

House Bill 2803

Sponsored by Representative GREENLICK

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**.

Requires Director of Oregon Youth Authority to request hearing before transferring to Department of Corrections physical custody of person aging out of Oregon Youth Authority custody. Specifies requirements for notice and hearing procedure.

Applies to transfers or returns of physical custody of persons from Oregon Youth Authority to Department of Corrections occurring on or after effective date of Act.

A BILL FOR AN ACT

1
2 Relating to the transfer of physical custody of persons aging out of Oregon Youth Authority custody;
3 creating new provisions; and amending ORS 420A.203.

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

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

6 420A.203. (1) **As used in this section, "sentence imposed" means the total period of man-**
7 **datory incarceration imposed for all convictions resulting from a single prosecution or**
8 **criminal proceeding not including any reduction in the sentence under ORS 421.121 or any**
9 **other statute.**

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

13 (A) Sentenced to a term of imprisonment of at least 24 months following waiver under ORS
14 419C.349, 419C.352, 419C.364 or 419C.370; or

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

17 (b) [*When a person described in paragraph (a) of this subsection has served one-half of the sentence*
18 *imposed,*] The sentencing court shall determine what further commitment or disposition is appropri-
19 ate as provided in this section **for a person described in paragraph (a) of this subsection upon**
20 **the occurrence of each of the following events:**

21 **(A) When the person has served one-half of the sentence imposed.**

22 **(B) If the person will not complete the term of imprisonment imposed before the person**
23 **attains 25 years of age, when the person attains 24 years of age.** [*As used in this subsection and*
24 *subsection (2) of this section, "sentence imposed" means the total period of mandatory incarceration*
25 *imposed for all convictions resulting from a single prosecution or criminal proceeding not including*
26 *any reduction in the sentence under ORS 421.121 or any other statute.*]

27 [(2)(a)] **(3)(a)** [*No more than 120 days and not less than 60 days before the date on which a person*
28 *has served one-half of the sentence imposed,*] The Oregon Youth Authority or the Department of
29 Corrections, whichever has physical custody of [*the*] **a person described in subsection (2)(b) of this**
30 **section,** shall file in the sentencing court a notice and request that the court set a time and place

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 for the hearing required under this section **no more than 120 days and not less than 60 days**
 2 **before:**

3 **(A) If the determination is required under subsection (2)(b)(A) of this section, the date**
 4 **on which the person has served one-half of the sentence imposed; or**

5 **(B) If the determination is required under subsection (2)(b)(B) of this section, the date**
 6 **on which the person attains 24 years of age.**

7 **(b)** The youth authority or department shall serve the person with a copy of the notice and re-
 8 quest for hearing on or before the date of filing.

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

13 **(A) If the determination is required under subsection (2)(b)(A) of this section, a date not**
 14 **more than 30 days after the date on which the person will have served one-half of the sen-**
 15 **tence imposed;**

16 **(B) If the determination is required under subsection (2)(b)(B) of this section, a date not**
 17 **more than 30 days after the date on which the person will attain 24 years of age; or**

18 **(C) A later date as agreed upon by the parties.**

19 *[(c)] (d)* The court shall notify the following of the time and place of the hearing:

20 (A) The person and, **if the person is a minor**, the person's parents;

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

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

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

26 (A) The victim and, **if the victim is a minor**, the victim's parents or legal guardian; and

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

29 *[(3)] (4)* In a hearing under this section:

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

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

34 (c) The district attorney represents the state.

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

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

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

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

4 (h) The hearing must be recorded.

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

6 (j) The question to be decided is which of the dispositions provided in subsection [(4)] (5) of this
 7 section should be ordered in the case.

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

12 [(4)(a)] (5)(a) At the conclusion of the hearing and after considering and making findings re-
 13 garding each of the factors in paragraph (b) of this subsection, the court shall order one of the fol-
 14 lowing dispositions:

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

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

20 (i) Has been rehabilitated and reformed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 [(5)] (6) The court shall provide copies of its disposition order under subsection [(4)] (5) of this
2 section to the parties, to the records supervisor of the correctional institution in which the person
3 is incarcerated and to the manager of the institution-based records office of the Department of
4 Corrections.

5 [(6)] (7) The person or the state may appeal an order entered under this section. On appeal, the
6 appellate court's review is limited to claims that:

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

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

9 or

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

11 **SECTION 2. The amendments to ORS 420A.203 by section 1 of this 2019 Act apply to**
12 **transfers or returns of physical custody of persons from the Oregon Youth Authority to the**
13 **Department of Corrections occurring on or after the effective date of this 2019 Act.**

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