

House Bill 2295

Sponsored by Representative POST; Representatives LEWIS, NOBLE (at the request of former Representative Andy Olson) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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, 137.712, 420A.203 and
3 420A.206; and providing that this Act shall be referred to the people for their approval or re-
4 jection.

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

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

7 (1) **"Sentence imposed" means the total period of mandatory incarceration imposed for**
8 **all convictions resulting from a single prosecution or criminal proceeding, not including any**
9 **reduction in the sentence under ORS 421.121 or any other statute.**

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

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

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

15 (c) **Sexual abuse in the first degree under ORS 163.427 involving one victim and one**
16 **criminal episode.**

17 (d) **Robbery in the first degree under ORS 164.415 if no physical injury occurred.**

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

19 **SECTION 2. (1) When a young offender has completed two-thirds of the sentence im-**
20 **posed, the Oregon Youth Authority shall determine whether the young offender has attained**
21 **the eligibility benchmarks for earned review as provided in this section.**

22 (2) **In order to attain the eligibility benchmarks for earned review, the young offender**
23 **must have:**

24 (a) **Obtained a two-year degree, vocational educational certificate or other equivalent**
25 **education achievement appropriate to the young offender's individual level of ability and ca-**
26 **capacity, as specified by the authority;**

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

28 (c) **Participated in a mentoring program; and**

29 (d) **Engaged in a restorative justice program with the following components:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

2 (B) A meeting with crime victims and community members concerning the impact of
3 crime on victims and the community.

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

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

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

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

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

13 (a) Participate in the psychological examination described in subsection (3)(a) of this
14 section;

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

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

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

22 (6) The authority shall adopt rules to carry out the provisions of this section, including
23 specifying the education achievements and treatment programs that qualify as eligibility
24 benchmarks under subsection (2) of this section.

25 **SECTION 3.** (1)(a) The Oregon Youth Authority shall establish a Public Safety Panel
26 based in Marion County consisting of four members. The purpose of the panel is to conduct
27 an earned review meeting to determine whether to recommend that the sentencing court
28 grant conditional release to a young offender.

29 (b) The authority shall appoint two members to the panel as follows:

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

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

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

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

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

36 (2) The authority shall:

37 (a) Schedule an earned review meeting between the panel and the young offender within
38 30 days of providing the reports and records to the panel under section 2 of this 2019 Act.

39 (b) Provide notice of earned review meetings to the members of the panel.

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

41 (3) At an earned review meeting:

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

43 (b) The young offender shall be present.

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

45 (4)(a) Prior to the earned review meeting, the panel shall review all reports and records

1 received from the authority concerning the young offender.

2 (b) At the meeting, the panel may ask questions of the young offender and the young
3 offender may make a statement.

4 (c) After considering all records and reports, the circumstances of the offense and the
5 young offender and any additional information or statements provided at the meeting, each
6 panel member shall determine if, by clear and convincing evidence, the young offender has
7 demonstrated rehabilitation and a contrite heart.

8 (5)(a) If at least at three of the four members of the panel make the determination de-
9 scribed in subsection (4) of this section, the panel shall prepare a report containing the
10 panel's findings and a recommendation that the sentencing court conditionally release the
11 young offender.

12 (b) The panel shall forward to the sentencing court the report described in paragraph (a)
13 of this subsection along with copies of all reports and records concerning the young offender
14 in the panel's possession.

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

17 (2) At a hearing under this section:

18 (a) A representative of the Oregon Youth Authority shall be present.

19 (b) The young offender shall be present.

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

21 (2) At the hearing, the court shall consider:

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

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

25 (c) Any other information the court considers relevant to making a determination con-
26 cerning conditional release.

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

31 (b) If the court does not make the finding in paragraph (a) of this subsection, the court
32 shall order that the young offender serve the entire remainder of the sentence of
33 imprisonment imposed, taking into account any reduction in the sentence under ORS 421.121
34 or any other statute, with the person's physical custody determined under ORS 137.124,
35 420.011 and 420A.200.

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

37 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
38 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
39 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
40 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
41 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
42 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)
43 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is
44 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

45 (b) A district attorney, the Attorney General or a juvenile department counselor may not file in

1 juvenile court a petition alleging that a person has committed an act that, if committed by an adult,
2 would constitute aggravated murder or an offense listed in subsection (4) of this section if the person
3 was 15, 16 or 17 years of age at the time the act was committed.

4 (2) When a person charged under this section is convicted of an offense listed in subsection (4)
5 of this section, the court shall impose at least the presumptive term of imprisonment provided for
6 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
7 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
8 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
9 leave from custody. The person is not eligible for any reduction in[, or based on,] the minimum
10 sentence for any reason under ORS 421.121 or any other provision of law. **The person is eligible**
11 **for earned review under sections 1 to 4 of this 2019 Act and conditional release under ORS**
12 **420A.206.** ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this
13 section and convicted of aggravated murder under ORS 163.095 except that a person who was under
14 18 years of age at the time the offense was committed is not subject to a sentence of death.

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

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

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- 19
 - 20 (a)(A) Murder, as defined in
 - 21 ORS 163.115300 months
 - 22 (B) Attempt or conspiracy
 - 23 to commit aggravated
 - 24 murder, as defined
 - 25 in ORS 163.095120 months
 - 26 (C) Attempt or conspiracy
 - 27 to commit murder, as
 - 28 defined in ORS 163.115.90 months
 - 29 (D) Manslaughter in the
 - 30 first degree, as defined
 - 31 in ORS 163.118.120 months
 - 32 (E) Manslaughter in the
 - 33 second degree, as defined
 - 34 in ORS 163.125.75 months
 - 35 (F) Assault in the first
 - 36 degree, as defined
 - 37 in ORS 163.185.90 months
 - 38 (G) Assault in the second
 - 39 degree, as defined
 - 40 in ORS 163.175.70 months
 - 41 (H) Kidnapping in the first
 - 42 degree, as defined in
 - 43 ORS 163.235.90 months
 - 44 (I) Kidnapping in the second
 - 45 degree, as defined in

1 ORS 163.22570 months
2 (J) Rape in the first degree,
3 as defined in ORS 163.375....100 months
4 (K) Rape in the second
5 degree, as defined in
6 ORS 163.365.75 months
7 (L) Sodomy in the first
8 degree, as defined in
9 ORS 163.405.100 months
10 (M) Sodomy in the second
11 degree, as defined in
12 ORS 163.395.75 months
13 (N) Unlawful sexual
14 penetration in the first
15 degree, as defined
16 in ORS 163.411.100 months
17 (O) Unlawful sexual
18 penetration in the
19 second degree, as
20 defined in ORS 163.408.75 months
21 (P) Sexual abuse in the first
22 degree, as defined in
23 ORS 163.427.75 months
24 (Q) Robbery in the first
25 degree, as defined in
26 ORS 164.415.90 months
27 (R) Robbery in the second
28 degree, as defined in
29 ORS 164.405.70 months
30 (b)(A) Arson in the first degree,
31 as defined in
32 ORS 164.325, when
33 the offense represented
34 a threat of serious
35 physical injury.90 months
36 (B) Using a child in a display
37 of sexually explicit
38 conduct, as defined in
39 ORS 163.670.70 months
40 (C) Compelling prostitution,
41 as defined in ORS 167.017
42 (1)(a), (b) or (d).70 months
43 (c) Aggravated vehicular
44 homicide, as defined in
45 ORS 163.149.240 months

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
 7 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
 8 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
 9 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
 10 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
 11 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
 12 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
 13 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
 14 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
 15 of this section and finds that a substantial and compelling reason under the rules of the Oregon
 16 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
 17 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and
 18 any other statute **and is eligible for earned review and under sections 1 to 4 of this 2019 Act**
 19 **and conditional release under ORS 420A.206.**

20 (b) In order to make a dispositional departure under this section, the court must make the fol-
 21 lowing additional findings on the record:

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

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

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

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

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

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

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

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

35 (D) That the defendant treated the injury or illness solely by spiritual treatment in accordance
 36 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual
 37 treatment would bring about the victim's recovery from the injury or illness;

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

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

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

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

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

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

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

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

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

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

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

9 (B) That, if the defendant represented by words or conduct that the defendant was armed with
10 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-
11 nificant physical injury;

12 (C) That, if the defendant represented by words or conduct that the defendant was armed with
13 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical
14 injury; and

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

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

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

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

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

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

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

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

31 (f) If the conviction is for unlawful sexual penetration in the second degree:

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

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

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

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

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

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

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

45 (3) In making the findings required by subsections (1) and (2) of this section, the court may

1 consider any evidence presented at trial and may receive and consider any additional relevant in-
 2 formation offered by either party at sentencing.

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

- 5 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);
- 6 (b) Escape in the first degree, as defined in ORS 162.165;
- 7 (c) Aggravated murder, as defined in ORS 163.095;
- 8 (d) Criminally negligent homicide, as defined in ORS 163.145;
- 9 (e) Assault in the third degree, as defined in ORS 163.165;
- 10 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);
- 11 (g) Rape in the third degree, as defined in ORS 163.355;
- 12 (h) Sodomy in the third degree, as defined in ORS 163.385;
- 13 (i) Sexual abuse in the second degree, as defined in ORS 163.425;
- 14 (j) Stalking, as defined in ORS 163.732;
- 15 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
 16 felony under the rules of the Oregon Criminal Justice Commission;
- 17 (L) Arson in the first degree, as defined in ORS 164.325;
- 18 (m) Robbery in the third degree, as defined in ORS 164.395;
- 19 (n) Intimidation in the first degree, as defined in ORS 166.165;
- 20 (o) Promoting prostitution, as defined in ORS 167.012; and
- 21 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
 22 of this subsection.

23 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section
 24 violates a condition of probation by committing a new crime, the court shall revoke the probation
 25 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-
 26 tice Commission.

27 (6) As used in this section:

28 (a) “Conviction” includes, but is not limited to:

29 (A) A juvenile court adjudication finding a person within the court’s jurisdiction under ORS
 30 419C.005, if the person was at least 15 years of age at the time the person committed the offense
 31 that brought the person within the jurisdiction of the juvenile court. “Conviction” does not include
 32 a juvenile court adjudication described in this subparagraph if the person successfully asserted the
 33 defense set forth in ORS 419C.522.

34 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-
 35 stitute a crime listed in subsection (4) of this section.

36 (b) “Previous conviction” means a conviction that was entered prior to imposing sentence on the
 37 current crime provided that the prior conviction is based on a crime committed in a separate crim-
 38 inal episode. “Previous conviction” does not include a conviction for a Class C felony, including an
 39 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
 40 entered within the 10-year period immediately preceding the date on which the current crime was
 41 committed.

42 (c) “Significant physical injury” means a physical injury that:

- 43 (A) Creates a risk of death that is not a remote risk;
- 44 (B) Causes a serious and temporary disfigurement;
- 45 (C) Causes a protracted disfigurement; or

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

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

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

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

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

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

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

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

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

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

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

(C) The district attorney who prosecuted the case.

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

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

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

(3) In a hearing under this section:

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

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

(c) The district attorney represents the state.

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

(e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within

1 a reasonable time before the hearing, as determined by the court, the person must be given the op-
 2 portunity to examine all reports and other documents concerning the person that the state, the
 3 Oregon Youth Authority or the Department of Corrections intends to submit for consideration by
 4 the court at the hearing.

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

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

11 (h) The hearing must be recorded.

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

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

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

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

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

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

27 (i) Has been rehabilitated and reformed;

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (K) The safety of the victim, the victim’s family and the community;

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

6 (M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Au-
 7 thority, the Department of Corrections or the person.

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

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

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

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

16 or

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

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

19 420A.206. (1)(a) If, after [*the*] a hearing required by ORS 420A.203 **or under section 4 of this**
 20 **2019 Act**, the court determines that conditional release is the appropriate disposition, the court
 21 shall direct the Department of Corrections to prepare a proposed release plan. The Department of
 22 Corrections shall submit the release plan to the court no later than 45 days after receipt of the
 23 court’s direction to prepare the plan. The Department of Corrections shall incorporate any condi-
 24 tions recommended by the court and shall consider any recommendations made by the Oregon Youth
 25 Authority. The release plan submitted to the court must include:

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

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

28 (C) The level of supervision required;

29 (D) Conditions or requirements that provide for the safety of the victim, the victim’s family and
 30 the community;

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

33 (F) Any conditions reasonably necessary to further the reform and rehabilitation of the person
 34 and to ensure compliance with the other conditions imposed; and

35 (G) Any special conditions necessary because of the person’s individual circumstances.

36 (b) If the court does not approve the proposed release plan, the court shall return the plan to
 37 the Department of Corrections with recommended modifications and additions. The Department of
 38 Corrections shall submit a revised plan to the court no later than 15 days after receipt of the court’s
 39 recommended modifications and additions.

40 (c) If the court does not approve the revised plan, the court shall make any changes that the
 41 court deems appropriate and prepare the final release plan. The final release plan must require, in
 42 addition to any other conditions, that the person:

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

44 (B) Be under the supervision of the Department of Corrections and its representatives and follow
 45 the direction and counsel of the Department of Corrections and its representatives;

1 (C) Answer all reasonable inquiries of the court or the supervisory authority of the Department
2 of Corrections;

3 (D) Report to the supervision officer as directed by the court or the supervisory authority of the
4 Department of Corrections;

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

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

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

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

11 (2) When the court has approved a final release plan, the court shall enter an order condi-
12 tionally releasing the person. The order of conditional release shall:

13 (a) State the conditions of release;

14 (b) Require the person to comply fully with all of the conditions of release;

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

16 (d) Continue the person's commitment to the legal custody of the Department of Corrections;

17 (e) Provide that the Department of Corrections or its designee shall supervise the person;

18 (f) Provide that the period of supervision is the entire remainder of the sentence of imprisonment
19 imposed, taking into account any reduction in the sentence under ORS 421.121 or any other statute,
20 unless the conditional release is revoked or suspended; and

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

24 (3)(a) A person conditionally released under this section remains within the jurisdiction of the
25 sentencing court for the period of the conditional release.

26 (b) At any time after the entry of an order of conditional release, the court, on its own motion
27 or on motion of the Department of Corrections, may amend the conditional release order to modify
28 the conditions of the person's release and supervision, providing that the modifications are consist-
29 ent with the requirements for conditions of release in subsections (1) and (2) of this section. Before
30 entering an amended order under this paragraph, the court shall provide the Department of Cor-
31 rections and the person with a reasonable amount of time to comment on the proposed modifications.
32 The court shall serve the Department of Corrections and the person with a copy of the amended
33 order at least 15 days before the order takes effect.

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

36 (4)(a) If an officer of the Department of Corrections or the supervisory authority or a law
37 enforcement officer has reasonable grounds to believe that a person released under this section has
38 violated a condition of the release, the officer may take the person into custody and detain the
39 person pending a hearing on the alleged violation as provided in paragraph (c) of this subsection.
40 No later than 24 hours after a person is taken into custody under this subsection, the Department
41 of Corrections or the supervisory authority shall file a notice and affidavit with the court as pro-
42 vided in paragraph (b) of this subsection and serve a copy of the notice and affidavit on the person.

43 (b) When a notice and affidavit is filed under paragraph (a) of this subsection and if the court
44 finds that the notice and affidavit state reasonable grounds to believe the person has violated a
45 condition of the release, the court shall issue an order that the person appear and show cause why

1 the conditional release should not be revoked or suspended as a sanction for the alleged violation.

2 When a court issues an order under this paragraph, the court shall:

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

4 (B) Provide the person with written notice containing the following information:

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

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

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

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

13 (v) The possible sanction authorized if the court determines that the person has violated the
14 conditions of release.

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

17 (d) In a hearing under this subsection:

18 (A) The person has the right to be represented by counsel and, if financially eligible, to have
19 counsel appointed at state expense if the court determines, after request, that the request is based
20 on a timely and colorable claim that:

21 (i) The person has not committed the alleged violation of the release conditions;

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

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

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

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

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

32 (E) If the court finds that the person has violated the conditions of release and that subsection
33 (5) of this section does not apply, the person has the burden of establishing good cause why the
34 conditional release should not be revoked or suspended; and

35 (F) At the conclusion of the hearing, the court shall enter an order containing findings of fact
36 and, if the court finds that the person violated a condition of release, stating what sanctions are
37 imposed.

38 (e) Except as provided in subsection (5) of this section, when the court finds that the person has
39 violated a condition of release, the court shall impose one or more of the following sanctions:

40 (A) Adjustments to the level of supervision;

41 (B) Modifications of the conditions of release;

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

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

45 (E) Revocation of conditional release.

1 (5) At the conclusion of the hearing, the court shall revoke the person's conditional release and
2 order the person committed to the physical custody of the Department of Corrections to be confined
3 for the entire remainder of the sentence of imprisonment imposed, taking into account any reduction
4 in the sentence under ORS 421.121 or any other statute, if the court finds that:

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

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

9 (c) The person's conditional release has been suspended twice under this section within the past
10 18 months.

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

14 (b) The state, the Department of Corrections or the person may appeal from an order of the
15 court entered under subsection (4) or (5) of this section. The appellate court's review is limited to
16 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 condition of release is not
20 supported by substantial evidence in the record.

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

23