

# D R A F T

## SUMMARY

Establishes process of earned review for certain young offenders serving terms of imprisonment in custody of Oregon Youth Authority. Specifies eligibility benchmarks. Directs authority to establish Public Safety Panel to consider circumstances of offender and make recommendation to court. Authorizes court to conditionally release young offender upon making certain findings.

Refers Act to people for their approval or rejection at next regular general election.

## A BILL FOR AN ACT

1  
2 Relating to earned review; creating new provisions; amending ORS 137.707,  
3 137.712, 420A.203 and 420A.206; providing for criminal sentence reduction  
4 that requires approval by a two-thirds majority; and providing that this  
5 Act shall be referred to the people for their approval or rejection.

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

7 **SECTION 1. As used in sections 1 to 4 of this 2019 Act:**

8 (1) **“Sentence imposed” means the total period of mandatory incar-**  
9 **ceration imposed for all convictions resulting from a single prose-**  
10 **cution or criminal proceeding, not including any reduction in the**  
11 **sentence under ORS 421.121 or any other statute.**

12 (2) **“Young offender” means a person sentenced to the legal custody**  
13 **of the Department of Corrections and serving a sentence of**  
14 **imprisonment in the physical custody of the Oregon Youth Authority**  
15 **for any of the following offenses:**

16 (a) **Assault in the second degree under ORS 163.175.**

17 (b) **Kidnapping in the second degree under ORS 163.225.**

1 (c) Sexual abuse in the first degree under ORS 163.427 involving one  
2 victim and one criminal episode.

3 (d) Robbery in the first degree under ORS 164.415 if no physical in-  
4 jury occurred.

5 (e) Robbery in the second degree under ORS 164.405.

6 **SECTION 2.** (1) When a young offender has completed two-thirds  
7 of the sentence imposed, the Oregon Youth Authority shall determine  
8 whether the young offender has attained the eligibility benchmarks for  
9 earned review as provided in this section.

10 (2) In order to attain the eligibility benchmarks for earned review,  
11 the young offender must have:

12 (a) Obtained a two-year degree, vocational educational certificate  
13 or other equivalent education achievement appropriate to the young  
14 offender's individual level of ability and capacity, as specified by the  
15 authority;

16 (b) Completed a treatment program as specified by the authority;

17 (c) Participated in a mentoring program; and

18 (d) Engaged in a restorative justice program with the following  
19 components:

20 (A) A meeting with the victim of the offense, if the victim consents;  
21 and

22 (B) A meeting with crime victims and community members con-  
23 cerning the impact of crime on victims and the community.

24 (3) If the authority determines that a young offender has attained  
25 the eligibility benchmarks for earned review, the authority shall:

26 (a) Ensure that a psychological examination of the young offender  
27 is conducted and a report of the examination is prepared;

28 (b) Prepare a report detailing the young offender's attainment of  
29 each eligibility benchmark; and

30 (c) Collect all records concerning the offense and the behavior of  
31 the young offender while in the custody of the authority.

1 (4) In order to proceed with earned review, a young offender shall:

2 (a) Participate in the psychological examination described in sub-  
3 section (3)(a) of this section;

4 (b) Authorize the release to the authority of the records described  
5 in subsection (3)(c) of this section; and

6 (c) Authorize the release to the Public Safety Panel described in  
7 section 3 of this 2019 Act and the sentencing court of all records and  
8 reports described in subsection (3) of this section.

9 (5) The authority shall submit all reports and records described in  
10 subsection (3) of this section to the Public Safety Panel described in  
11 section 3 of this 2019 Act.

12 (6) The authority shall adopt rules to carry out the provisions of  
13 this section, including specifying the education achievements and  
14 treatment programs that qualify as eligibility benchmarks under sub-  
15 section (2) of this section.

16 **SECTION 3.** (1)(a) The Oregon Youth Authority shall establish a  
17 Public Safety Panel based in Marion County consisting of four mem-  
18 bers. The purpose of the panel is to conduct an earned review meeting  
19 to determine whether to recommend that the sentencing court grant  
20 conditional release to a young offender.

21 (b) The authority shall appoint two members to the panel as fol-  
22 lows:

23 (A) One member who is a retired district attorney.

24 (B) One member who is a defense attorney.

25 (c) The Chief Justice of the Supreme Court shall appoint two  
26 members to the panel as follows:

27 (A) One member who is a private citizen.

28 (B) One member who is a retired judge.

29 (2) The authority shall:

30 (a) Schedule an earned review meeting between the panel and the  
31 young offender within 30 days of providing the reports and records to

1 **the panel under section 2 of this 2019 Act.**

2 **(b) Provide notice of earned review meetings to the members of the**  
3 **panel.**

4 **(c) Provide meeting space and administrative support for the panel.**

5 **(3) At an earned review meeting:**

6 **(a) A representative of the authority shall be present.**

7 **(b) The young offender shall be present.**

8 **(c) The district attorney and the victim of the offense may appear**  
9 **and be heard.**

10 **(4)(a) Prior to the earned review meeting, the panel shall review all**  
11 **reports and records received from the authority concerning the young**  
12 **offender.**

13 **(b) At the meeting, the panel may ask questions of the young**  
14 **offender and the young offender may make a statement.**

15 **(c) After considering all records and reports, the circumstances of**  
16 **the offense and the young offender and any additional information or**  
17 **statements provided at the meeting, each panel member shall deter-**  
18 **mine if, by clear and convincing evidence, the young offender has**  
19 **demonstrated rehabilitation and a contrite heart.**

20 **(5)(a) If at least at three of the four members of the panel make the**  
21 **determination described in subsection (4) of this section, the panel**  
22 **shall prepare a report containing the panel's findings and a recom-**  
23 **mendation that the sentencing court conditionally release the young**  
24 **offender.**

25 **(b) The panel shall forward to the sentencing court the report de-**  
26 **scribed in paragraph (a) of this subsection along with copies of all re-**  
27 **ports and records concerning the young offender in the panel's**  
28 **possession.**

29 **SECTION 4. (1)(a) Upon receiving a recommendation for conditional**  
30 **release from the Public Safety Panel described in section 3 of this 2019**  
31 **Act, the court shall hold a hearing.**

1 (b) The court shall ensure that the young offender, the Oregon  
2 Youth Authority and the district attorney have notice of the hearing.  
3 The district attorney shall provide notice of the hearing to the victim  
4 of the offense.

5 (c) The court may delay the hearing for good cause.

6 (2) At a hearing under this section:

7 (a) A representative of the Oregon Youth Authority shall be pres-  
8 ent.

9 (b) The young offender shall be present.

10 (c) The district attorney and the victim of the offense may appear  
11 and be heard.

12 (3) At the hearing, the court shall consider:

13 (a) Any records or reports concerning the young offender provided  
14 by the Public Safety Panel under section 3 of this 2019 Act.

15 (b) Any statements made by the young offender, victim and district  
16 attorney.

17 (c) Any other information the court considers relevant to making  
18 a determination concerning conditional release.

19 (4)(a) At the conclusion of the hearing, if the court finds by clear  
20 and convincing evidence that conditional release of the young offender  
21 is in the interest of justice and the community, the court shall order  
22 that the young offender be conditionally released in accordance with  
23 ORS 420A.206 at such time as the court may order.

24 (b) If the court does not make the finding in paragraph (a) of this  
25 subsection, the court shall order that the young offender serve the  
26 entire remainder of the sentence of imprisonment imposed, taking into  
27 account any reduction in the sentence under ORS 421.121 or any other  
28 statute, with the person's physical custody determined under ORS  
29 137.124, 420.011 and 420A.200.

30 **SECTION 5.** ORS 137.707 is amended to read:

31 137.707. (1)(a) Notwithstanding any other provision of law, when a person

1 charged with aggravated murder, as defined in ORS 163.095, or an offense  
2 listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the  
3 time the offense is committed, and the offense is committed on or after April  
4 1, 1995, or when a person charged with an offense listed in subsection (4)(b)  
5 of this section is 15, 16 or 17 years of age at the time the offense is com-  
6 mitted, and the offense is committed on or after October 4, 1997, or when a  
7 person charged with the offense described in subsection (4)(c) of this section  
8 is 15, 16 or 17 years of age at the time the offense is committed and the of-  
9 fense is committed on or after January 1, 2008, the person shall be prosecuted  
10 as an adult in criminal court.

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

16 (2) When a person charged under this section is convicted of an offense  
17 listed in subsection (4) of this section, the court shall impose at least the  
18 presumptive term of imprisonment provided for the offense in subsection (4)  
19 of this section. The court may impose a greater presumptive term if other-  
20 wise permitted by law, but may not impose a lesser term. The person is not,  
21 during the service of the term of imprisonment, eligible for release on post-  
22 prison supervision or any form of temporary leave from custody. The person  
23 is not eligible for any reduction in[, or based on,] the minimum sentence for  
24 any reason under ORS 421.121 or any other provision of law. **The person is**  
25 **eligible for earned review under sections 1 to 4 of this 2019 Act and**  
26 **conditional release under ORS 420A.206.** ORS 138.052, 163.105 and 163.150  
27 apply to sentencing a person prosecuted under this section and convicted of  
28 aggravated murder under ORS 163.095 except that a person who was under  
29 18 years of age at the time the offense was committed is not subject to a  
30 sentence of death.

31 (3) The court shall commit the person to the legal and physical custody

1 of the Department of Corrections.

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

4 \_\_\_\_\_

- 5 (a)(A) Murder, as defined in  
6 ORS 163.115.....300 months
- 7 (B) Attempt or conspiracy  
8 to commit aggravated  
9 murder, as defined  
10 in ORS 163.095.....120 months
- 11 (C) Attempt or conspiracy  
12 to commit murder, as  
13 defined in ORS 163.115. ....90 months
- 14 (D) Manslaughter in the  
15 first degree, as defined  
16 in ORS 163.118.....120 months
- 17 (E) Manslaughter in the  
18 second degree, as defined  
19 in ORS 163.125.....75 months
- 20 (F) Assault in the first  
21 degree, as defined  
22 in ORS 163.185.....90 months
- 23 (G) Assault in the second  
24 degree, as defined  
25 in ORS 163.175.....70 months
- 26 (H) Kidnapping in the first  
27 degree, as defined in  
28 ORS 163.235.....90 months
- 29 (I) Kidnapping in the second  
30 degree, as defined in  
31 ORS 163.225.....70 months

- 1 (J) Rape in the first degree,
- 2 as defined in ORS 163.375....100 months
- 3 (K) Rape in the second
- 4 degree, as defined in
- 5 ORS 163.365.....75 months
- 6 (L) Sodomy in the first
- 7 degree, as defined in
- 8 ORS 163.405.....100 months
- 9 (M) Sodomy in the second
- 10 degree, as defined in
- 11 ORS 163.395.....75 months
- 12 (N) Unlawful sexual
- 13 penetration in the first
- 14 degree, as defined
- 15 in ORS 163.411.....100 months
- 16 (O) Unlawful sexual
- 17 penetration in the
- 18 second degree, as
- 19 defined in ORS 163.408. ....75 months
- 20 (P) Sexual abuse in the first
- 21 degree, as defined in
- 22 ORS 163.427.....75 months
- 23 (Q) Robbery in the first
- 24 degree, as defined in
- 25 ORS 164.415.....90 months
- 26 (R) Robbery in the second
- 27 degree, as defined in
- 28 ORS 164.405.....70 months
- 29 (b)(A) Arson in the first degree,
- 30 as defined in
- 31 ORS 164.325, when



- 1 the offense represented
- 2 a threat of serious
- 3 physical injury. ....90 months
- 4 (B) Using a child in a display
- 5 of sexually explicit
- 6 conduct, as defined in
- 7 ORS 163.670. ....70 months
- 8 (C) Compelling prostitution,
- 9 as defined in ORS 167.017
- 10 (1)(a), (b) or (d).....70 months
- 11 (c) Aggravated vehicular
- 12 homicide, as defined in
- 13 ORS 163.149. ....240 months

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

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

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

20 (A) But constitutes an offense for which waiver is authorized under ORS  
21 419C.349, the court, upon motion of the district attorney, shall hold a hearing  
22 to determine whether to retain jurisdiction or to transfer the case to juvenile  
23 court for disposition. In determining whether to retain jurisdiction, the court  
24 shall consider the criteria for waiver in ORS 419C.349. If the court retains  
25 jurisdiction, the court shall sentence the person as an adult under sentencing  
26 guidelines. If the court does not retain jurisdiction, the court shall:

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

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

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

1 (B) And is not an offense for which waiver is authorized under ORS  
2 419C.349, the court may not sentence the person. The court shall:

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

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

6 (iii) Enter an order transferring the case to the juvenile court for dispo-  
7 sition under ORS 419C.067 and 419C.411.

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

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

22 (b) If a person charged and tried as provided in subsection (6) of this  
23 section is not found guilty of aggravated murder or an offense listed in  
24 subsection (4) of this section, but is found guilty of one of the other charges  
25 that constitutes an offense for which waiver is authorized under ORS  
26 419C.349, the court, upon motion of the district attorney, shall hold a hearing  
27 to determine whether to retain jurisdiction or to transfer the case to juvenile  
28 court for disposition. In determining whether to retain jurisdiction, the court  
29 shall consider the criteria for waiver in ORS 419C.349. If the court retains  
30 jurisdiction, the court shall sentence the person as an adult under sentencing  
31 guidelines. If the court does not retain jurisdiction, the court shall:

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

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

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

6 **SECTION 6.** ORS 137.712 is amended to read:

7 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person  
8 is convicted of manslaughter in the second degree as defined in ORS 163.125,  
9 assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in  
10 the second degree as defined in ORS 163.225, rape in the second degree as  
11 defined in ORS 163.365, sodomy in the second degree as defined in ORS  
12 163.395, unlawful sexual penetration in the second degree as defined in ORS  
13 163.408, sexual abuse in the first degree as defined in ORS 163.427 (1)(a)(A)  
14 or robbery in the second degree as defined in ORS 164.405, the court may  
15 impose a sentence according to the rules of the Oregon Criminal Justice  
16 Commission that is less than the minimum sentence that otherwise may be  
17 required by ORS 137.700 or 137.707 if the court, on the record at sentencing,  
18 makes the findings set forth in subsection (2) of this section and finds that  
19 a substantial and compelling reason under the rules of the Oregon Criminal  
20 Justice Commission justifies the lesser sentence. When the court imposes a  
21 sentence under this subsection, the person is eligible for a reduction in the  
22 sentence as provided in ORS 421.121 and any other statute **and is eligible**  
23 **for earned review and under sections 1 to 4 of this 2019 Act and con-**  
24 **ditional release under ORS 420A.206.**

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

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

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

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

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

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

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

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

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

9 (D) That the defendant treated the injury or illness solely by spiritual  
10 treatment in accordance with the religious beliefs or practices of the de-  
11 fendant and based on a good faith belief that spiritual treatment would bring  
12 about the victim's recovery from the injury or illness;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (C) That the defendant has not been previously found to be within the  
31 jurisdiction of a juvenile court for an act that would have been a felony

1 sexual offense if the act had been committed by an adult;

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

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

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

9 (G) That the object used to commit the unlawful sexual penetration was  
10 the hand or any part thereof of the defendant.

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

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

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

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

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

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

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

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

23 (1)(b)(A);

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

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

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

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

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

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

- 1 (m) Robbery in the third degree, as defined in ORS 164.395;
- 2 (n) Intimidation in the first degree, as defined in ORS 166.165;
- 3 (o) Promoting prostitution, as defined in ORS 167.012; and
- 4 (p) An attempt or solicitation to commit any Class A or B felony listed
- 5 in paragraphs (a) to (L) of this subsection.

6 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation  
7 under this section violates a condition of probation by committing a new  
8 crime, the court shall revoke the probation and impose the presumptive  
9 sentence of imprisonment under the rules of the Oregon Criminal Justice  
10 Commission.

11 (6) As used in this section:

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

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

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

21 (b) "Previous conviction" means a conviction that was entered prior to  
22 imposing sentence on the current crime provided that the prior conviction  
23 is based on a crime committed in a separate criminal episode. "Previous  
24 conviction" does not include a conviction for a Class C felony, including an  
25 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless  
26 the conviction was entered within the 10-year period immediately preceding  
27 the date on which the current crime was committed.

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

- 29 (A) Creates a risk of death that is not a remote risk;
- 30 (B) Causes a serious and temporary disfigurement;
- 31 (C) Causes a protracted disfigurement; or

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

3 **SECTION 7.** ORS 420A.203 is amended to read:

4 420A.203. (1)(a) This section [*and ORS 420A.206 apply*] **applies** only to  
5 persons who were under 18 years of age at the time of the commission of the  
6 offense for which the persons were sentenced to a term of imprisonment, who  
7 committed the offense on or after June 30, 1995, and who were:

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

10 (B) Sentenced to a term of imprisonment of at least 24 months under ORS  
11 137.707 (5)(b)(A) or (7)(b).

12 (b) When a person described in paragraph (a) of this subsection has served  
13 one-half of the sentence imposed, the sentencing court shall determine what  
14 further commitment or disposition is appropriate as provided in this section.  
15 As used in this subsection and subsection (2) of this section, “sentence im-  
16 posed” means the total period of mandatory incarceration imposed for all  
17 convictions resulting from a single prosecution or criminal proceeding not  
18 including any reduction in the sentence under ORS 421.121 or any other  
19 statute.

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

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



1 (c) The court shall notify the following of the time and place of the  
2 hearing:

3 (A) The person and the person's parents;

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

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

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

9 (A) The victim and the victim's parents or legal guardian; and

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

13 (3) In a hearing under this section:

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

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

19 (c) The district attorney represents the state.

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

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

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

1 Corrections.

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

6 (h) The hearing must be recorded.

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

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

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

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

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

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

24 (i) Has been rehabilitated and reformed;

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

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

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

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

- 1 (B) The person's juvenile and criminal records;
- 2 (C) The person's mental, emotional and physical health;
- 3 (D) The gravity of the loss, damage or injury caused or attempted, during  
4 or as part of the criminal act for which the person was convicted and sen-  
5 tenced;
- 6 (E) The manner in which the person committed the criminal act for which  
7 the person was convicted and sentenced;
- 8 (F) The person's efforts, participation and progress in rehabilitation pro-  
9 grams since the person's conviction;
- 10 (G) The results of any mental health or substance abuse treatment;
- 11 (H) Whether the person demonstrates accountability and responsibility for  
12 past and future conduct;
- 13 (I) Whether the person has made and will continue to make restitution  
14 to the victim and the community;
- 15 (J) Whether the person will comply with and benefit from all conditions  
16 that will be imposed if the person is conditionally released;
- 17 (K) The safety of the victim, the victim's family and the community;
- 18 (L) The recommendations of the district attorney, the Oregon Youth Au-  
19 thority and the Department of Corrections; and
- 20 (M) Any other relevant factors or circumstances raised by the state, the  
21 Oregon Youth Authority, the Department of Corrections or the person.
- 22 (5) The court shall provide copies of its disposition order under subsection  
23 (4) of this section to the parties, to the records supervisor of the correctional  
24 institution in which the person is incarcerated and to the manager of the  
25 institution-based records office of the Department of Corrections.
- 26 (6) The person or the state may appeal an order entered under this sec-  
27 tion. On appeal, the appellate court's review is limited to claims that:
- 28 (a) The disposition is not authorized under this section;
- 29 (b) The court failed to comply with the requirements of this section in  
30 imposing the disposition; or
- 31 (c) The findings of the court are not supported by substantial evidence in

1 the record.

2 **SECTION 8.** ORS 420A.206 is amended to read:

3 420A.206. (1)(a) If, after [*the*] a hearing required by ORS 420A.203 **or un-**  
4 **der section 4 of this 2019 Act**, the court determines that conditional release  
5 is the appropriate disposition, the court shall direct the Department of Cor-  
6 rections to prepare a proposed release plan. The Department of Corrections  
7 shall submit the release plan to the court no later than 45 days after receipt  
8 of the court's direction to prepare the plan. The Department of Corrections  
9 shall incorporate any conditions recommended by the court and shall con-  
10 sider any recommendations made by the Oregon Youth Authority. The re-  
11 lease plan submitted to the court must include:

12 (A) A description of support services and program opportunities available  
13 to the person;

14 (B) The recommended conditions of the release and supervision;

15 (C) The level of supervision required;

16 (D) Conditions or requirements that provide for the safety of the victim,  
17 the victim's family and the community;

18 (E) For persons whose sentences include a requirement to make  
19 restitution or to pay compensatory fines or attorney fees and who have not  
20 yet made full payment, a payment schedule;

21 (F) Any conditions reasonably necessary to further the reform and reha-  
22 bilitation of the person and to ensure compliance with the other conditions  
23 imposed; and

24 (G) Any special conditions necessary because of the person's individual  
25 circumstances.

26 (b) If the court does not approve the proposed release plan, the court shall  
27 return the plan to the Department of Corrections with recommended modifi-  
28 cations and additions. The Department of Corrections shall submit a revised  
29 plan to the court no later than 15 days after receipt of the court's recom-  
30 mended modifications and additions.

31 (c) If the court does not approve the revised plan, the court shall make

1 any changes that the court deems appropriate and prepare the final release  
2 plan. The final release plan must require, in addition to any other conditions,  
3 that the person:

4 (A) Comply with the conditions of post-release supervision;

5 (B) Be under the supervision of the Department of Corrections and its  
6 representatives and follow the direction and counsel of the Department of  
7 Corrections and its representatives;

8 (C) Answer all reasonable inquiries of the court or the supervisory au-  
9 thority of the Department of Corrections;

10 (D) Report to the supervision officer as directed by the court or the su-  
11 pervisory authority of the Department of Corrections;

12 (E) Not own, possess or be in control of any dangerous weapon or deadly  
13 weapon, as those terms are defined in ORS 161.015, or any dangerous animal;

14 (F) Respect and obey all municipal, county, state and federal laws;

15 (G) Participate in a victim impact treatment program; and

16 (H) Pay any restitution, compensatory fine or attorney fees ordered and  
17 regularly perform any community service ordered.

18 (2) When the court has approved a final release plan, the court shall enter  
19 an order conditionally releasing the person. The order of conditional release  
20 shall:

21 (a) State the conditions of release;

22 (b) Require the person to comply fully with all of the conditions of re-  
23 lease;

24 (c) Confirm that the person has been given a copy of the conditions of  
25 release;

26 (d) Continue the person's commitment to the legal custody of the De-  
27 partment of Corrections;

28 (e) Provide that the Department of Corrections or its designee shall su-  
29 pervise the person;

30 (f) Provide that the period of supervision is the entire remainder of the  
31 sentence of imprisonment imposed, taking into account any reduction in the

1 sentence under ORS 421.121 or any other statute, unless the conditional re-  
2 lease is revoked or suspended; and

3 (g) Require that the Department of Corrections or its designee submit a  
4 report to the court no later than 90 days after the person is conditionally  
5 released and at least every 180 days thereafter informing the court of the  
6 person's circumstances and progress on conditional release.

7 (3)(a) A person conditionally released under this section remains within  
8 the jurisdiction of the sentencing court for the period of the conditional re-  
9 lease.

10 (b) At any time after the entry of an order of conditional release, the  
11 court, on its own motion or on motion of the Department of Corrections,  
12 may amend the conditional release order to modify the conditions of the  
13 person's release and supervision, providing that the modifications are con-  
14 sistent with the requirements for conditions of release in subsections (1) and  
15 (2) of this section. Before entering an amended order under this paragraph,  
16 the court shall provide the Department of Corrections and the person with  
17 a reasonable amount of time to comment on the proposed modifications. The  
18 court shall serve the Department of Corrections and the person with a copy  
19 of the amended order at least 15 days before the order takes effect.

20 (c) The Department of Corrections and the supervisory authority may  
21 adjust the level of the person's supervision as is appropriate to the person's  
22 progress and conduct in the community.

23 (4)(a) If an officer of the Department of Corrections or the supervisory  
24 authority or a law enforcement officer has reasonable grounds to believe that  
25 a person released under this section has violated a condition of the release,  
26 the officer may take the person into custody and detain the person pending  
27 a hearing on the alleged violation as provided in paragraph (c) of this sub-  
28 section. No later than 24 hours after a person is taken into custody under  
29 this subsection, the Department of Corrections or the supervisory authority  
30 shall file a notice and affidavit with the court as provided in paragraph (b)  
31 of this subsection and serve a copy of the notice and affidavit on the person.

1 (b) When a notice and affidavit is filed under paragraph (a) of this sub-  
2 section and if the court finds that the notice and affidavit state reasonable  
3 grounds to believe the person has violated a condition of the release, the  
4 court shall issue an order that the person appear and show cause why the  
5 conditional release should not be revoked or suspended as a sanction for the  
6 alleged violation. When a court issues an order under this paragraph, the  
7 court shall:

8 (A) Serve a copy of the order to show cause on the person and the district  
9 attorney; and

10 (B) Provide the person with written notice containing the following in-  
11 formation:

12 (i) The time, place and purpose of the hearing;

13 (ii) That the person has the right to have adverse witnesses present at the  
14 hearing for purpose of confrontation and cross-examination unless the court  
15 determines that good cause exists for not permitting confrontation;

16 (iii) That the person has the right to subpoena witnesses and present  
17 documentary evidence and testimony of witnesses;

18 (iv) That the person has the right to be represented by counsel and, if  
19 financially eligible, to have counsel appointed at state expense as provided  
20 in paragraph (d) of this subsection; and

21 (v) The possible sanction authorized if the court determines that the per-  
22 son has violated the conditions of release.

23 (c) The court shall hold the hearing no more than 15 days after issuing  
24 the order to appear and show cause. The court may order the person to be  
25 detained pending the hearing and disposition.

26 (d) In a hearing under this subsection:

27 (A) The person has the right to be represented by counsel and, if finan-  
28 cially eligible, to have counsel appointed at state expense if the court de-  
29 termines, after request, that the request is based on a timely and colorable  
30 claim that:

31 (i) The person has not committed the alleged violation of the release

1 conditions;

2 (ii) Even if the violation is a matter of public record or is uncontested,  
3 there are substantial reasons that justify or mitigate the violation and make  
4 revocation inappropriate and the reasons are complex or otherwise difficult  
5 to develop or present; or

6 (iii) The person, in doubtful cases, appears to be incapable of speaking  
7 effectively on the person's own behalf;

8 (B) The Department of Corrections or the supervisory authority has the  
9 burden of proving the alleged violation by a preponderance of the evidence;

10 (C) The state is a party and is represented by the district attorney;

11 (D) The standards for the introduction and admissibility of evidence in  
12 contested case hearings under ORS 183.450 (1) and (2) apply in the hearing;

13 (E) If the court finds that the person has violated the conditions of re-  
14 lease and that subsection (5) of this section does not apply, the person has  
15 the burden of establishing good cause why the conditional release should not  
16 be revoked or suspended; and

17 (F) At the conclusion of the hearing, the court shall enter an order con-  
18 taining findings of fact and, if the court finds that the person violated a  
19 condition of release, stating what sanctions are imposed.

20 (e) Except as provided in subsection (5) of this section, when the court  
21 finds that the person has violated a condition of release, the court shall im-  
22 pose one or more of the following sanctions:

23 (A) Adjustments to the level of supervision;

24 (B) Modifications of the conditions of release;

25 (C) Any appropriate available local sanctions including, but not limited  
26 to, community service work, house arrest, electronic surveillance, restitution  
27 centers, work release centers or day centers;

28 (D) Suspension of conditional release for up to 180 days; or

29 (E) Revocation of conditional release.

30 (5) At the conclusion of the hearing, the court shall revoke the person's  
31 conditional release and order the person committed to the physical custody



1 of the Department of Corrections to be confined for the entire remainder of  
2 the sentence of imprisonment imposed, taking into account any reduction in  
3 the sentence under ORS 421.121 or any other statute, if the court finds that:

4 (a) The person has been convicted of a new criminal offense;

5 (b) The person has violated the condition prohibiting ownership, pos-  
6 session or control of a dangerous weapon or deadly weapon, as those terms  
7 are defined in ORS 161.015, or a dangerous animal; or

8 (c) The person's conditional release has been suspended twice under this  
9 section within the past 18 months.

10 (6)(a) The state, the Department of Corrections or the person may appeal  
11 from an order of conditional release under this section. The appellate court's  
12 review is limited to claims that the court failed to comply with the require-  
13 ments of law in ordering the conditional release.

14 (b) The state, the Department of Corrections or the person may appeal  
15 from an order of the court entered under subsection (4) or (5) of this section.  
16 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 law; and

19 (C) The finding of the court that the person did or did not violate a  
20 condition of release is not supported by substantial evidence in the record.

21 **SECTION 9. This 2019 Act shall be submitted to the people for their**  
22 **approval or rejection at the next regular general election held**  
23 **throughout this state.**

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