

# D R A F T

## SUMMARY

Requires court to include in judgement document age of defendant at time of committing offense if defendant sentenced to term of incarceration and physical custody of defendant is related to age of defendant at time of committing crime.

Directs Department of Corrections to transfer person sentenced to term of incarceration for offense committed when person was under 18 years of age to physical custody of Oregon Youth Authority even if criminal proceedings were initiated after person attained 18 years of age.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the physical custody of a person sentenced to a term of incar-  
3 ceration; creating new provisions; amending ORS 137.071, 137.124 and  
4 420.011; and prescribing an effective date.

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

6 **SECTION 1.** ORS 137.071 is amended to read:

7 137.071. (1) The judge in a criminal action shall ensure that the creation  
8 and filing of a judgment document complies with this section. On appeal, the  
9 appellate court may give leave as provided in ORS 19.270 for entry of a  
10 judgment document that complies with this section but may not reverse or  
11 set aside a judgment, determination or disposition on the sole ground that  
12 the judgment document fails to comply with this section.

13 (2) A judgment document in a criminal action must comply with ORS  
14 18.038. In addition, a judgment document in a criminal action must:

15 (a) Indicate whether the defendant was determined to be financially eli-  
16 gible for purposes of appointed counsel in the action.

1 (b) Indicate whether the court appointed counsel for the defendant in the  
2 action.

3 (c) If there is no attorney for the defendant, indicate whether the de-  
4 fendant knowingly waived any right to an attorney after having been in-  
5 formed of that right.

6 (d) Include the identity of the recorder or reporter for the proceeding or  
7 action who is to be served under ORS 138.081.

8 (e) Include any information specifically required by statute or by court  
9 rule.

10 (f) Specify clearly the court's determination for each charge in the infor-  
11 mation, indictment or complaint.

12 (g) Specify clearly the court's disposition, including all legal consequences  
13 the court establishes or imposes. If the determination is one of conviction,  
14 the judgment document must include any suspension of sentence, forfeiture,  
15 imprisonment, cancellation of license, removal from office, monetary obli-  
16 gation, probation, conditions of probation, discharge, restitution, community  
17 service and all other sentences and legal consequences imposed by the court.  
18 Nothing in this paragraph requires the judgment document to specify any  
19 consequences that may result from the determination but are not established  
20 or imposed by the court.

21 (h) Include the identities of the attorney for the state and the attorney,  
22 if any, for the defendant.

23 **(i) If the court sentences the defendant to a term of incarceration,**  
24 **and the physical custody of the defendant as determined by ORS**  
25 **137.124 is related to the age of the defendant at the time of committing**  
26 **an offense, indicate the age of the defendant at the time of committing**  
27 **the offense.**

28 (3) A judgment document in a criminal action that includes a money  
29 award, as defined in ORS 18.005, must comply with ORS 18.048.

30 (4) The requirements of this section do not apply to a judgment document  
31 if the action was commenced by the issuance of a uniform citation adopted

1 under ORS 1.525 and the court has used the space on the citation for the  
2 entry of a judgment. The exemption provided by this subsection does not  
3 apply if any indictment, information or complaint other than a uniform ci-  
4 tation is filed in the action.

5 **SECTION 2.** ORS 137.124 is amended to read:

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

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

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

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

21 (b) Notwithstanding paragraph (a) of this subsection, when the court im-  
22 poses a sentence upon conviction of a felony that includes a term of incar-  
23 ceration that is 12 months or less, the court shall commit the defendant to  
24 the legal and physical custody of the Department of Corrections if the court  
25 orders that the term of incarceration be served consecutively to a term of  
26 incarceration that exceeds 12 months that was imposed in a previous pro-  
27 ceeding or in the same proceeding by a court of this state upon conviction  
28 of a felony.

29 (3) After assuming custody of the convicted person the Department of  
30 Corrections may transfer inmates from one correctional facility to another  
31 such facility for the purposes of diagnosis and study, rehabilitation and

1 treatment, as best seems to fit the needs of the inmate and for the protection  
2 and welfare of the community and the inmate.

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

6 (5)(a) When a person under 18 years of age at the time of committing the  
7 offense and under 20 years of age at the time of sentencing is committed to  
8 the Department of Corrections under ORS 137.707 **or due to the fact that**  
9 **criminal proceedings were initiated after the person attained 18 years**  
10 **of age**, the Department of Corrections shall transfer the physical custody  
11 of the person to the Oregon Youth Authority as provided in ORS 420.011 if:

12 (A) The person will complete the sentence imposed before the person at-  
13 tains 25 years of age;

14 (B) The Department of Corrections and the Oregon Youth Authority de-  
15 termine that, because of the person's age, immaturity, mental or emotional  
16 condition or risk of physical harm to the person, the person should not be  
17 incarcerated initially in a Department of Corrections institution; or

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

20 (b) A person placed in the custody of the Oregon Youth Authority under  
21 this subsection who is at least 18 years of age shall be returned to the  
22 physical custody of the Department of Corrections whenever the Director of  
23 the Oregon Youth Authority, after consultation with the Department of  
24 Corrections, determines that the conditions or circumstances that warranted  
25 the transfer of custody under this subsection are no longer present.

26 (c) Notwithstanding ORS 137.320, the sheriff may by agreement with the  
27 Department of Corrections transfer the person described in this subsection  
28 directly to a youth correction facility for physical custody without first de-  
29 livering the person to the Department of Corrections. As part of the agree-  
30 ment with the Department of Corrections, the sheriff may designate the  
31 county juvenile department or the Oregon Youth Authority to conduct the

1 direct transfer described in this paragraph if the sheriff has entered into a  
2 written agreement with the county juvenile department, the Oregon Youth  
3 Authority, or both, to provide the direct transfer.

4 (6)(a) When a person under 18 years of age at the time of committing the  
5 offense and under 20 years of age at the time of sentencing is committed to  
6 the legal and physical custody of the Department of Corrections or the su-  
7 pervisory authority of a county following waiver under ORS 419C.349,  
8 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or  
9 (7)(b) or 137.712, the Department of Corrections or the supervisory authority  
10 of a county shall transfer the person to the physical custody of the Oregon  
11 Youth Authority for placement as provided in ORS 420.011 (3). The terms and  
12 conditions of the person's incarceration and custody are governed by ORS  
13 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by  
14 agreement with the Department of Corrections or the supervisory authority  
15 of a county transfer the person described in this subsection directly to a  
16 youth correction facility for physical custody without first delivering the  
17 person to the Department of Corrections or supervisory authority of the  
18 county. As part of the agreement with the Department of Corrections or su-  
19 pervisory authority of the county, the sheriff may designate the county ju-  
20 venile department or the Oregon Youth Authority to conduct the direct  
21 transfer described in this paragraph if the sheriff has entered into a written  
22 agreement with the county juvenile department, the Oregon Youth Author-  
23 ity, or both, to provide the direct transfer.

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

29 *[(7) If the Director of the Oregon Youth Authority concurs in the decision,*  
30 *the Department of Corrections or the supervisory authority of a county shall*  
31 *transfer the physical custody of a person committed to the Department of Cor-*

1 *rections or the supervisory authority of the county under subsection (1) or (2)*  
2 *of this section to the Oregon Youth Authority as provided in ORS 420.011 (2)*  
3 *if:]*

4 *[(a) The person was at least 18 years of age but under 20 years of age at*  
5 *the time of committing the felony for which the person is being sentenced to*  
6 *a term of incarceration;]*

7 *[(b) The person is under 20 years of age at the time of commitment to the*  
8 *Department of Corrections or the supervisory authority of the county;]*

9 *[(c) The person has not been committed previously to the legal and physical*  
10 *custody of the Department of Corrections or the supervisory authority of a*  
11 *county;]*

12 *[(d) The person has not been convicted and sentenced to a term of incar-*  
13 *ceration for the commission of a felony in any other state;]*

14 *[(e) The person will complete the term of incarceration imposed before the*  
15 *person attains 25 years of age;]*

16 *[(f) The person is likely in the foreseeable future to benefit from the*  
17 *rehabilitative and treatment programs administered by the Oregon Youth Au-*  
18 *thority;]*

19 *[(g) The person does not pose a substantial danger to Oregon Youth Au-*  
20 *thority staff or persons in the custody of the Oregon Youth Authority; and]*

21 *[(h) At the time of the proposed transfer, no more than 50 persons are in*  
22 *the physical custody of the Oregon Youth Authority under this subsection.]*

23 **[(8)] (7)** Notwithstanding the provisions of *[subsections]* **subsection**  
24 **(5)(a)(A)** *[or (7)]* of this section, the department or the supervisory authority  
25 of a county may not transfer the physical custody of the person under sub-  
26 section **(5)(a)(A)** *[or (7)]* of this section if the Director of the Oregon Youth  
27 Authority, after consultation with the Department of Corrections or the su-  
28 pervisory authority of a county, determines that, because of the person's age,  
29 mental or emotional condition or risk of physical harm to other persons, the  
30 person should not be incarcerated in a youth correction facility.

31 **[(9)] (8)** Notwithstanding any other provision of this section, under no

1 circumstances may a person under 18 years of age be incarcerated in a De-  
2 partment of Corrections institution.

3 **(9) If a defendant is transferred under subsection (5) of this section,**  
4 **the defendant shall also be transferred after a resentencing on the**  
5 **same charges resulting from an appellate decision or a post-conviction**  
6 **relief proceeding or for any other reason, even if the defendant is 20**  
7 **years of age or older at the time of the resentencing.**

8 **SECTION 3.** ORS 420.011 is amended to read:

9 420.011. (1) Except as provided in subsections (2) and (3) of this section,  
10 admissions to the youth correction facilities are limited to youth offenders  
11 who are at least 12 but less than 19 years of age, found by the juvenile court  
12 to have committed an act that if committed by an adult would constitute  
13 aggravated murder, murder, a felony or a Class A misdemeanor and placed  
14 in the legal custody of the Oregon Youth Authority. A youth offender ad-  
15 mitted to a youth correction facility may not be transferred by administra-  
16 tive process to any penal or correctional institution.

17 (2)(a) In addition to the persons placed in the legal custody of the youth  
18 authority under ORS 419C.478 (1) or 419C.481, and with the concurrence of  
19 the Director of the Oregon Youth Authority or the director's designee, per-  
20 sons who are committed to the Department of Corrections under ORS 137.124  
21 and meet the requirements of ORS 137.124 (5) [*or* (7)] may be temporarily  
22 assigned to a youth correction facility as provided by ORS 137.124 (5) [*or*  
23 (7)]. A person assigned on such a temporary basis remains within the legal  
24 custody of the Department of Corrections and such reassignment is subject  
25 to termination by the Director of the Oregon Youth Authority by referring  
26 the person back to the Department of Corrections as provided in paragraph  
27 (b) of this subsection.

28 (b) After a person is transferred to the physical custody of the youth au-  
29 thority under ORS 137.124 (5) [*or* (7)], the Director of the Oregon Youth  
30 Authority may refer the person back to the Department of Corrections for  
31 physical custody and placement if the director, after consulting with the

1 Department of Corrections, determines that the person is at least 18 years  
2 of age and:

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

5 (B) Is not likely, in the foreseeable future, to benefit from the rehabili-  
6 tation and treatment programs administered by the youth authority and is  
7 appropriate for placement in a Department of Corrections institution.

8 (3) Any person under 18 years of age at the time of committing the crime  
9 and under 20 years of age at the time of sentencing and commitment who,  
10 after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentenc-  
11 ing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to a term  
12 of imprisonment in the custody of the Department of Corrections, and any  
13 person under 16 years of age who after waiver under ORS 419C.349, 419C.352,  
14 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or  
15 137.712 is sentenced to a term of imprisonment in the county jail, shall be  
16 temporarily assigned to a youth correction facility by the Department of  
17 Corrections, or by the sheriff to whose custody the person has been com-  
18 mitted, pursuant to ORS 137.124 (6). The director shall designate the appro-  
19 priate youth correction facility or schools for such assignment. A person  
20 assigned to a youth correction facility under ORS 137.124 (6) and this sub-  
21 section remains within the legal custody of the Department of Corrections  
22 or sheriff to whose custody the person was committed. The assignment of  
23 such a person to the youth correction facility is subject, when the person is  
24 18 years of age or older, to termination by the director by referring the  
25 person back to the Department of Corrections or the sheriff to serve the  
26 balance of the person's sentence. Assignment to a youth correction facility  
27 pursuant to ORS 137.124 (6) and this subsection, if not terminated earlier by  
28 the director, shall terminate upon the person's attaining the age specified in  
29 ORS 420A.010 (5) setting the age limits for which the Oregon Youth Au-  
30 thority may retain legal and physical custody of the person, and the person  
31 shall be referred to the Department of Corrections or the sheriff having legal



1 custody of the person to serve the balance of the person's sentence.

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

9 **SECTION 4. (1) The amendments to ORS 137.071, 137.124 and 420.011**  
10 **by sections 1 to 3 of this 2019 Act become operative on January 1, 2020.**

11 **(2) The Department of Corrections and the Oregon Youth Authority**  
12 **may take any action before the operative date specified in subsection**  
13 **(1) of this section that is necessary to enable the department or au-**  
14 **thority to exercise, on and after the operative date specified in sub-**  
15 **section (1) of this section, all of the duties, functions and powers**  
16 **conferred on the department or authority by the amendments to ORS**  
17 **137.071, 137.124 and 420.011 by sections 1 to 3 of this 2019 Act.**

18 **SECTION 5. The amendments to ORS 137.071, 137.124 and 420.011 by**  
19 **sections 1 to 3 of this 2019 Act apply to sentences imposed on or after**  
20 **January 1, 2020.**

21 **SECTION 6. This 2019 Act takes effect on the 91st day after the date**  
22 **on which the 2019 regular session of the Eightieth Legislative Assem-**  
23 **bly adjourns sine die.**

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