

# Senate Bill 68

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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**.

Eliminates mandatory minimum sentence for persons under 18 years of age convicted of committing crime of using a child in a display of sexually explicit conduct. Authorizes sentencing court to enter order relieving person of obligation to report as sex offender.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; amending ORS 137.707 and 181.594; declaring an emer-  
3 gency; and providing for criminal sentence reduction that requires approval by a two-thirds  
4 majority.

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

6 **SECTION 1. Notwithstanding ORS 137.690, when a person is convicted of using a child in**  
7 **a display of sexually explicit conduct under ORS 163.670 and the court finds that the person**  
8 **was under 18 years of age at the time the crime was committed, the court:**

9 (1) **Shall sentence the person in accordance with the rules of the Oregon Criminal Justice**  
10 **Commission; and**

11 (2) **May enter an order relieving the person of the obligation to report as a sex offender.**

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

13 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-  
14 vated murder[,] as defined in ORS 163.095, **using a child in a display of sexually explicit conduct**  
15 **as defined in ORS 163.670** or an offense listed in subsection (4)(a) of this section is 15, 16 or 17  
16 years of age at the time the offense is committed, [*and the offense is committed on or after April 1,*  
17 *1995, or when a person charged with an offense listed in subsection (4)(b) of this section is 15, 16 or*  
18 *17 years of age at the time the offense is committed, and the offense is committed on or after October*  
19 *4, 1997, or when a person charged with the offense described in subsection (4)(c) of this section is 15,*  
20 *16 or 17 years of age at the time the offense is committed and the offense is committed on or after*  
21 *January 1, 2008,*] the person shall be prosecuted as an adult in criminal court.

22 (b) A district attorney, the Attorney General or a juvenile department counselor may not file in  
23 juvenile court a petition alleging that a person has committed an act that, if committed by an adult,  
24 would constitute aggravated murder, **using a child in a display of sexually explicit conduct** or  
25 an offense listed in subsection (4) of this section if the person was 15, 16 or 17 years of age at the  
26 time the act was committed.

27 (2) When a person charged under this section is convicted of an offense listed in subsection (4)  
28 of this section, the court shall impose at least the presumptive term of imprisonment provided for  
29 the offense in subsection (4) of this section. The court may impose a greater presumptive term if

**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 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service  
2 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary  
3 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-  
4 tence for any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and  
5 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated  
6 murder under ORS 163.095 except that a person who was under 18 years of age at the time the of-  
7 fense was committed is not subject to a sentence of death.

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

10 (4) The offenses to which this section applies and the presumptive sentences are:  
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- 12
- 13 (a)(A) Murder, as defined in
- 14       ORS 163.115 .....300 months
- 15 (B) Attempt or conspiracy
- 16       to commit aggravated
- 17       murder, as defined
- 18       in ORS 163.095 .....120 months
- 19 (C) Attempt or conspiracy
- 20       to commit murder, as
- 21       defined in ORS 163.115 .....90 months
- 22 (D) Manslaughter in the
- 23       first degree, as defined
- 24       in ORS 163.118 .....120 months
- 25 (E) Manslaughter in the
- 26       second degree, as defined
- 27       in ORS 163.125 .....75 months
- 28 (F) Assault in the first
- 29       degree, as defined
- 30       in ORS 163.185 .....90 months
- 31 (G) Assault in the second
- 32       degree, as defined
- 33       in ORS 163.175 .....70 months
- 34 (H) Kidnapping in the first
- 35       degree, as defined in
- 36       ORS 163.235 .....90 months
- 37 (I) Kidnapping in the second
- 38       degree, as defined in
- 39       ORS 163.225 .....70 months
- 40 (J) Rape in the first degree,
- 41       as defined in ORS 163.375 ....100 months
- 42 (K) Rape in the second
- 43       degree, as defined in
- 44       ORS 163.365 .....75 months
- 45 (L) Sodomy in the first

1 degree, as defined in  
 2 ORS 163.405.....100 months  
 3 (M) Sodomy in the second  
 4 degree, as defined in  
 5 ORS 163.395.....75 months  
 6 (N) Unlawful sexual  
 7 penetration in the first  
 8 degree, as defined  
 9 in ORS 163.411.....100 months  
 10 (O) Unlawful sexual  
 11 penetration in the  
 12 second degree, as  
 13 defined in ORS 163.408. ....75 months  
 14 (P) Sexual abuse in the first  
 15 degree, as defined in  
 16 ORS 163.427.....75 months  
 17 (Q) Robbery in the first  
 18 degree, as defined in  
 19 ORS 164.415.....90 months  
 20 (R) Robbery in the second  
 21 degree, as defined in  
 22 ORS 164.405.....70 months  
 23 (b)(A) Arson in the first degree,  
 24 as defined in  
 25 ORS 164.325, when  
 26 the offense represented  
 27 a threat of serious  
 28 physical injury. ....90 months  
 29 [(B) *Using a child in a display*]  
 30 [*of sexually explicit*]  
 31 [*conduct, as defined in*]  
 32 [*ORS 163.670.....70 months*]  
 33 [(C) *Compelling prostitution,*]  
 34 (B) **Compelling prostitution,**  
 35 as defined in ORS 167.017  
 36 (1)(a), (b) or (d).....70 months  
 37 (c) Aggravated vehicular  
 38 homicide, as defined in  
 39 ORS 163.149.....240 months  
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41  
 42 (5) If a person charged with an offense under this section is found guilty of a lesser included  
 43 offense and the lesser included offense is:

44 (a) An offense listed in subsection (4) of this section, the court shall sentence the person as  
 45 provided in subsection (2) of this section.

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

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

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

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

11 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
12 419C.067 and 419C.411.

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

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

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

18 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
19 419C.067 and 419C.411.

20 (6) When a person is charged under this section, other offenses based on the same act or  
21 transaction shall be charged as separate counts in the same accusatory instrument and consolidated  
22 for trial, whether or not the other offenses are aggravated murder, **using a child in a display of**  
23 **sexually explicit conduct** or offenses listed in subsection (4) of this section. If it appears, upon  
24 motion, that the state or the person charged is prejudiced by the joinder and consolidation of of-  
25 fenses, the court may order an election or separate trials of counts or provide whatever other relief  
26 justice requires.

27 (7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty  
28 of aggravated murder, **using a child in a display of sexually explicit conduct** or an offense listed  
29 in subsection (4) of this section and one or more other offenses, the court shall impose the sentence  
30 for aggravated murder, **using a child in a display of sexually explicit conduct** or the offense listed  
31 in subsection (4) of this section as provided in subsection (2) of this section and shall impose sen-  
32 tences for the other offenses as otherwise provided by law.

33 (b) If a person charged and tried as provided in subsection (6) of this section is not found guilty  
34 of aggravated murder, **using a child in a display of sexually explicit conduct** or an offense listed  
35 in subsection (4) of this section, but is found guilty of one of the other charges that constitutes an  
36 offense for which waiver is authorized under ORS 419C.349, the court, upon motion of the district  
37 attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to  
38 juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider  
39 the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence  
40 the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the  
41 court shall:

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

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

45 (C) Enter an order transferring the case to the juvenile court for disposition under ORS

1 419C.067 and 419C.411.

2 **SECTION 3.** ORS 181.594 is amended to read:

3 181.594. As used in this section and ORS 181.595, 181.596, 181.597, 181.603, 181.609, 181.826,  
4 181.830 and 181.833:

5 (1) "Another United States court" means a federal court, a military court, the tribal court of a  
6 federally recognized Indian tribe or a court of:

- 7 (a) A state other than Oregon;
- 8 (b) The District of Columbia;
- 9 (c) The Commonwealth of Puerto Rico;
- 10 (d) Guam;
- 11 (e) American Samoa;
- 12 (f) The Commonwealth of the Northern Mariana Islands; or
- 13 (g) The United States Virgin Islands.

14 (2) "Attends" means is enrolled on a full-time or part-time basis.

15 (3)(a) "Correctional facility" means any place used for the confinement of persons:

16 (A) Charged with or convicted of a crime or otherwise confined under a court order.

17 (B) Found to be within the jurisdiction of the juvenile court for having committed an act that  
18 if committed by an adult would constitute a crime.

19 (b) "Correctional facility" applies to a state hospital or a secure intensive community inpatient  
20 facility only as to persons detained therein charged with or convicted of a crime, or detained therein  
21 after being found guilty except for insanity under ORS 161.290 to 161.370 or responsible except for  
22 insanity under ORS 419C.411.

23 (4) "Institution of higher education" means a public or private educational institution that pro-  
24 vides a program of post-secondary education.

25 (5) "Sex crime" means:

- 26 (a) Rape in any degree;
- 27 (b) Sodomy in any degree;
- 28 (c) Unlawful sexual penetration in any degree;
- 29 (d) Sexual abuse in any degree;
- 30 (e) Incest with a child victim;
- 31 (f) Using a child in a display of sexually explicit conduct, **unless the court enters an order**  
32 **under section 1 (2) of this 2013 Act;**
- 33 (g) Encouraging child sexual abuse in any degree;
- 34 (h) Transporting child pornography into the state;
- 35 (i) Paying for viewing a child's sexually explicit conduct;
- 36 (j) Compelling prostitution;
- 37 (k) Promoting prostitution;
- 38 (L) Kidnapping in the first degree if the victim was under 18 years of age;
- 39 (m) Contributing to the sexual delinquency of a minor;
- 40 (n) Sexual misconduct if the offender is at least 18 years of age;
- 41 (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- 42 (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent  
43 or by a person found to be within the jurisdiction of the juvenile court;
- 44 (q) Online sexual corruption of a child in any degree if the offender reasonably believed the  
45 child to be more than five years younger than the offender;

- 1 (r) Sexual assault of an animal;
  - 2 (s) Any attempt to commit any of the crimes set forth in paragraphs (a) to (r) of this subsection;
  - 3 (t) Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a)
  - 4 to (r) or (u) of this subsection; or
  - 5 (u) Public indecency or private indecency, if the person has a prior conviction for a crime listed
  - 6 in this subsection.
  - 7 (6) "Sex offender" means a person who:
  - 8 (a) Has been convicted of a sex crime;
  - 9 (b) Has been found guilty except for insanity of a sex crime;
  - 10 (c) Is paroled to this state under ORS 144.610 after being convicted in another United States
  - 11 court of a crime that would constitute a sex crime if committed in this state; or
  - 12 (d) Is described in ORS 181.609 (1).
  - 13 (7) "Works" or "carries on a vocation" means full-time or part-time employment for more than
  - 14 14 days within one calendar year whether financially compensated, volunteered or for the purpose
  - 15 of governmental or educational benefit.
  - 16 **SECTION 4. Section 1 of this 2013 Act and the amendments to ORS 137.707 and 181.594**
  - 17 **by sections 2 and 3 of this 2013 Act apply to crimes committed on or after the effective date**
  - 18 **of this 2013 Act.**
  - 19 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**
  - 20 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
  - 21 **on its passage.**
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