

# House Bill 2659

Sponsored by Representative GREENLICK (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**.

Provides that youth offenders sentenced to mandatory minimum terms of imprisonment for certain crimes committed at 15, 16 or 17 years of age are eligible for conditional release hearing if they are in custody of Oregon Youth Authority on 24th birthday.

## A BILL FOR AN ACT

1  
2 Relating to persons in custody of the Oregon Youth Authority; creating new provisions; and  
3 amending ORS 137.707, 420A.200 and 420A.203.

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

5 **SECTION 1.** ORS 420A.200 is amended to read:

6 420A.200. (1) A person may not continue in the legal or physical custody of the Oregon Youth  
7 Authority after the person attains 25 years of age.

8 (2) Except as otherwise provided in ORS 137.124, [*and*] 420.011 **and 420A.203**, when a person in  
9 the physical custody of the Oregon Youth Authority under ORS 137.124 attains 24 years and 11  
10 months of age and if the person will not complete the term of imprisonment imposed before the  
11 person attains 25 years of age, the Oregon Youth Authority shall transfer the person to the physical  
12 custody of the Department of Corrections.

13 **SECTION 2.** ORS 420A.203 is amended to read:

14 420A.203. [(1)(a)] (1) This section and ORS 420A.206 apply only to persons who were under 18  
15 years of age at the time of the commission of the offense for which the persons were sentenced to  
16 a term of imprisonment, who committed the offense on or after June 30, 1995, and who were **sen-**  
17 **tenced to a term of imprisonment:**

18 [(A)] (a) [*Sentenced to a term of imprisonment*] Of at least 24 months following waiver under ORS  
19 419C.349, 419C.352, 419C.364 or 419C.370; or

20 [(B)] (b) [*Sentenced to a term of imprisonment*] Of at least 24 months under ORS 137.707 (5)(b)(A)  
21 or (7)(b).

22 (2)(a) **When a person described in subsection (1) of this section attains 24 years of age**  
23 **while in the physical custody of the Oregon Youth Authority and will not complete the sen-**  
24 **tence imposed before the person attains 25 years of age, the sentencing court shall determine**  
25 **what further commitment or disposition is appropriate as provided in this section. No more**  
26 **than 120 days and not less than 60 days before the person's 24th birthday, the Oregon Youth**  
27 **Authority shall file in the sentencing court a notice and request that the court set a time**  
28 **and place for the hearing required under this section. The Oregon Youth Authority shall**  
29 **serve the person with a copy of the notice and request for a hearing on or before the date**  
30 **of filing. Upon receiving the notice and request for a hearing, the sentencing court shall**  
31 **schedule a hearing for a date not more than 30 days after the person's 24th birthday or a**

**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 **later date agreed upon by the parties.**

2 (b) When a person described in [*paragraph (a)*] **subsection (1)** of this subsection has served  
 3 one-half of the sentence imposed, the sentencing court shall determine what further commitment or  
 4 disposition is appropriate as provided in this section. [*As used in this subsection and subsection (2)*  
 5 *of this section, "sentence imposed" means the total period of mandatory incarceration imposed for all*  
 6 *convictions resulting from a single prosecution or criminal proceeding not including any reduction in*  
 7 *the sentence under ORS 421.121 or any other statute.*]

8 [(2)(a)] No more than 120 days and not less than 60 days before the date on which a person has  
 9 served one-half of the sentence imposed, the Oregon Youth Authority or the Department of Cor-  
 10 rections, whichever has physical custody of the person, shall file in the sentencing court a notice  
 11 and request that the court set a time and place for the hearing required under this section. The  
 12 youth authority or department shall serve the person with a copy of the notice and request for  
 13 hearing on or before the date of filing.

14 [(b)] Upon receiving the notice and request for a hearing [*under paragraph (a) of this*  
 15 *subsection*], the sentencing court shall schedule a hearing for a date not more than 30 days after the  
 16 date on which the person will have served one-half of the sentence imposed or such later date as  
 17 is agreed upon by the parties.

18 (c) The court shall notify the following of the time and place of [*the*] **a hearing scheduled under**  
 19 **this subsection:**

20 (A) The person and, **if the person is under 18 years of age**, the person's parents;

21 (B) The records supervisor of the correctional institution in which the person is incarcerated;  
 22 and

23 (C) The district attorney who prosecuted the case.

24 (d) The court shall make reasonable efforts to notify the following of the time and place of the  
 25 hearing:

26 (A) The victim and, **if the victim is under 18 years of age**, the victim's parents or legal  
 27 guardian; and

28 (B) Any other person who has filed a written request with the court to be notified of any hear-  
 29 ing concerning the transfer, discharge or release of the person.

30 (3) In a hearing under this section:

31 (a) The person and the state are parties to the proceeding.

32 (b) The person has the right to appear with counsel. If the person requests that the court ap-  
 33 point counsel and the court determines that the person is financially eligible for appointed counsel  
 34 at state expense, the court shall order that counsel be appointed.

35 (c) The district attorney represents the state.

36 (d) The court shall determine admissibility of evidence as if the hearing were a sentencing pro-  
 37 ceeding.

38 (e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the  
 39 Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within  
 40 a reasonable time before the hearing, as determined by the court, the person must be given the op-  
 41 portunity to examine all reports and other documents concerning the person that the state, the  
 42 Oregon Youth Authority or the Department of Corrections intends to submit for consideration by  
 43 the court at the hearing.

44 (f) Except as otherwise provided by law or by order of the court based on good cause, the person  
 45 must be given access to the records maintained in the person's case by the Oregon Youth Authority

1 and the Department of Corrections.

2 (g) The person may examine all of the witnesses called by the state, may subpoena and call  
 3 witnesses to testify on the person's behalf and may present evidence and argument. The court may  
 4 permit witnesses to appear by telephone or other two-way electronic communication device.

5 (h) The hearing must be recorded.

6 (i) The hearing and the record of the hearing are open to the public.

7 (j) The question to be decided is which of the dispositions provided in subsection (4) of this  
 8 section should be ordered in the case.

9 (k) The person has the burden of proving by clear and convincing evidence that the person has  
 10 been rehabilitated and reformed, and if conditionally released, the person would not be a threat to  
 11 the safety of the victim, the victim's family or the community and that the person would comply with  
 12 the release conditions.

13 (4)(a) At the conclusion of the hearing and after considering and making findings regarding each  
 14 of the factors in paragraph (b) of this subsection, the court shall order one of the following dispo-  
 15 sitions:

16 (A) Order that the person serve the entire remainder of the sentence of imprisonment imposed,  
 17 taking into account any reduction in the sentence under ORS 421.121 or any other statute, with the  
 18 person's physical custody determined under ORS 137.124, 420.011 and 420A.200.

19 (B) Order that the person be conditionally released under ORS 420A.206 at such time as the  
 20 court may order, if the court finds that the person:

21 (i) Has been rehabilitated and reformed;

22 (ii) Is not a threat to the safety of the victim, the victim's family or the community; and

23 (iii) Will comply with the conditions of release.

24 (b) In making the determination under this section, the court shall consider:

25 (A) The experiences and character of the person before and after commitment to the Oregon  
 26 Youth Authority or the Department of Corrections;

27 (B) The person's juvenile and criminal records;

28 (C) The person's mental, emotional and physical health;

29 (D) The gravity of the loss, damage or injury caused or attempted, during or as part of the  
 30 criminal act for which the person was convicted and sentenced;

31 (E) The manner in which the person committed the criminal act for which the person was con-  
 32 victed and sentenced;

33 (F) The person's efforts, participation and progress in rehabilitation programs since the person's  
 34 conviction;

35 (G) The results of any mental health or substance abuse treatment;

36 (H) Whether the person demonstrates accountability and responsibility for past and future con-  
 37 duct;

38 (I) Whether the person has made and will continue to make restitution to the victim and the  
 39 community;

40 (J) Whether the person will comply with and benefit from all conditions that will be imposed if  
 41 the person is conditionally released;

42 (K) The safety of the victim, the victim's family and the community;

43 (L) The recommendations of the district attorney, the Oregon Youth Authority and the Depart-  
 44 ment of Corrections; and

45 (M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Au-

1 thority, the Department of Corrections or the person.

2 (5) The court shall provide copies of its disposition order under subsection (4) of this section to  
 3 the parties, to the records supervisor of the correctional institution in which the person is  
 4 incarcerated and to the manager of the institution-based records office of the Department of Cor-  
 5 rections.

6 (6) The person or the state may appeal an order entered under this section. On appeal, the ap-  
 7 pellate court’s review is limited to claims that:

8 (a) The disposition is not authorized under this section;

9 (b) The court failed to comply with the requirements of this section in imposing the disposition;

10 or

11 (c) The findings of the court are not supported by substantial evidence in the record.

12 (7) **As used in this section, “sentence imposed” means the total period of mandatory**  
 13 **incarceration imposed for all convictions resulting from a single prosecution or criminal**  
 14 **proceeding not including any reduction in the sentence under ORS 421.121 or any other**  
 15 **statute.**

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

17 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-  
 18 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is  
 19 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or  
 20 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-  
 21 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed  
 22 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)  
 23 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is  
 24 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

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.

29 (2) When a person charged under this section is convicted of an offense listed in subsection (4)  
 30 of this section, the court shall impose at least the presumptive term of imprisonment provided for  
 31 the offense in subsection (4) of this section. The court may impose a greater presumptive term if  
 32 otherwise permitted by law, but may not impose a lesser term. **Except as otherwise provided in**  
 33 **ORS 420A.200 to 420A.206**, the person is not, during the service of the term of imprisonment, eli-  
 34 gible for release on post-prison supervision or any form of temporary leave from custody. **Except**  
 35 **as provided in ORS 420A.200 to 420A.206**, the person is not eligible for any reduction in, or based  
 36 on, the minimum sentence for any reason under ORS 421.121 or any other provision of law. ORS  
 37 138.012, 163.105 and 163.150 apply to sentencing a person prosecuted under this section and con-  
 38 victed of aggravated murder under ORS 163.095 except that a person who was under 18 years of age  
 39 at the time the offense was committed is not subject to a sentence of death.

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

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

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44

45 (a)(A) Murder, as defined in

1           ORS 163.115 .....300 months  
 2       (B) Attempt or conspiracy  
 3           to commit aggravated  
 4           murder, as defined  
 5           in ORS 163.095 .....120 months  
 6       (C) Attempt or conspiracy  
 7           to commit murder, as  
 8           defined in ORS 163.115. ....90 months  
 9       (D) Manslaughter in the  
 10           first degree, as defined  
 11           in ORS 163.118 .....120 months  
 12       (E) Manslaughter in the  
 13           second degree, as defined  
 14           in ORS 163.125 .....75 months  
 15       (F) Assault in the first  
 16           degree, as defined  
 17           in ORS 163.185 .....90 months  
 18       (G) Assault in the second  
 19           degree, as defined  
 20           in ORS 163.175 .....70 months  
 21       (H) Kidnapping in the first  
 22           degree, as defined in  
 23           ORS 163.235 .....90 months  
 24       (I) Kidnapping in the second  
 25           degree, as defined in  
 26           ORS 163.225 .....70 months  
 27       (J) Rape in the first degree,  
 28           as defined in ORS 163.375....100 months  
 29       (K) Rape in the second  
 30           degree, as defined in  
 31           ORS 163.365 .....75 months  
 32       (L) Sodomy in the first  
 33           degree, as defined in  
 34           ORS 163.405 .....100 months  
 35       (M) Sodomy in the second  
 36           degree, as defined in  
 37           ORS 163.395 .....75 months  
 38       (N) Unlawful sexual  
 39           penetration in the first  
 40           degree, as defined  
 41           in ORS 163.411 .....100 months  
 42       (O) Unlawful sexual  
 43           penetration in the  
 44           second degree, as  
 45           defined in ORS 163.408. ....75 months

- 1 (P) Sexual abuse in the first
- 2 degree, as defined in
- 3 ORS 163.427.....75 months
- 4 (Q) Robbery in the first
- 5 degree, as defined in
- 6 ORS 164.415.....90 months
- 7 (R) Robbery in the second
- 8 degree, as defined in
- 9 ORS 164.405.....70 months
- 10 (b)(A) Arson in the first degree,
- 11 as defined in
- 12 ORS 164.325, when
- 13 the offense represented
- 14 a threat of serious
- 15 physical injury.....90 months
- 16 (B) Using a child in a display
- 17 of sexually explicit
- 18 conduct, as defined in
- 19 ORS 163.670.....70 months
- 20 (C) Compelling prostitution,
- 21 as defined in ORS 167.017
- 22 (1)(a), (b) or (d).....70 months
- 23 (c) Aggravated vehicular
- 24 homicide, as defined in
- 25 ORS 163.149.....240 months

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

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

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

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

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

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

42 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
43 419C.067 and 419C.411.

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

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

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

4 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
5 419C.067 and 419C.411.

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

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

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

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

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

28 (C) Enter an order transferring the case to the juvenile court for disposition under ORS  
29 419C.067 and 419C.411.

30 **SECTION 4. The amendments to ORS 137.707, 420A.200 and 420A.203 by sections 1 to 3**  
31 **of this 2017 Act apply to acts committed on or after the effective date of this 2017 Act.**

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