

House Bill 2251

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Corrections)

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 person under 18 years of age may not be incarcerated in Department of Corrections institution.

A BILL FOR AN ACT

1
2 Relating to incarceration facilities for persons under 18 years of age; amending ORS 137.124 and
3 420.011.

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

5 **SECTION 1.** ORS 137.124 is amended to read:

6 137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of
7 incarceration that exceeds 12 months:

8 (a) The court shall not designate the correctional facility in which the defendant is to be con-
9 fined but shall commit the defendant to the legal and physical custody of the Department of Cor-
10 rections; and

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

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

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

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

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

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 (5)(a) When a person under 18 years of age at the time of committing the offense and under 20
 2 years of age at the time of sentencing is committed to the Department of Corrections under ORS
 3 137.707, the Department of Corrections shall transfer the physical custody of the person to the
 4 Oregon Youth Authority as provided in ORS 420.011 if:

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

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

10 **(C) The person is under 18 years of age at the time of sentencing and commitment.**

11 (b) A person placed in the custody of the Oregon Youth Authority under this subsection **who**
 12 **is at least 18 years of age** shall be returned to the physical custody of the Department of Cor-
 13 rections whenever the Director of the Oregon Youth Authority, after consultation with the Depart-
 14 ment of Corrections, determines that the conditions or circumstances that warranted the transfer
 15 of custody under this subsection are no longer present.

16 (c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Cor-
 17 rections transfer the person described in this subsection directly to a youth correction facility for
 18 physical custody without first delivering the person to the Department of Corrections. As part of the
 19 agreement with the Department of Corrections, the sheriff may designate the county juvenile de-
 20 partment or the Oregon Youth Authority to conduct the direct transfer described in this paragraph
 21 if the sheriff has entered into a written agreement with the county juvenile department, the Oregon
 22 Youth Authority, or both, to provide the direct transfer.

23 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20
 24 years of age at the time of sentencing is committed to the legal and physical custody of the De-
 25 partment of Corrections or the supervisory authority of a county following waiver under ORS
 26 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or
 27 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the
 28 person to the physical custody of the Oregon Youth Authority for placement as provided in ORS
 29 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS
 30 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Depart-
 31 ment of Corrections or the supervisory authority of a county transfer the person described in this
 32 subsection directly to a youth correction facility for physical custody without first delivering the
 33 person to the Department of Corrections or supervisory authority of the county. As part of the
 34 agreement with the Department of Corrections or supervisory authority of the county, the sheriff
 35 may designate the county juvenile department or the Oregon Youth Authority to conduct the direct
 36 transfer described in this paragraph if the sheriff has entered into a written agreement with the
 37 county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

38 (b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS
 39 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment
 40 in the county jail, the sheriff shall transfer the person to a youth correction facility for physical
 41 custody as provided in ORS 420.011 (3).

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

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

3 (b) The person is under 20 years of age at the time of commitment to the Department of Cor-
 4 rections or the supervisory authority of the county;

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

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

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

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

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

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

17 (8) Notwithstanding the provisions of subsections (5)(a)(A) or (7) of this section, the department
 18 or the supervisory authority of a county may not transfer the physical custody of the person under
 19 subsection (5)(a)(A) or (7) of this section if the Director of the Oregon Youth Authority, after con-
 20 sultation with the Department of Corrections or the supervisory authority of a county, determines
 21 that, because of the person's age, mental or emotional condition or risk of physical harm to other
 22 persons, the person should not be incarcerated in a youth correction facility.

23 **(9) Notwithstanding any other provision of this section, under no circumstances may a**
 24 **person under 18 years of age be incarcerated in a Department of Corrections institution.**

25 **SECTION 2.** ORS 420.011 is amended to read:

26 420.011. (1) Except as provided in subsections (2) and (3) of this section, admissions to the youth
 27 correction facilities are limited to youth offenders who are at least 12 but less than 19 years of age,
 28 found by the juvenile court to have committed an act that if committed by an adult would constitute
 29 aggravated murder, murder, a felony or a Class A misdemeanor and placed in the legal custody of
 30 the Oregon Youth Authority. A youth offender admitted to a youth correction facility may not be
 31 transferred by administrative process to any penal or correctional institution.

32 (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS
 33 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority
 34 or the director's designee, persons who are committed to the Department of Corrections under ORS
 35 137.124 and meet the requirements of ORS 137.124 (5) or (7) may be temporarily assigned to a youth
 36 correction facility as provided by ORS 137.124 (5) or (7). A person assigned on such a temporary
 37 basis remains within the legal custody of the Department of Corrections and such reassignment is
 38 subject to termination by the Director of the Oregon Youth Authority by referring the person back
 39 to the Department of Corrections as provided in paragraph (b) of this subsection.

40 (b) After a person is transferred to the physical custody of the youth authority under ORS
 41 137.124 (5) or (7), the Director of the Oregon Youth Authority may refer the person back to the
 42 Department of Corrections for physical custody and placement if the director, after consulting with
 43 the Department of Corrections, determines that the person **is at least 18 years of age and:**

44 (A) Poses a substantial danger to youth authority staff or persons in the custody of the youth
 45 authority; or

1 (B) Is not likely, in the foreseeable future, to benefit from the rehabilitation and treatment pro-
 2 grams administered by the youth authority and is appropriate for placement in a Department of
 3 Corrections institution.

4 (3) Any person under 18 years of age at the time of committing the crime and under 20 years
 5 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349, 419C.352,
 6 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to
 7 a term of imprisonment in the custody of the Department of Corrections, and any person under 16
 8 years of age who after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing
 9 under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of imprisonment in the county
 10 jail, shall be temporarily assigned to a youth correction facility by the Department of Corrections,
 11 or by the sheriff to whose custody the person has been committed, pursuant to ORS 137.124 (6). The
 12 director shall designate the appropriate youth correction facility or schools for such assignment. A
 13 person assigned to a youth correction facility under ORS 137.124 (6) and this subsection remains
 14 within the legal custody of the Department of Corrections or sheriff to whose custody the person
 15 was committed. The assignment of such a person to the youth correction facility is subject, when
 16 the person is [16] 18 years of age or older, to termination by the director by referring the person
 17 back to the Department of Corrections or the sheriff to serve the balance of the person's sentence.
 18 Assignment to a youth correction facility pursuant to ORS 137.124 (6) and this subsection, if not
 19 terminated earlier by the director, shall terminate upon the person's attaining the age specified in
 20 ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and
 21 physical custody of the person, and the person shall be referred to the Department of Corrections
 22 or the sheriff having legal custody of the person to serve the balance of the person's sentence.

23 (4) Whenever a person committed to the custody of the Department of Corrections is temporarily
 24 assigned to a youth correction facility pursuant to this section, the youth authority may provide
 25 programs and treatment for the person, and may adopt rules relating to conditions of confinement
 26 at the youth correction facility, as the youth authority determines are appropriate. However, the
 27 person remains subject to laws and rules of the State Board of Parole and Post-Prison Supervision
 28 relating to parole.

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