

Senate Bill 394

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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 hearing after having served one-half of sentence imposed.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to conditional release; creating new provisions; amending ORS 137.707 and 420A.203; de-
3 claring an emergency; and providing for criminal sentence reduction that requires approval by
4 a two-thirds 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 (5)(b)(A) or
14 (7)(b); **or**

15 (C) **Under ORS 137.707 (2).**

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

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

28 (b) Upon receiving the notice and request for a hearing under paragraph (a) of this subsection,
29 the sentencing court shall schedule a hearing for a date not more than 30 days after the date on

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 which the person will have served one-half of the sentence imposed or such later date as is agreed
2 upon by the parties.

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

4 (A) The person and, **if the person is a minor**, the person's parents;

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

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

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

10 (A) The victim and, **if the victim is a minor**, the victim's parents or legal guardian; and

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

13 (3) In a hearing under this section:

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

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

18 (c) The district attorney represents the state.

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

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

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

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

33 (h) The hearing must be recorded.

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

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

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

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

44 (A) Order that the person serve the entire remainder of the sentence of imprisonment imposed,
45 taking into account any reduction in the sentence under ORS 421.121 or any other statute, with the

1 person's physical custody determined under ORS 137.124, 420.011 and 420A.200.

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

4 (i) Has been rehabilitated and reformed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 or

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

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

41 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
42 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
43 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
44 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
45 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed

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

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

8 (2)(a) When a person charged under this section is convicted of an offense listed in subsection
9 (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for
10 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
11 otherwise permitted by law, but may not impose a lesser term. *[The person is not, during the service
12 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
13 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence
14 for any reason under ORS 421.121 or any other provision of law.]*

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

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

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

20 (c) ORS 138.012, 163.105 and 163.150 apply to sentencing a person prosecuted under this section
21 and convicted of aggravated murder under ORS 163.095 except that a person who was under 18
22 years of age at the time the offense was committed is not subject to a sentence of death.

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

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

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- 27
 - 28 (a)(A) Murder, as defined in
 - 29 ORS 163.115300 months
 - 30 (B) Attempt or conspiracy
 - 31 to commit aggravated
 - 32 murder, as defined
 - 33 in ORS 163.095120 months
 - 34 (C) Attempt or conspiracy
 - 35 to commit murder, as
 - 36 defined in ORS 163.11590 months
 - 37 (D) Manslaughter in the
 - 38 first degree, as defined
 - 39 in ORS 163.118120 months
 - 40 (E) Manslaughter in the
 - 41 second degree, as defined
 - 42 in ORS 163.12575 months
 - 43 (F) Assault in the first
 - 44 degree, as defined
 - 45 in ORS 163.18590 months

- 1 (G) Assault in the second
- 2 degree, as defined
- 3 in ORS 163.17570 months
- 4 (H) Kidnapping in the first
- 5 degree, as defined in
- 6 ORS 163.23590 months
- 7 (I) Kidnapping in the second
- 8 degree, as defined in
- 9 ORS 163.22570 months
- 10 (J) Rape in the first degree,
- 11 as defined in ORS 163.375100 months
- 12 (K) Rape in the second
- 13 degree, as defined in
- 14 ORS 163.36575 months
- 15 (L) Sodomy in the first
- 16 degree, as defined in
- 17 ORS 163.405100 months
- 18 (M) Sodomy in the second
- 19 degree, as defined in
- 20 ORS 163.39575 months
- 21 (N) Unlawful sexual
- 22 penetration in the first
- 23 degree, as defined
- 24 in ORS 163.411100 months
- 25 (O) Unlawful sexual
- 26 penetration in the
- 27 second degree, as
- 28 defined in ORS 163.40875 months
- 29 (P) Sexual abuse in the first
- 30 degree, as defined in
- 31 ORS 163.42775 months
- 32 (Q) Robbery in the first
- 33 degree, as defined in
- 34 ORS 164.41590 months
- 35 (R) Robbery in the second
- 36 degree, as defined in
- 37 ORS 164.40570 months
- 38 (b)(A) Arson in the first degree,
- 39 as defined in
- 40 ORS 164.325, when
- 41 the offense represented
- 42 a threat of serious
- 43 physical injury.90 months
- 44 (B) Using a child in a display
- 45 of sexually explicit

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

8

9

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

11 offense and the lesser included offense is:

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

13 provided in subsection (2) of this section.

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

15 (A) But constitutes an offense for which waiver is authorized under ORS 419C.349, the court,

16 upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction

17 or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdic-

18 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdic-

19 tion, the court shall sentence the person as an adult under sentencing guidelines. If the court does

20 not retain jurisdiction, the court shall:

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

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

23 appropriate; and

24 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS

25 419C.067 and 419C.411.

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

27 sentence the person. The court shall:

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

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

30 appropriate; and

31 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS

32 419C.067 and 419C.411.

33 (6) When a person is charged under this section, other offenses based on the same act or

34 transaction shall be charged as separate counts in the same accusatory instrument and consolidated

35 for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection

36 (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by

37 the joinder and consolidation of offenses, the court may order an election or separate trials of

38 counts or provide whatever other relief justice requires.

39 (7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty

40 of aggravated murder or an offense listed in subsection (4) of this section and one or more other

41 offenses, the court shall impose the sentence for aggravated murder or the offense listed in sub-

42 section (4) of this section as provided in subsection (2) of this section and shall impose sentences for

43 the other offenses as otherwise provided by law.

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

45 of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one

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

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

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

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

12 **SECTION 3. (1) The amendments to ORS 137.707 and 420A.203 by sections 1 and 2 of this**
13 **2011 Act apply to crimes committed before, on or after the effective date of this 2011 Act.**

14 **(2) If a person described in ORS 420A.203 (1)(a) is sentenced before the effective date of**
15 **this 2011 Act, the provisions of ORS 420A.203 and 420A.206 apply to the person except that,**
16 **if, on the effective date of this 2011 Act, the person has served more than one-half of the**
17 **sentence imposed or the person has less than 90 days to serve before the person will have**
18 **served one-half of the sentence imposed:**

19 **(a) The Department of Corrections or the Oregon Youth Authority, whichever has phys-**
20 **ical custody of the person, shall file the notice and request for a hearing described in ORS**
21 **420A.203 (2)(a) with the sentencing court no later than 30 days after the effective date of this**
22 **2011 Act; and**

23 **(b) Upon receipt of the notice described in paragraph (a) of this subsection, the sentenc-**
24 **ing court shall schedule a hearing as soon as practicable.**

25 **SECTION 4. This 2011 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
27 **on its passage.**

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