

# House Bill 4125

Sponsored by Representatives GELSER, SPRENGER, BARKER, BARTON; Representatives GORSEK, HUFFMAN, OLSON, READ, Senator STEINER HAYWARD (at the request of Sergeant David Peterson and Corporal Andrew Connelly) (Presession filed.)

## 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**.

Adds reserve officer to category of victims for which aggravated murder can be charged when murder is related to performance of official duties. Increases mandatory minimum sentence for attempted aggravated murder of police officer to 20 years' imprisonment.

## A BILL FOR AN ACT

1  
2 Relating to attempted aggravated murder of a police officer; amending ORS 137.700, 137.707 and  
3 163.095.

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

5 **SECTION 1.** ORS 163.095 is amended to read:

6 163.095. As used in ORS 163.105 and this section, "aggravated murder" means murder as defined  
7 in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

8 (1)(a) The defendant committed the murder pursuant to an agreement that the defendant receive  
9 money or other thing of value for committing the murder.

10 (b) The defendant solicited another to commit the murder and paid or agreed to pay the person  
11 money or other thing of value for committing the murder.

12 (c) The defendant committed murder after having been convicted previously in any jurisdiction  
13 of any homicide, the elements of which constitute the crime of murder as defined in ORS 163.115  
14 or manslaughter in the first degree as defined in ORS 163.118.

15 (d) There was more than one murder victim in the same criminal episode as defined in ORS  
16 131.505.

17 (e) The homicide occurred in the course of or as a result of intentional maiming or torture of  
18 the victim.

19 (f) The victim of the intentional homicide was a person under the age of 14 years.

20 (2)(a) The victim was one of the following and the murder was related to the performance of the  
21 victim's official duties in the justice system:

22 (A) A police officer as defined in ORS 181.610, **a member of the Oregon State Police or a**  
23 **reserve officer as defined in ORS 133.005;**

24 (B) A correctional, parole and probation officer or other person charged with the duty of cus-  
25 tody, control or supervision of convicted persons;

26 *[(C) A member of the Oregon State Police;]*

27 *[(D)] (C)* A judicial officer as defined in ORS 1.210;

28 *[(E)] (D)* A juror or witness in a criminal proceeding;

29 *[(F)] (E)* An employee or officer of a court of justice;

30 *[(G)] (F)* A member of the State Board of Parole and Post-Prison Supervision; or

**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        ~~[(H)]~~ (G) A liquor enforcement inspector.

2        (b) The defendant was confined in a state, county or municipal penal or correctional facility or  
3 was otherwise in custody when the murder occurred.

4        (c) The defendant committed murder by means of an explosive as defined in ORS 164.055.

5        (d) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed the  
6 homicide under the circumstances set forth in ORS 163.115 (1)(b).

7        (e) The murder was committed in an effort to conceal the commission of a crime, or to conceal  
8 the identity of the perpetrator of a crime.

9        (f) The murder was committed after the defendant had escaped from a state, county or municipal  
10 penal or correctional facility and before the defendant had been returned to the custody of the fa-  
11 cility.

12        **SECTION 2.** ORS 137.700 is amended to read:

13        137.700. (1) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses  
14 listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995,  
15 or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on  
16 or after October 4, 1997, or of the offense described in subsection (2)(c) of this section and the of-  
17 fense was committed on or after January 1, 2008, the court shall impose, and the person shall serve,  
18 at least the entire term of imprisonment listed in subsection (2) of this section. The person is not,  
19 during the service of the term of imprisonment, eligible for release on post-prison supervision or any  
20 form of temporary leave from custody. The person is not eligible for any reduction in, or **reduction**  
21 based on, the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute.  
22 The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower  
23 sentence than the sentence specified in subsection (2) of this section.

24        (2) The offenses to which subsection (1) of this section applies and the applicable mandatory  
25 minimum sentences are:



26  
27  
28        (a)(A) Murder, as defined in  
29                ORS 163.115 .....300 months

30        (B)(i) Attempt or conspiracy  
31                to commit aggravated  
32                murder, as defined  
33                in ORS 163.095 (1) or  
34                (2)(a)(B) to (G)  
35                or (b) to (f) .....120 months

36        (ii) **Attempt or conspiracy**  
37                **to commit aggravated**  
38                **murder, as defined**  
39                **in ORS 163.095**  
40                **(2)(a)(A) .....240 months**

41        (C) Attempt or conspiracy  
42                to commit murder, as  
43                defined in ORS 163.115. ....90 months

44        (D) Manslaughter in the  
45                first degree, as defined

1 in ORS 163.118.....120 months  
 2 (E) Manslaughter in the  
 3 second degree, as defined  
 4 in ORS 163.125.....75 months  
 5 (F) Assault in the first  
 6 degree, as defined in  
 7 ORS 163.185.....90 months  
 8 (G) Assault in the second  
 9 degree, as defined in  
 10 ORS 163.175.....70 months  
 11 (H) Except as provided in  
 12 paragraph (b)(G) of  
 13 this subsection,  
 14 kidnapping in the first  
 15 degree, as defined  
 16 in ORS 163.235.....90 months  
 17 (I) Kidnapping in the second  
 18 degree, as defined in  
 19 ORS 163.225.....70 months  
 20 (J) Rape in the first degree,  
 21 as defined in ORS 163.375  
 22 (1)(a), (c) or (d).....100 months  
 23 (K) Rape in the second degree,  
 24 as defined in ORS 163.365.....75 months  
 25 (L) Sodomy in the first degree,  
 26 as defined in ORS 163.405  
 27 (1)(a), (c) or (d).....100 months  
 28 (M) Sodomy in the second  
 29 degree, as defined in  
 30 ORS 163.395.....75 months  
 31 (N) Unlawful sexual penetration  
 32 in the first degree, as  
 33 defined in ORS 163.411  
 34 (1)(a) or (c). .....100 months  
 35 (O) Unlawful sexual penetration  
 36 in the second degree, as  
 37 defined in ORS 163.408. ....75 months  
 38 (P) Sexual abuse in the first  
 39 degree, as defined in  
 40 ORS 163.427.....75 months  
 41 (Q) Robbery in the first degree,  
 42 as defined in ORS 164.415.....90 months  
 43 (R) Robbery in the second  
 44 degree, as defined in  
 45 ORS 164.405.....70 months

- 1 (b)(A) Arson in the first degree,
- 2 as defined in ORS 164.325,
- 3 when the offense represented
- 4 a threat of serious
- 5 physical injury. ....90 months
- 6 (B) Using a child in a display
- 7 of sexually explicit
- 8 conduct, as defined in
- 9 ORS 163.670. ....70 months
- 10 (C) Compelling prostitution,
- 11 as defined in ORS 167.017. ....70 months
- 12 (D) Rape in the first degree,
- 13 as defined in
- 14 ORS 163.375 (1)(b). ....300 months
- 15 (E) Sodomy in the first degree,
- 16 as defined in
- 17 ORS 163.405 (1)(b). ....300 months
- 18 (F) Unlawful sexual penetration
- 19 in the first degree, as
- 20 defined in
- 21 ORS 163.411 (1)(b). ....300 months
- 22 (G) Kidnapping in the first
- 23 degree, as defined in
- 24 ORS 163.235, when the
- 25 offense is committed in
- 26 furtherance of the commission
- 27 or attempted commission of an
- 28 offense listed in subparagraph
- 29 (D), (E) or (F) of
- 30 this paragraph. ....300 months
- 31 (c) Aggravated vehicular
- 32 homicide, as defined in
- 33 ORS 163.149. ....240 months

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36 **SECTION 3.** ORS 137.707 is amended to read:

37 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-  
 38 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is  
 39 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or  
 40 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-  
 41 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed  
 42 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)  
 43 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is  
 44 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

45 (b) A district attorney, the Attorney General or a juvenile department counselor may not file in

1 juvenile court a petition alleging that a person has committed an act that, if committed by an adult,  
2 would constitute aggravated murder or an offense listed in subsection (4) of this section if the person  
3 was 15, 16 or 17 years of age at the time the act was committed.

4 (2) When a person charged under this section is convicted of an offense listed in subsection (4)  
5 of this section, the court shall impose at least the presumptive term of imprisonment provided for  
6 the offense in subsection (4) of this section. The court may impose a greater presumptive term if  
7 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service  
8 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary  
9 leave from custody. The person is not eligible for any reduction in, or **reduction** based on, the  
10 minimum sentence for any reason under ORS 421.121 or any other provision of law. ORS 138.012,  
11 163.105 and 163.150 apply to sentencing a person prosecuted under this section and convicted of  
12 aggravated murder under ORS 163.095 except that a person who was under 18 years of age at the  
13 time the offense was committed is not subject to a sentence of death.

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

16 (4) The offenses to which this section applies and the presumptive sentences are:  
17 \_\_\_\_\_

- 18
- 19 (a)(A) Murder, as defined in
- 20 ORS 163.115.....300 months
- 21 (B)(i) Attempt or conspiracy
- 22 to commit aggravated
- 23 murder, as defined
- 24 in ORS 163.095 (1) or
- 25 **(2)(a)(B) to (G)**
- 26 **or (b) to (f).....120 months**
- 27 **(ii) Attempt or conspiracy**
- 28 **to commit aggravated**
- 29 **murder, as defined**
- 30 **in ORS 163.095**
- 31 **(2)(a)(A).....240 months**
- 32 (C) Attempt or conspiracy
- 33 to commit murder, as
- 34 defined in ORS 163.115.....90 months
- 35 (D) Manslaughter in the
- 36 first degree, as defined
- 37 in ORS 163.118.....120 months
- 38 (E) Manslaughter in the
- 39 second degree, as defined
- 40 in ORS 163.125.....75 months
- 41 (F) Assault in the first
- 42 degree, as defined
- 43 in ORS 163.185.....90 months
- 44 (G) Assault in the second
- 45 degree, as defined

1 in ORS 163.175.....70 months  
 2 (H) Kidnapping in the first  
 3 degree, as defined in  
 4 ORS 163.235.....90 months  
 5 (I) Kidnapping in the second  
 6 degree, as defined in  
 7 ORS 163.225.....70 months  
 8 (J) Rape in the first degree,  
 9 as defined in ORS 163.375....100 months  
 10 (K) Rape in the second  
 11 degree, as defined in  
 12 ORS 163.365.....75 months  
 13 (L) Sodomy in the first  
 14 degree, as defined in  
 15 ORS 163.405.....100 months  
 16 (M) Sodomy in the second  
 17 degree, as defined in  
 18 ORS 163.395.....75 months  
 19 (N) Unlawful sexual  
 20 penetration in the first  
 21 degree, as defined  
 22 in ORS 163.411.....100 months  
 23 (O) Unlawful sexual  
 24 penetration in the  
 25 second degree, as  
 26 defined in ORS 163.408. ....75 months  
 27 (P) Sexual abuse in the first  
 28 degree, as defined in  
 29 ORS 163.427.....75 months  
 30 (Q) Robbery in the first  
 31 degree, as defined in  
 32 ORS 164.415.....90 months  
 33 (R) Robbery in the second  
 34 degree, as defined in  
 35 ORS 164.405.....70 months  
 36 (b)(A) Arson in the first degree,  
 37 as defined in  
 38 ORS 164.325, when  
 39 the offense represented  
 40 a threat of serious  
 41 physical injury.....90 months  
 42 (B) Using a child in a display  
 43 of sexually explicit  
 44 conduct, as defined in  
 45 ORS 163.670.....70 months

- 1 (C) Compelling prostitution,
- 2 as defined in ORS 167.017
- 3 (1)(a), (b) or (d).....70 months
- 4 (c) Aggravated vehicular
- 5 homicide, as defined in
- 6 ORS 163.149.....240 months

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9 (5) If a person charged with an offense under this section is found guilty of a lesser included  
 10 offense and the lesser included offense is:

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

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

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

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

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

23 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
 24 419C.067 and 419C.411.

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

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

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

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

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

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

43 (b) If a person charged and tried as provided in subsection (6) of this section is not found guilty  
 44 of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one  
 45 of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349,

1 the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain  
2 jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain  
3 jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains  
4 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court  
5 does not retain jurisdiction, the court shall:

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

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

9 (C) Enter an order transferring the case to the juvenile court for disposition under ORS  
10 419C.067 and 419C.411.

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