

House Bill 3193

Sponsored by JOINT COMMITTEE ON PUBLIC SAFETY

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 trial court to conduct hearing to determine whether to prosecute person as adult when person is alleged to have committed certain crimes at 15, 16 or 17 years of age.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to juvenile offenders; creating new provisions; amending ORS 137.705, 137.707 and 419C.067;
3 declaring an emergency; and providing for criminal sentence reduction that requires approval
4 by a two-thirds majority.

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

6 **SECTION 1.** ORS 137.705 is amended to read:

7 137.705. (1)(a) As used in this section and ORS 137.707:

8 (A) "Charged" means the filing of an accusatory instrument in a court of criminal jurisdiction
9 [*alleging the commission of an offense listed in ORS 137.707*].

10 (B) "Detention facility" has the meaning given that term in ORS 419A.004.

11 (C) "Prosecuted" includes pretrial and trial procedures, requirements and limitations provided
12 for in criminal cases.

13 (b) Unless otherwise provided in ORS 137.707, ORS chapters 137 and 138 apply to proceedings
14 under ORS 137.707.

15 (2)(a) Notwithstanding ORS 419B.100 and 419C.005, a person 15, 16 or 17 years of age at the time
16 of committing the offense may be charged with the commission of an offense listed in ORS 137.707
17 and, **if the trial court enters an order retaining jurisdiction under ORS 137.707**, may be pros-
18 ecuted as an adult.

19 (b) The district attorney shall notify the juvenile court and the juvenile department when [*a*
20 *person under 18 years of age is charged with an offense listed in ORS 137.707*] **the court enters an**
21 **order retaining jurisdiction under ORS 137.707**.

22 (c) [*The filing of an accusatory instrument in a criminal court*] **An order retaining jurisdiction**
23 **under ORS 137.707** divests the juvenile court of jurisdiction in the matter if juvenile court jurisdic-
24 tion is based on the conduct alleged in the accusatory instrument or [*any conduct*] arising out of the
25 same act or transaction. Upon receiving notice from the district attorney under paragraph (b) of this
26 subsection, the juvenile court shall dismiss, without prejudice, [*the*] **a juvenile court proceeding**
27 **based on the conduct alleged in the accusatory instrument or arising out of the same act**
28 **or transaction** and **shall** enter any order necessary to transfer the matter or transport the person
29 to the criminal court for further proceedings. Nothing in this paragraph affects the authority or ju-
30 risdiction of the juvenile court with respect to other matters or conduct.

31 (3)(a) A person charged with a crime under ORS 137.707 who is 16 or 17 years of age [*shall*]

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 **may** be detained in custody **only** in a detention facility, unless the director of the county juvenile
 2 department and the sheriff agree to detain the person in a jail or other place where adults are de-
 3 tained. A person detained in accordance with this paragraph is subject to release on the same terms
 4 and conditions as for adults.

5 (b) [If] A person charged with a crime under ORS 137.707 **who** is under 16 years of age[, *the*
 6 *person*] may not be detained[, *either*] before conviction, or after conviction but before execution of
 7 the sentence, in a jail or other place where adults are detained.

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

9 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
 10 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)[(a)] of this section is
 11 15, 16 or 17 years of age at the time the **charged** offense is **alleged to have been** committed, [*and*
 12 *the offense is committed on or after April 1, 1995, or when a person charged with an offense listed in*
 13 *subsection (4)(b) of this section is 15, 16 or 17 years of age at the time the offense is committed, and*
 14 *the offense is committed on or after October 4, 1997, or when a person charged with the offense de-*
 15 *scribed in subsection (4)(c) of this section is 15, 16 or 17 years of age at the time the offense is com-*
 16 *mitted and the offense is committed on or after January 1, 2008, the person shall be prosecuted as an*
 17 *adult in criminal court.*] **the trial court shall hold a hearing to determine whether to prosecute**
 18 **the person as an adult. Following the hearing, the court shall enter an order retaining ju-**
 19 **risdiction if the court finds, by a preponderance of the evidence, that:**

20 (A) **At the time of the alleged offense, the person was of sufficient sophistication and**
 21 **maturity to appreciate the nature and quality of the conduct involved; and**

22 (B) **Retaining jurisdiction serves the best interests of the person and of society and is**
 23 **therefore justified. For the purposes of this subparagraph, the court shall consider the cri-**
 24 **teria for waiver in ORS 419C.349.**

25 (b) [*A district attorney, the Attorney General or a juvenile department counselor may not file in*
 26 *juvenile court a petition alleging that a person has committed an act that, if committed by an adult,*
 27 *would constitute aggravated murder or an offense listed in subsection (4) of this section if the person*
 28 *was 15, 16 or 17 years of age at the time the act was committed.*] **If the court does not retain ju-**
 29 **risdiction, the court shall remand the person to the juvenile court for proceedings in ac-**
 30 **cordance with ORS chapter 419C.**

31 (2) [*When a person charged under this section is*] **If the court enters an order retaining ju-**
 32 **risdiction and the person is subsequently** convicted of an offense listed in subsection (4) of this
 33 section, the court shall impose at least the presumptive term of imprisonment provided for the of-
 34 fense in subsection (4) of this section. The court may impose a greater presumptive term if otherwise
 35 permitted by law, but may not impose a lesser term. The person is not, during the service of the
 36 term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave
 37 from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for
 38 any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and 163.150 apply
 39 to sentencing a person prosecuted under this section and convicted of aggravated murder under ORS
 40 163.095 except that a person who was under 18 years of age at the time the offense was committed
 41 is not subject to a sentence of death.

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

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

- 1
- 2 (a)(A) Murder, as defined in
- 3 ORS 163.115300 months
- 4 (B) Attempt or conspiracy
- 5 to commit aggravated
- 6 murder, as defined
- 7 in ORS 163.095120 months
- 8 (C) Attempt or conspiracy
- 9 to commit murder, as
- 10 defined in ORS 163.11590 months
- 11 (D) Manslaughter in the
- 12 first degree, as defined
- 13 in ORS 163.118120 months
- 14 (E) Manslaughter in the
- 15 second degree, as defined
- 16 in ORS 163.12575 months
- 17 (F) Assault in the first
- 18 degree, as defined
- 19 in ORS 163.18590 months
- 20 (G) Assault in the second
- 21 degree, as defined
- 22 in ORS 163.17570 months
- 23 (H) Kidnapping in the first
- 24 degree, as defined in
- 25 ORS 163.23590 months
- 26 (I) Kidnapping in the second
- 27 degree, as defined in
- 28 ORS 163.22570 months
- 29 (J) Rape in the first degree,
- 30 as defined in ORS 163.375....100 months
- 31 (K) Rape in the second
- 32 degree, as defined in
- 33 ORS 163.36575 months
- 34 (L) Sodomy in the first
- 35 degree, as defined in
- 36 ORS 163.405100 months
- 37 (M) Sodomy in the second
- 38 degree, as defined in
- 39 ORS 163.39575 months
- 40 (N) Unlawful sexual
- 41 penetration in the first
- 42 degree, as defined
- 43 in ORS 163.411100 months
- 44 (O) Unlawful sexual
- 45 penetration in the

- 1 second degree, as
- 2 defined in ORS 163.408.75 months
- 3 (P) Sexual abuse in the first
- 4 degree, as defined in
- 5 ORS 163.427.75 months
- 6 (Q) Robbery in the first
- 7 degree, as defined in
- 8 ORS 164.415.90 months
- 9 (R) Robbery in the second
- 10 degree, as defined in
- 11 ORS 164.405.70 months
- 12 (b)(A) Arson in the first degree,
- 13 as defined in
- 14 ORS 164.325, when
- 15 the offense represented
- 16 a threat of serious
- 17 physical injury.90 months
- 18 (B) Using a child in a display
- 19 of sexually explicit
- 20 conduct, as defined in
- 21 ORS 163.670.70 months
- 22 (C) Compelling prostitution,
- 23 as defined in ORS 167.017
- 24 (1)(a), (b) or (d).70 months
- 25 (c) Aggravated vehicular
- 26 homicide, as defined in
- 27 ORS 163.149.240 months

28
29

(5) If a person charged [*with an offense*] **and tried** 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.

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

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

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

6 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
7 419C.067 and 419C.411.

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

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

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

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

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

30 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
31 419C.067 and 419C.411.

32 **SECTION 3.** ORS 419C.067 is amended to read:

33 419C.067. When a case is transferred to the juvenile court under ORS 137.707 (5)(b)(B) or
34 (7)(b), the juvenile court shall enter an order finding the youth within the jurisdiction of the court
35 under ORS 419C.005 based on the verdict in the criminal court. The juvenile court's order has the
36 same effect as an adjudication under ORS 419C.400.

37 **SECTION 4. The amendments to ORS 137.705, 137.707 and 419C.067 by sections 1 to 3 of**
38 **this 2013 Act apply to persons charged with an offense that is alleged to have been committed**
39 **on or after the effective date of this 2013 Act.**

40 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**
41 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
42 **on its passage.**