing the court of the person's circumstances and progress on conditional release.
- 43 (3)(a) A person conditionally released under this section remains within the jurisdiction of the
 44 sentencing court for the period of the conditional release.
- 45 (b) At any time after the entry of an order of conditional release, the court, on its own motion

1 or on motion of the Department of Corrections, may amend the conditional release order to modify
2 the conditions of the person's release and supervision, providing that the modifications are consist-
3 ent with the requirements for conditions of release in subsections (1) and (2) of this section. Before
4 entering an amended order under this paragraph, the court shall provide the Department of Cor-
5 rections and the person with a reasonable amount of time to comment on the proposed modifications.
6 The court shall serve the Department of Corrections and the person with a copy of the amended
7 order at least 15 days before the order takes effect.

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

10 (4)(a) If an officer of the Department of Corrections or the supervisory authority or a law
11 enforcement officer has reasonable grounds to believe that a person released under this section has
12 violated a condition of the release, the officer may take the person into custody and detain the
13 person pending a hearing on the alleged violation as provided in paragraph (c) of this subsection.
14 No later than 24 hours after a person is taken into custody under this subsection, the Department
15 of Corrections or the supervisory authority shall file a notice and affidavit with the court as pro-
16 vided in paragraph (b) of this subsection and serve a copy of the notice and affidavit on the person.

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

22 (A) Serve a copy of the order to show cause on the person and the district attorney; and

23 (B) Provide the person with written notice containing the following information:

24 (i) The time, place and purpose of the hearing;

25 (ii) That the person has the right to have adverse witnesses present at the hearing for purpose
26 of confrontation and cross-examination unless the court determines that good cause exists for not
27 permitting confrontation;

28 (iii) That the person has the right to subpoena witnesses and present documentary evidence and
29 testimony of witnesses;

30 (iv) That the person has the right to be represented by counsel and, if financially eligible, to
31 have counsel appointed at state expense as provided in paragraph (d) of this subsection; and

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

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

36 (d) In a hearing under this subsection:

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

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

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

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

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

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

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

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

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

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

14 (A) Adjustments to the level of supervision;

15 (B) Modifications of the conditions of release;

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

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

19 (E) Revocation of conditional release.

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

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

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

29 (c) The person's conditional release has been suspended twice under this section within the past
30 18 months.

31 (6)(a) The state, the Department of Corrections or the person may appeal from an order of con-
32 ditional release under this section. The appellate court's review is limited to claims that the court
33 failed to comply with the requirements of law in ordering the conditional release.

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

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

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

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

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

42 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
43 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
44 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
45 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-

tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c) of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

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

(2)(a) When a person charged under this section is convicted of an offense listed in subsection (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for the offense in subsection (4) of this section. The court may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser term. *[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 under ORS 421.121 or any other provision of law.]* ORS 138.012, 163.105 and 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated murder under ORS 163.095 except that a person who was under 18 years of age at the time the offense was committed is not subject to a sentence of death.

(b) Except as otherwise provided in ORS 420A.203, a person sentenced under this section 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.

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

(4) The offenses to which this section applies and the presumptive 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 163.11590 months
 - (D) Manslaughter in the
first degree, as defined
in ORS 163.118.....120 months
 - (E) Manslaughter in the
second degree, as defined
in ORS 163.125.....75 months
 - (F) Assault in the first
degree, as defined

1 in ORS 163.185.....90 months
 2 (G) Assault in the second
 3 degree, as defined
 4 in ORS 163.175.....70 months
 5 (H) Kidnapping in the first
 6 degree, as defined in
 7 ORS 163.235.....90 months
 8 (I) Kidnapping in the second
 9 degree, as defined in
 10 ORS 163.225.....70 months
 11 (J) Rape in the first degree,
 12 as defined in ORS 163.375....100 months
 13 (K) Rape in the second
 14 degree, as defined in
 15 ORS 163.365.....75 months
 16 (L) Sodomy in the first
 17 degree, as defined in
 18 ORS 163.405.....100 months
 19 (M) Sodomy in the second
 20 degree, as defined in
 21 ORS 163.395.....75 months
 22 (N) Unlawful sexual
 23 penetration in the first
 24 degree, as defined
 25 in ORS 163.411.....100 months
 26 (O) Unlawful sexual
 27 penetration in the
 28 second degree, as
 29 defined in ORS 163.40875 months
 30 (P) Sexual abuse in the first
 31 degree, as defined in
 32 ORS 163.427.....75 months
 33 (Q) Robbery in the first
 34 degree, as defined in
 35 ORS 164.415.....90 months
 36 (R) Robbery in the second
 37 degree, as defined in
 38 ORS 164.405.....70 months
 39 (b)(A) Arson in the first degree,
 40 as defined in
 41 ORS 164.325, when
 42 the offense represented
 43 a threat of serious
 44 physical injury.90 months
 45 (B) Using a child in a display

- 1 of sexually explicit
- 2 conduct, as defined in
- 3 ORS 163.670.....70 months
- 4 (C) Compelling prostitution,
- 5 as defined in ORS 167.017.....70 months
- 6 (c) Aggravated vehicular
- 7 homicide, as defined in
- 8 ORS 163.149.....240 months

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

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

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

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

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

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

25 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 26 419C.067 and 419C.411.

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

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

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

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

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

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

45 (b) If a person charged and tried as provided in subsection (6) of this section is not found guilty

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

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

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

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

13 **SECTION 4. The amendments to ORS 137.707, 420A.203 and 420A.206 by sections 1 to 3**
14 **of this 2009 Act apply to persons sentenced for offenses committed on or after the effective**
15 **date of this 2009 Act.**

16 _____