

Enrolled
House Bill 3183

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to the legal and physical custody of juvenile offenders; creating new provisions; amending ORS 137.124; and declaring an emergency.

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

SECTION 1. ORS 137.124 is amended to read:

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

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

(b) If the judgment provides that the term of incarceration be served consecutively to a term of incarceration of 12 months or less that was imposed in a previous proceeding by a court of this state upon conviction of a felony, the defendant shall serve any remaining part of the previously imposed term of incarceration in the legal and physical custody of the Department of Corrections.

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

(b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the Department of Corrections if the court orders that the term of incarceration be served consecutively to a term of incarceration that exceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court of this state upon conviction of a felony.

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

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

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

(A) The person will complete the sentence imposed before the person attains 25 years of age;
or

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

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

(c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Corrections transfer the person described in this subsection directly to a youth correction facility for physical custody without first delivering the person to the Department of Corrections.

(6)(a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the legal and physical custody of the Department of Corrections or the supervisory authority of a county following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the person to the physical custody of the Oregon Youth Authority for placement as provided in ORS 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS 420A.200 to 420A.206. **Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Corrections or the supervisory authority of a county transfer the person described in this subsection directly to a youth correction facility for physical custody without first delivering the person to the Department of Corrections.**

(b) **Notwithstanding ORS 137.320**, when a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall transfer the person to a youth correction facility for physical custody as provided in ORS 420.011 (3).

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

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

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

(c) The person has not been committed previously to the legal and physical custody of the Department of Corrections or the supervisory authority of a county;

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

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

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

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

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

(8) Notwithstanding the provisions of subsections (5)(a)(A) or (7) of this section, the department or the supervisory authority of a county may not transfer the physical custody of the person under subsection (5)(a)(A) or (7) of this section if the Director of the Oregon Youth Authority, after con-

sultation with the Department of Corrections or the supervisory authority of a county, determines that, because of the person's age, mental or emotional condition or risk of physical harm to other persons, the person should not be incarcerated in a youth correction facility.

SECTION 2. The amendments to ORS 137.124 by section 1 of this 2013 Act apply to persons sentenced for a crime in a proceeding occurring on or after the effective date of this 2013 Act.

SECTION 3. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House May 1, 2013

Received by Governor:

Repassed by House June 3, 2013

.....M,....., 2013

Approved:

.....
Ramona J. Line, Chief Clerk of House

.....M,....., 2013

.....
Tina Kotek, Speaker of House

.....
John Kitzhaber, Governor

Passed by Senate May 29, 2013

Filed in Office of Secretary of State:

.....
Peter Courtney, President of Senate

.....M,....., 2013

.....
Kate Brown, Secretary of State