

D R A F T

SUMMARY

Authorizes juvenile offender charged with offense subject to mandatory minimum sentence, who receives mandatory minimum sentence or other sentence of imprisonment, to be eligible for conditional release after serving at least one-half of sentence imposed.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to juvenile offender sentencing; creating new provisions; amending
3 ORS 137.707, 137.712 and 420A.203; prescribing an effective date; and pro-
4 viding for criminal sentence reduction that requires approval by a two-
5 thirds majority.

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

6 **SECTION 1.** ORS 420A.203 is amended to read:

7
8 420A.203. (1)(a) This section and ORS 420A.206 apply only to persons who
9 were under 18 years of age at the time of the commission of the offense for
10 which the persons were sentenced to a term of imprisonment, who committed
11 the offense on or after June 30, 1995, and who were:

12 (A) Sentenced to a term of imprisonment of at least 24 months following
13 waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370; or

14 (B) Sentenced to a term of imprisonment of at least 24 months under ORS
15 137.707 [*(5)(b)(A) or (7)(b)*] **or 137.712.**

16 (b) When a person described in paragraph (a) of this subsection has served
17 one-half of the sentence imposed, the sentencing court shall determine what
18 further commitment or disposition is appropriate as provided in this section.

19 As used in this subsection and subsection (2) of this section, “sentence im-

1 posed” means the total period of mandatory incarceration imposed for all
2 convictions resulting from a single prosecution or criminal proceeding not
3 including any reduction in the sentence under ORS 421.121 or any other
4 statute.

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

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

17 (c) The court shall notify the following of the time and place of the
18 hearing:

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

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

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

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

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

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

31 **(e) Notwithstanding paragraph (b) of this subsection, the court may**

1 **delay the hearing for good cause.**

2 (3) In a hearing under this section:

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

4 (b) The person has the right to appear with counsel. If the person requests
5 that the court appoint counsel and the court determines that the person is
6 financially eligible for appointed counsel at state expense, the court shall
7 order that counsel be appointed.

8 (c) The district attorney represents the state.

9 (d) The court shall determine admissibility of evidence as if the hearing
10 were a sentencing proceeding.

11 (e) The court may consider, when relevant, written reports of the Oregon
12 Youth Authority, the Department of Corrections and qualified experts, in
13 addition to the testimony of witnesses. Within a reasonable time before the
14 hearing, as determined by the court, the person must be given the opportu-
15 nity to examine all reports and other documents concerning the person that
16 the state, the Oregon Youth Authority or the Department of Corrections in-
17 tends to submit for consideration by the court at the hearing.

18 (f) Except as otherwise provided by law or by order of the court based
19 on good cause, the person must be given access to the records maintained in
20 the person's case by the Oregon Youth Authority and the Department of
21 Corrections.

22 (g) The person may examine all of the witnesses called by the state, may
23 subpoena and call witnesses to testify on the person's behalf and may present
24 evidence and argument. The court may permit witnesses to appear by tele-
25 phone or other two-way electronic communication device.

26 (h) The hearing must be recorded.

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

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

30 (k) The person has the burden of proving by clear and convincing evi-
31 dence that the person has been rehabilitated and reformed, and if condi-

1 tionally released, the person would not be a threat to the safety of the
2 victim, the victim's family or the community and that the person would
3 comply with the release conditions.

4 (4)(a) At the conclusion of the hearing and after considering and making
5 findings regarding each of the factors in paragraph (b) of this subsection, the
6 court shall order one of the following dispositions:

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

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

13 (i) Has been rehabilitated and reformed;

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

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

17 (b) In making the determination under this section, the court shall con-
18 sider:

19 (A) The experiences and character of the person before and after com-
20 mitment to the Oregon Youth Authority or the Department of Corrections;

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

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

23 (D) The gravity of the loss, damage or injury caused or attempted, during
24 or as part of the criminal act for which the person was convicted and sen-
25 tenced;

26 (E) The manner in which the person committed the criminal act for which
27 the person was convicted and sentenced;

28 (F) The person's efforts, participation and progress in rehabilitation pro-
29 grams since the person's conviction;

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

31 (H) Whether the person demonstrates accountability and responsibility for

1 past and future conduct;

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

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

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

7 (L) The recommendations of the district attorney, the Oregon Youth Au-
8 thority and the Department of Corrections; and

9 (M) Any other relevant factors or circumstances raised by the state, the
10 Oregon Youth Authority, the Department of Corrections or the person.

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

15 (6) The person or the state may appeal an order entered under this sec-
16 tion. On appeal, the appellate court's review is limited to claims that:

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

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

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

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

23 137.707. (1)(a) Notwithstanding any other provision of law, when a person
24 charged with aggravated murder, as defined in ORS 163.095, or an offense
25 listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the
26 time the offense is committed, and the offense is committed on or after April
27 1, 1995, or when a person charged with an offense listed in subsection (4)(b)
28 of this section is 15, 16 or 17 years of age at the time the offense is com-
29 mitted, and the offense is committed on or after October 4, 1997, or when a
30 person charged with the offense described in subsection (4)(c) of this section
31 is 15, 16 or 17 years of age at the time the offense is committed and the of-

1 fense is committed on or after January 1, 2008, the person shall be prosecuted
2 as an adult in criminal court.

3 (b) A district attorney, the Attorney General or a juvenile department
4 counselor may not file in juvenile court a petition alleging that a person has
5 committed an act that, if committed by an adult, would constitute aggravated
6 murder or an offense listed in subsection (4) of this section if the person was
7 15, 16 or 17 years of age at the time the act was committed.

8 (2) When a person charged under this section is convicted of an offense
9 listed in subsection (4) of this section, the court shall impose at least the
10 presumptive term of imprisonment provided for the offense in subsection (4)
11 of this section. The court may impose a greater presumptive term if other-
12 wise permitted by law, but may not impose a lesser term. The person is not,
13 during the service of the term of imprisonment, eligible for release on post-
14 prison supervision or any form of temporary leave from custody. The person
15 is not eligible for any reduction in, or based on, the minimum sentence for
16 any reason under ORS 421.121 or any other provision of law. **The person is**
17 **eligible for a hearing and conditional release under ORS 420A.203 and**
18 **420A.206.** ORS 138.052, 163.105 and 163.150 apply to sentencing a person
19 prosecuted under this section and convicted of aggravated murder under ORS
20 163.095 except that a person who was under 18 years of age at the time the
21 offense was committed is not subject to a sentence of death.

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

24 (4) The offenses to which this section applies and the presumptive sen-
25 tences are:

-
- 26
- 27 (a)(A) Murder, as defined in
 - 28 ORS 163.115.....300 months
 - 29 (B) Attempt or conspiracy
 - 30 to commit aggravated
 - 31 murder, as defined

- 1 in ORS 163.095.....120 months
- 2 (C) Attempt or conspiracy
- 3 to commit murder, as
- 4 defined in ORS 163.115.90 months
- 5 (D) Manslaughter in the
- 6 first degree, as defined
- 7 in ORS 163.118.....120 months
- 8 (E) Manslaughter in the
- 9 second degree, as defined
- 10 in ORS 163.125.....75 months
- 11 (F) Assault in the first
- 12 degree, as defined
- 13 in ORS 163.185.....90 months
- 14 (G) Assault in the second
- 15 degree, as defined
- 16 in ORS 163.175.....70 months
- 17 (H) Kidnapping in the first
- 18 degree, as defined in
- 19 ORS 163.235.....90 months
- 20 (I) Kidnapping in the second
- 21 degree, as defined in
- 22 ORS 163.225.....70 months
- 23 (J) Rape in the first degree,
- 24 as defined in ORS 163.375....100 months
- 25 (K) Rape in the second
- 26 degree, as defined in
- 27 ORS 163.365.....75 months
- 28 (L) Sodomy in the first
- 29 degree, as defined in
- 30 ORS 163.405.....100 months
- 31 (M) Sodomy in the second

- 1 degree, as defined in
- 2 ORS 163.395.....75 months
- 3 (N) Unlawful sexual
- 4 penetration in the first
- 5 degree, as defined
- 6 in ORS 163.411.....100 months
- 7 (O) Unlawful sexual
- 8 penetration in the
- 9 second degree, as
- 10 defined in ORS 163.408.75 months
- 11 (P) Sexual abuse in the first
- 12 degree, as defined in
- 13 ORS 163.427.....75 months
- 14 (Q) Robbery in the first
- 15 degree, as defined in
- 16 ORS 164.415.....90 months
- 17 (R) Robbery in the second
- 18 degree, as defined in
- 19 ORS 164.405.....70 months
- 20 (b)(A) Arson in the first degree,
- 21 as defined in
- 22 ORS 164.325, when
- 23 the offense represented
- 24 a threat of serious
- 25 physical injury.90 months
- 26 (B) Using a child in a display
- 27 of sexually explicit
- 28 conduct, as defined in
- 29 ORS 163.670.....70 months
- 30 (C) Compelling prostitution,
- 31 as defined in ORS 167.017

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

5

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

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

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

11 (A) But constitutes an offense for which waiver is authorized under ORS
12 419C.349, the court, upon motion of the district attorney, shall hold a hearing
13 to determine whether to retain jurisdiction or to transfer the case to juvenile
14 court for disposition. In determining whether to retain jurisdiction, the court
15 shall consider the criteria for waiver in ORS 419C.349. If the court retains
16 jurisdiction, the court shall sentence the person as an adult under sentencing
17 guidelines. If the court does not retain jurisdiction, the court shall:

- 18 (i) Order that a presentence report be prepared;
- 19 (ii) Set forth in a memorandum any observations and recommendations
20 that the court deems appropriate; and
- 21 (iii) Enter an order transferring the case to the juvenile court for dispo-
22 sition under ORS 419C.067 and 419C.411.

23 (B) And is not an offense for which waiver is authorized under ORS
24 419C.349, the court may not sentence the person. The court shall:

- 25 (i) Order that a presentence report be prepared;
- 26 (ii) Set forth in a memorandum any observations and recommendations
27 that the court deems appropriate; and
- 28 (iii) Enter an order transferring the case to the juvenile court for dispo-
29 sition under ORS 419C.067 and 419C.411.

30 (6) When a person is charged under this section, other offenses based on
31 the same act or transaction shall be charged as separate counts in the same

1 accusatory instrument and consolidated for trial, whether or not the other
 2 offenses are aggravated murder or offenses listed in subsection (4) of this
 3 section. If it appears, upon motion, that the state or the person charged is
 4 prejudiced by the joinder and consolidation of offenses, the court may order
 5 an election or separate trials of counts or provide whatever other relief jus-
 6 tice requires.

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

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

- 23 (A) Order that a presentence report be prepared;
- 24 (B) Set forth in a memorandum any observations and recommendations
 25 that the court deems appropriate; and
- 26 (C) Enter an order transferring the case to the juvenile court for dispo-
 27 sition under ORS 419C.067 and 419C.411.

28 **SECTION 3.** ORS 137.712 is amended to read:

29 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person
 30 is convicted of manslaughter in the second degree as defined in ORS 163.125,
 31 assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in

1 the second degree as defined in ORS 163.225, rape in the second degree as
2 defined in ORS 163.365, sodomy in the second degree as defined in ORS
3 163.395, unlawful sexual penetration in the second degree as defined in ORS
4 163.408, sexual abuse in the first degree as defined in ORS 163.427 (1)(a)(A)
5 or robbery in the second degree as defined in ORS 164.405, the court may
6 impose a sentence according to the rules of the Oregon Criminal Justice
7 Commission that is less than the minimum sentence that otherwise may be
8 required by ORS 137.700 or 137.707 if the court, on the record at sentencing,
9 makes the findings set forth in subsection (2) of this section and finds that
10 a substantial and compelling reason under the rules of the Oregon Criminal
11 Justice Commission justifies the lesser sentence. When the court imposes a
12 sentence under this subsection, the person is eligible for a reduction in the
13 sentence as provided in ORS 421.121 and any other statute **and is eligible**
14 **for a hearing and conditional release under ORS 420A.203 and**
15 **420A.206.**

16 (b) In order to make a dispositional departure under this section, the
17 court must make the following additional findings on the record:

18 (A) There exists a substantial and compelling reason not relied upon in
19 paragraph (a) of this subsection;

20 (B) A sentence of probation will be more effective than a prison term in
21 reducing the risk of offender recidivism; and

22 (C) A sentence of probation will better serve to protect society.

23 (2) A conviction is subject to subsection (1) of this section only if the
24 sentencing court finds on the record by a preponderance of the evidence:

25 (a) If the conviction is for manslaughter in the second degree:

26 (A) That the victim was a dependent person as defined in ORS 163.205
27 who was at least 18 years of age;

28 (B) That the defendant is the mother or father of the victim;

29 (C) That the death of the victim was the result of an injury or illness that
30 was not caused by the defendant;

31 (D) That the defendant treated the injury or illness solely by spiritual

1 treatment in accordance with the religious beliefs or practices of the de-
2 fendant and based on a good faith belief that spiritual treatment would bring
3 about the victim's recovery from the injury or illness;

4 (E) That no other person previously under the defendant's care has died
5 or sustained significant physical injury as a result of or despite the use of
6 spiritual treatment, regardless of whether the spiritual treatment was used
7 alone or in conjunction with medical care; and

8 (F) That the defendant does not have a previous conviction for a crime
9 listed in subsection (4) of this section or for criminal mistreatment in the
10 second degree.

11 (b) If the conviction is for assault in the second degree:

12 (A) That the victim was not physically injured by means of a deadly
13 weapon;

14 (B) That the victim did not suffer a significant physical injury; and

15 (C) That the defendant does not have a previous conviction for a crime
16 listed in subsection (4) of this section.

17 (c) If the conviction is for kidnapping in the second degree:

18 (A) That the victim was at least 12 years of age at the time the crime
19 was committed; and

20 (B) That the defendant does not have a previous conviction for a crime
21 listed in subsection (4) of this section.

22 (d) If the conviction is for robbery in the second degree:

23 (A) That the victim did not suffer a significant physical injury;

24 (B) That, if the defendant represented by words or conduct that the de-
25 fendant was armed with a dangerous weapon, the representation did not
26 reasonably put the victim in fear of imminent significant physical injury;

27 (C) That, if the defendant represented by words or conduct that the de-
28 fendant was armed with a deadly weapon, the representation did not rea-
29 sonably put the victim in fear of imminent physical injury; and

30 (D) That the defendant does not have a previous conviction for a crime
31 listed in subsection (4) of this section.

1 (e) If the conviction is for rape in the second degree, sodomy in the second
2 degree or sexual abuse in the first degree:

3 (A) That the victim was at least 12 years of age, but under 14 years of
4 age, at the time of the offense;

5 (B) That the defendant does not have a prior conviction for a crime listed
6 in subsection (4) of this section;

7 (C) That the defendant has not been previously found to be within the
8 jurisdiction of a juvenile court for an act that would have been a felony
9 sexual offense if the act had been committed by an adult;

10 (D) That the defendant was no more than five years older than the victim
11 at the time of the offense;

12 (E) That the offense did not involve sexual contact with any minor other
13 than the victim; and

14 (F) That the victim's lack of consent was due solely to incapacity to
15 consent by reason of being under 18 years of age at the time of the offense.

16 (f) If the conviction is for unlawful sexual penetration in the second de-
17 gree:

18 (A) That the victim was 12 years of age or older at the time of the offense;

19 (B) That the defendant does not have a prior conviction for a crime listed
20 in subsection (4) of this section;

21 (C) That the defendant has not been previously found to be within the
22 jurisdiction of a juvenile court for an act that would have been a felony
23 sexual offense if the act had been committed by an adult;

24 (D) That the defendant was no more than five years older than the victim
25 at the time of the offense;

26 (E) That the offense did not involve sexual contact with any minor other
27 than the victim;

28 (F) That the victim's lack of consent was due solely to incapacity to
29 consent by reason of being under 18 years of age at the time of the offense;
30 and

31 (G) That the object used to commit the unlawful sexual penetration was

1 the hand or any part thereof of the defendant.

2 (3) In making the findings required by subsections (1) and (2) of this sec-
3 tion, the court may consider any evidence presented at trial and may receive
4 and consider any additional relevant information offered by either party at
5 sentencing.

6 (4) The crimes to which subsection (2)(a)(F), (b)(C), (c)(B), (d)(D), (e)(B)
7 and (f)(B) of this section refer are:

8 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);

9 (b) Escape in the first degree, as defined in ORS 162.165;

10 (c) Aggravated murder, as defined in ORS 163.095;

11 (d) Criminally negligent homicide, as defined in ORS 163.145;

12 (e) Assault in the third degree, as defined in ORS 163.165;

13 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205

14 (1)(b)(A);

15 (g) Rape in the third degree, as defined in ORS 163.355;

16 (h) Sodomy in the third degree, as defined in ORS 163.385;

17 (i) Sexual abuse in the second degree, as defined in ORS 163.425;

18 (j) Stalking, as defined in ORS 163.732;

19 (k) Burglary in the first degree, as defined in ORS 164.225, when it is
20 classified as a person felony under the rules of the Oregon Criminal Justice
21 Commission;

22 (L) Arson in the first degree, as defined in ORS 164.325;

23 (m) Robbery in the third degree, as defined in ORS 164.395;

24 (n) Intimidation in the first degree, as defined in ORS 166.165;

25 (o) Promoting prostitution, as defined in ORS 167.012; and

26 (p) An attempt or solicitation to commit any Class A or B felony listed
27 in paragraphs (a) to (L) of this subsection.

28 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation
29 under this section violates a condition of probation by committing a new
30 crime, the court shall revoke the probation and impose the presumptive
31 sentence of imprisonment under the rules of the Oregon Criminal Justice

1 Commission.

2 (6) As used in this section:

3 (a) "Conviction" includes, but is not limited to:

4 (A) A juvenile court adjudication finding a person within the court's ju-
5 risdiction under ORS 419C.005, if the person was at least 15 years of age at
6 the time the person committed the offense that brought the person within the
7 jurisdiction of the juvenile court. "Conviction" does not include a juvenile
8 court adjudication described in this subparagraph if the person successfully
9 asserted the defense set forth in ORS 419C.522.

10 (B) A conviction in another jurisdiction for a crime that if committed in
11 this state would constitute a crime listed in subsection (4) of this section.

12 (b) "Previous conviction" means a conviction that was entered prior to
13 imposing sentence on the current crime provided that the prior conviction
14 is based on a crime committed in a separate criminal episode. "Previous
15 conviction" does not include a conviction for a Class C felony, including an
16 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless
17 the conviction was entered within the 10-year period immediately preceding
18 the date on which the current crime was committed.

19 (c) "Significant physical injury" means a physical injury that:

20 (A) Creates a risk of death that is not a remote risk;

21 (B) Causes a serious and temporary disfigurement;

22 (C) Causes a protracted disfigurement; or

23 (D) Causes a prolonged impairment of health or the function of any bodily
24 organ.

25 **SECTION 4. (1) The amendments to ORS 137.707, 137.712 and**
26 **420A.203 by sections 1 to 3 of this 2019 Act become operative on Janu-**
27 **ary 1, 2020.**

28 **(2) The Oregon Youth Authority may take any action before the**
29 **operative date specified in subsection (1) of this section that is neces-**
30 **sary to enable the authority to exercise, on and after the operative**
31 **date specified in subsection (1) of this section, all of the duties, func-**

1 tions and powers conferred on the authority by the amendments to
2 ORS 137.707, 137.712 and 420A.203 by sections 1 to 3 of this 2019 Act.

3 SECTION 5. The amendments to ORS 137.707, 137.712 and 420A.203
4 by sections 1 to 3 of this 2019 Act apply to sentences imposed on or
5 after January 1, 2020.

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

9
