

D R A F T

SUMMARY

Requires that minors who are sentenced to more than one year's imprisonment begin service of sentence in physical custody of Oregon Youth Authority.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the legal and physical custody of juvenile offenders; creating new
3 provisions; amending ORS 137.124, 137.320 and 420.011; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 137.320 is amended to read:

7 137.320. (1)(a) When a judgment includes commitment to the legal and
8 physical custody of the Department of Corrections, the sheriff shall deliver
9 the defendant, together with a copy of the entry of judgment and a statement
10 signed by the sheriff of the number of days the defendant was imprisoned
11 prior to delivery, to:

12 (A) The superintendent of the Department of Corrections institution to
13 which the defendant is initially assigned pursuant to ORS 137.124, **if the**
14 **defendant is 18 years of age or older.**

15 (B) **The superintendent of the Oregon Youth Authority institution**
16 **to which the defendant is initially assigned, if the defendant is under**
17 **18 years of age.**

18 (b) If at the time of entry of a judgment, the defendant was serving a term
19 of incarceration at the direction of the supervisory authority of a county
20 upon conviction of a prior felony, the sheriff shall also deliver to the [*De-*

1 *partment of Corrections]* **superintendent** a copy of the prior entry of judg-
 2 ment committing the defendant to the supervisory authority of the county
 3 of conviction and a statement of the number of days the defendant has re-
 4 maining to be served on the term or incarceration imposed in the prior
 5 judgment.

6 (2) If the defendant is surrendered to another legal authority prior to
 7 delivery to an institution [*of the Department of Corrections]* **described in**
 8 **subsection (1)(a) of this section**, the sheriff shall forward to the Depart-
 9 ment of Corrections copies of the entry of all pertinent judgments, a state-
 10 ment of the number of days the defendant was imprisoned prior to surrender,
 11 a statement of the number of days the defendant has remaining to be served
 12 on any term of incarceration the defendant was serving at the direction of
 13 the supervisory authority of a county upon conviction of a prior felony and
 14 an identification of the authority to whom the prisoner was surrendered.

15 (3) Upon receipt of the information described in subsection (1) or (2) of
 16 this section, the Department of Corrections shall establish a case file and
 17 compute the defendant's sentence in accordance with the provisions of ORS
 18 137.370.

19 (4) When the judgment is imprisonment in the county jail or a fine and
 20 that the defendant be imprisoned until it is paid, the judgment shall be exe-
 21 cuted by the sheriff of the county. The sheriff shall compute the time the
 22 defendant was imprisoned after arrest and prior to the commencement of the
 23 term specified in the judgment. Such time shall be credited toward the term
 24 of the sentence.

25 **SECTION 2.** ORS 137.124 is amended to read:

26 137.124. (1) If the court imposes a sentence upon conviction of a felony
 27 that includes a term of incarceration that exceeds 12 months:

28 (a) The court shall [*not designate the correctional facility in which the*
 29 *defendant is to be confined but shall]* commit the defendant to the legal and
 30 physical custody of the Department of Corrections; and

31 (b) If the judgment provides that the term of incarceration be served

1 consecutively to a term of incarceration of 12 months or less that was im-
2 posed in a previous proceeding by a court of this state upon conviction of a
3 felony, the defendant shall serve any remaining part of the previously im-
4 posed term of incarceration in the legal and physical custody of the Depart-
5 ment of Corrections.

6 (2)(a) If the court imposes a sentence upon conviction of a felony that
7 includes a term of incarceration that is 12 months or less, the court shall
8 commit the defendant to the legal and physical custody of the supervisory
9 authority of the county in which the crime of conviction occurred.

10 (b) Notwithstanding paragraph (a) of this subsection, when the court im-
11 poses a sentence upon conviction of a felony that includes a term of incar-
12 ceration that is 12 months or less, the court shall commit the defendant to
13 the legal and physical custody of the Department of Corrections if the court
14 orders that the term of incarceration be served consecutively to a term of
15 incarceration that exceeds 12 months that was imposed in a previous pro-
16 ceeding or in the same proceeding by a court of this state upon conviction
17 of a felony.

18 (3) After assuming custody of the convicted person the Department of
19 Corrections may transfer inmates from one correctional facility to another
20 such facility for the purposes of diagnosis and study, rehabilitation and
21 treatment, as best seems to fit the needs of the inmate and for the protection
22 and welfare of the community and the inmate.

23 (4) If the court imposes a sentence of imprisonment upon conviction of a
24 misdemeanor, it shall commit the defendant to the custody of the supervisory
25 authority of the county in which the crime of conviction occurred.

26 (5)(a) When a person under 18 years of age at the time of committing the
27 offense and under 20 years of age at the time of sentencing is committed to
28 the Department of Corrections under ORS 137.707, the Department of Cor-
29 rections shall transfer the physical custody of the person to the Oregon
30 Youth Authority as provided in ORS 420.011 if:

31 (A) The person will complete the sentence imposed before the person at-

1 tains 25 years of age; or

2 (B) The Department of Corrections and the Oregon Youth Authority de-
3 termine that, because of the person's age, immaturity, mental or emotional
4 condition or risk of physical harm to the person, the person should not be
5 incarcerated initially in a Department of Corrections institution.

6 (b) A person placed in the custody of the Oregon Youth Authority under
7 this subsection shall be returned to the physical custody of the Department
8 of Corrections whenever the Director of the Oregon Youth Authority, after
9 consultation with the Department of Corrections, determines that the condi-
10 tions or circumstances that warranted the transfer of custody under this
11 subsection are no longer present.

12 (6)(a) When a person under 18 years of age at the time of committing the
13 offense and under 20 years of age at the time of sentencing is committed to
14 the legal and physical custody of the Department of Corrections or the su-
15 pervisory authority of a county following waiver under ORS 419C.349,
16 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or
17 (7)(b) or 137.712, the Department of Corrections or the supervisory authority
18 of a county shall transfer the person to the physical custody of the Oregon
19 Youth Authority for placement as provided in ORS 420.011 (3). The terms and
20 conditions of the person's incarceration and custody are governed by ORS
21 420A.200 to 420A.206.

22 (b) When a person under 16 years of age is waived under ORS 419C.349,
23 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of
24 imprisonment in the county jail, the sheriff shall transfer the person to a
25 youth correction facility for physical custody as provided in ORS 420.011 (3).

26 (7) If the Director of the Oregon Youth Authority concurs in the decision,
27 the Department of Corrections or the supervisory authority of a county shall
28 transfer the physical custody of a person committed to the Department of
29 Corrections or the supervisory authority of the county under subsection (1)
30 or (2) of this section to the Oregon Youth Authority as provided in ORS
31 420.011 (2) if:

1 (a) The person was at least 18 years of age but under 20 years of age at
2 the time of committing the felony for which the person is being sentenced
3 to a term of incarceration;

4 (b) The person is under 20 years of age at the time of commitment to the
5 Department of Corrections or the supervisory authority of the county;

6 (c) The person has not been committed previously to the legal and phys-
7 ical custody of the Department of Corrections or the supervisory authority
8 of a county;

9 (d) The person has not been convicted and sentenced to a term of incar-
10 ceration for the commission of a felony in any other state;

11 (e) The person will complete the term of incarceration imposed before the
12 person attains 25 years of age;

13 (f) The person is likely in the foreseeable future to benefit from the
14 rehabilitative and treatment programs administered by the Oregon Youth
15 Authority;

16 (g) The person does not pose a substantial danger to Oregon Youth Au-
17 thority staff or persons in the custody of the Oregon Youth Authority; and

18 (h) At the time of the proposed transfer, no more than 50 persons are in
19 the physical custody of the Oregon Youth Authority under this subsection.

20 (8) Notwithstanding the provisions of subsections (5)(a)(A) or (7) of this
21 section, the department or the supervisory authority of a county may not
22 transfer the physical custody of the person under subsection (5)(a)(A) or (7)
23 of this section if the Director of the Oregon Youth Authority, after consul-
24 tation with the Department of Corrections or the supervisory authority of a
25 county, determines that, because of the person's age, mental or emotional
26 condition or risk of physical harm to other persons, the person should not
27 be incarcerated in a youth correction facility.

28 **(9) When a person committed to the legal and physical custody of**
29 **the Department of Corrections under subsection (1) or (2) of this sec-**
30 **tion is under 18 years of age at the time of commitment, the court**
31 **shall order that the person be temporarily placed in the physical cus-**

1 **tody of the Oregon Youth Authority as provided in ORS 420.011 (3). A**
2 **person placed in the custody of the Oregon Youth Authority under this**
3 **subsection may be transferred to the physical custody of the Depart-**
4 **ment of Corrections at any time after the person attains 18 years of**
5 **age, if the Director of the Oregon Youth Authority determines that the**
6 **transfer is appropriate.**

7 **SECTION 3.** ORS 420.011 is amended to read:

8 420.011. (1) Except as provided in subsections (2) and (3) of this section,
9 admissions to the youth correction facilities are limited to youth offenders
10 who are at least 12 but less than 19 years of age, found by the juvenile court
11 to have committed an act that if committed by an adult would constitute
12 aggravated murder, murder, a felony or a Class A misdemeanor and placed
13 in the legal custody of the Oregon Youth Authority. A youth offender ad-
14 mitted to a youth correction facility may not be transferred by administra-
15 tive process to any penal or correctional institution.

16 (2)(a) In addition to the persons placed in the legal custody of the youth
17 authority under ORS 419C.478 (1) or 419C.481, and with the concurrence of
18 the Director of the Oregon Youth Authority or the director's designee, per-
19 sons who are committed to the Department of Corrections under ORS 137.124
20 and meet the requirements of ORS 137.124 (5) or (7) may be temporarily as-
21 signed to a youth correction facility as provided by ORS 137.124 (5) or (7).
22 A person assigned on such a temporary basis remains within the legal cus-
23 tody of the Department of Corrections and such reassignment is subject to
24 termination by the Director of the Oregon Youth Authority by referring the
25 person back to the Department of Corrections as provided in paragraph (b)
26 of this subsection.

27 (b) After a person is transferred to the physical custody of the youth au-
28 thority under ORS 137.124 (5) or (7), the Director of the Oregon Youth Au-
29 thority may refer the person back to the Department of Corrections for
30 physical custody and placement if the director, after consulting with the
31 Department of Corrections, determines that the person:

1 (A) Poses a substantial danger to youth authority staff or persons in the
2 custody of the youth authority; or

3 (B) Is not likely, in the foreseeable future, to benefit from the rehabili-
4 tation and treatment programs administered by the youth authority and is
5 appropriate for placement in a Department of Corrections institution.

6 (3) Any person under 18 years of age at the time of committing the crime
7 and under 20 years of age at the time of sentencing and commitment who,
8 after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentenc-
9 ing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to a term
10 of imprisonment in the custody of the Department of Corrections, and any
11 person under 16 years of age who after waiver under ORS 419C.349, 419C.352,
12 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or
13 137.712 is sentenced to a term of imprisonment in the county jail, shall be
14 temporarily assigned to a youth correction facility by the Department of
15 Corrections, or by the sheriff to whose custody the person has been com-
16 mitted, pursuant to ORS 137.124 (6). **A person under 18 years of age at the**
17 **time of commitment shall be temporarily assigned to a youth cor-**
18 **rection facility by the court, pursuant to ORS 137.124 (9).** The director
19 shall designate the appropriate youth correction facility or schools for such
20 assignment. A person assigned to a youth correction facility under ORS
21 137.124 (6) **or (9)** and this subsection remains within the legal custody of the
22 Department of Corrections or sheriff to whose custody the person was com-
23 mitted. The assignment of such a person to the youth correction facility is
24 subject, when the person is [16] **18** years of age or older, to termination by
25 the director by referring the person back to the Department of Corrections
26 or the sheriff to serve the balance of the person's sentence. Assignment to
27 a youth correction facility pursuant to ORS 137.124 (6) **or (9)** and this sub-
28 section, if not terminated earlier by the director, shall terminate upon the
29 person's attaining the age specified in ORS 420A.010 (5) setting the age limits
30 for which the Oregon Youth Authority may retain legal and physical custody
31 of the person, and the person shall be referred to the Department of Cor-

1 rections or the sheriff having legal custody of the person to serve the balance
2 of the person's sentence.

3 (4) Whenever a person committed to the custody of the Department of
4 Corrections is temporarily assigned to a youth correction facility pursuant
5 to this section, the youth authority may provide programs and treatment for
6 the person, and may adopt rules relating to conditions of confinement at the
7 youth correction facility, as the youth authority determines are appropriate.
8 However, the person remains subject to laws and rules of the State Board
9 of Parole and Post-Prison Supervision relating to parole.

10 **SECTION 4. The amendments to ORS 137.124, 137.320 and 420.011 by**
11 **sections 1 to 3 of this 2013 Act apply to persons sentenced for a crime**
12 **on or after the effective date of this 2013 Act.**

13 **SECTION 5. This 2013 Act being necessary for the immediate pres-**
14 **ervation of the public peace, health and safety, an emergency is de-**
15 **clared to exist, and this 2013 Act takes effect on its passage.**

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