

# Senate Bill 628

Sponsored by Senator STARR; Senator KNOPP

## 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 minimum sentence for certain felonies is 10 years if defendant threatened use of firearm during commission of felony, 20 years if defendant discharged firearm during commission of felony and 25 years if defendant discharged firearm causing physical injury during commission of felony. Provides that maximum sentence for certain felonies is life imprisonment without possibility of parole or release if defendant discharged firearm causing physical injury during commission of felony. Eliminates exemption from minimum sentences for first-time offenders.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; amending ORS 161.610; and declaring an emergency.

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

4 **SECTION 1.** ORS 161.610 is amended to read:

5 161.610. (1) As used in this section, "firearm" has the meaning given that term in ORS 166.210.

6 (2) The [*use or*] threatened use of a firearm, whether operable or inoperable, **by a defendant**  
7 **during the commission of a felony described in subsection (5) of this section, the discharge**  
8 **of a firearm by a defendant during the commission of a felony described in subsection (5) of**  
9 **this section or the discharge of a firearm causing physical injury** by a defendant during the  
10 commission of a felony **described in subsection (5) of this section** may be pleaded in the  
11 accusatory instrument and proved at trial as an element in aggravation of the crime as provided in  
12 this section. When a crime is so pleaded, the aggravated nature of the crime may be indicated by  
13 adding the words "with a firearm" to the title of the offense **and a description of the aggravating**  
14 **circumstances in the statement of the acts that constitutes the offense**. The unaggravated  
15 crime shall be considered a lesser included offense.

16 (3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise pro-  
17 vided in subsection (6) of this section, if a defendant is convicted of a felony **described in sub-**  
18 **section (5) of this section** having as an element the defendant's [*use or*] threatened use of a  
19 firearm, **discharge of a firearm or discharge of a firearm causing physical injury** during the  
20 commission of the crime, the court shall impose at least the minimum term of imprisonment as pro-  
21 vided in subsection (4) of this section. Except as provided in ORS 144.122 and 144.126 [*and subsection*  
22 *(5) of this section*], in no case shall any person punishable under this section become eligible for work  
23 release, parole, temporary leave or terminal leave until the minimum term of imprisonment is served,  
24 less a period of time equivalent to any reduction of imprisonment granted for good time served or  
25 time credits earned under ORS 421.121, nor shall the execution of the sentence imposed upon such  
26 person be suspended by the court.

27 [*(4) The minimum terms of imprisonment for felonies having as an element the defendant's use or*  
28 *threatened use of a firearm in the commission of the crime shall be as follows:*]

**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) Except as provided in subsection (5) of this section, upon the first conviction for such felony,*  
 2 *five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or*  
 3 *is equipped with a firearms silencer, the term of imprisonment shall be 10 years.]*

4        *[(b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of this*  
 5 *subsection or subsection (5) of this section, 10 years, except that if the firearm is a machine gun,*  
 6 *short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of*  
 7 *imprisonment shall be 20 years.]*

8        *[(c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of this*  
 9 *subsection, 30 years.]*

10        *[(5) If it is the first time that the defendant is subject to punishment under this section, rather than*  
 11 *impose the sentence otherwise required by subsection (4)(a) of this section, the court may:]*

12        *[(a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or*  
 13 *impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justify-*  
 14 *ing such lesser sentence and sets forth those circumstances in its statement on sentencing; or]*

15        *[(b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance*  
 16 *with the rules of the Oregon Criminal Justice Commission.]*

17        *[(6) When a defendant who is convicted of a felony having as an element the defendant's use or*  
 18 *threatened use of a firearm during the commission of the crime is a person who was waived from ju-*  
 19 *venile court under ORS 137.707 (5)(b)(A), 419C.349, 419C.352, 419C.364 or 419C.370, the court is not*  
 20 *required to impose a minimum term of imprisonment under this section.]*

21        **(4)(a) The minimum term of imprisonment for felonies described in subsection (5) of this**  
 22 **section that have the defendant's threatened use of a firearm as an element of the crime is**  
 23 **10 years.**

24        **(b) The minimum term of imprisonment for felonies described in subsection (5) of this**  
 25 **section that have discharge of firearm as an element of the crime is 20 years.**

26        **(c) The minimum term of imprisonment for felonies described in subsection (5) of this**  
 27 **section that have discharge of firearm causing physical injury as an element of the crime is**  
 28 **25 years, and the maximum term is life imprisonment without the possibility of parole or**  
 29 **release.**

30        **(5) This section applies to the following felonies:**

31        **(a) Murder and any aggravated form thereof.**

32        **(b) Manslaughter in the first or second degree.**

33        **(c) Assault in any degree constituting a felony, including assaulting a public safety offi-**  
 34 **cer.**

35        **(d) Kidnapping in any degree.**

36        **(e) Trafficking in persons.**

37        **(f) Rape in the first or second degree.**

38        **(g) Sodomy in the first or second degree.**

39        **(h) Unlawful sexual penetration in the first or second degree.**

40        **(i) Burglary in any degree.**

41        **(j) Escape in the first degree.**

42        **(k) Arson in any degree.**

43        **(L) Robbery in any degree.**

44        **(m) Compelling prostitution.**

45        **(n) Delivery or manufacture of a controlled substance in Schedule I or II.**

1       **(o) Any attempt of the above crimes if the attempt constitutes a felony.**

2       **(6) The minimum and maximum sentences established by this section do not apply to the**  
3 **sentencing of a person who was waived from juvenile court under ORS 137.707 (5)(b)(A),**  
4 **419C.349, 419C.352, 419C.364 or 419C.370.**

5       **SECTION 2.** **The amendments to ORS 161.610 by section 1 of this 2013 Act apply to crimes**  
6 **committed on or after the effective date of this 2013 Act.**

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

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