

# Senate Bill 549

Sponsored by Senator RILEY; Senators BURDICK, DEMBROW, FREDERICK, MONNES ANDERSON, STEINER HAYWARD, WAGNER (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**.

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

## A BILL FOR AN ACT

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

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

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

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

10 (A) Sentenced to a term of imprisonment of at least 24 months following waiver under ORS  
11 419C.349, 419C.352, 419C.364 or 419C.370; or

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

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

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

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

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

**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) The person and, **if the person is under 18 years of age**, the person’s parents;
- 2 (B) The records supervisor of the correctional institution in which the person is incarcerated;
- 3 and
- 4 (C) The district attorney who prosecuted the case.
- 5 (d) The court shall make reasonable efforts to notify the following of the time and place of the
- 6 hearing:
- 7 (A) The victim and, **if the victim is under 18 years of age**, the victim’s parents or legal
- 8 guardian; and
- 9 (B) Any other person who has filed a written request with the court to be notified of any hear-
- 10 ing concerning the transfer, discharge or release of the person.
- 11 (3) In a hearing under this section:
- 12 (a) The person and the state are parties to the proceeding.
- 13 (b) The person has the right to appear with counsel. If the person requests that the court ap-
- 14 point counsel and the court determines that the person is financially eligible for appointed counsel
- 15 at state expense, the court shall order that counsel be appointed.
- 16 (c) The district attorney represents the state.
- 17 (d) The court shall determine admissibility of evidence as if the hearing were a sentencing pro-
- 18 ceeding.
- 19 (e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the
- 20 Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within
- 21 a reasonable time before the hearing, as determined by the court, the person must be given the op-
- 22 portunity to examine all reports and other documents concerning the person that the state, the
- 23 Oregon Youth Authority or the Department of Corrections intends to submit for consideration by
- 24 the court at the hearing.
- 25 (f) Except as otherwise provided by law or by order of the court based on good cause, the person
- 26 must be given access to the records maintained in the person’s case by the Oregon Youth Authority
- 27 and the Department of Corrections.
- 28 (g) The person may examine all of the witnesses called by the state, may subpoena and call
- 29 witnesses to testify on the person’s behalf and may present evidence and argument. The court may
- 30 permit witnesses to appear by telephone or other two-way electronic communication device.
- 31 (h) The hearing must be recorded.
- 32 (i) The hearing and the record of the hearing are open to the public.
- 33 (j) The question to be decided is which of the dispositions provided in subsection (4) of this
- 34 section should be ordered in the case.
- 35 (k) The person has the burden of proving by clear and convincing evidence that the person has
- 36 been rehabilitated and reformed, and if conditionally released, the person would not be a threat to
- 37 the safety of the victim, the victim’s family or the community and that the person would comply with
- 38 the release conditions.
- 39 (4)(a) At the conclusion of the hearing and after considering and making findings regarding each
- 40 of the factors in paragraph (b) of this subsection, the court shall order one of the following dispo-
- 41 sitions:
- 42 (A) Order that the person serve the entire remainder of the sentence of imprisonment imposed,
- 43 taking into account any reduction in the sentence under ORS 421.121 or any other statute, with the
- 44 person’s physical custody determined under ORS 137.124, 420.011 and 420A.200.
- 45 (B) Order that the person be conditionally released under ORS 420A.206 at such time as the

1 court may order, if the court finds that the person:

2 (i) Has been rehabilitated and reformed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 or

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

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

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

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

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

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

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

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



- 21
- 22 (a)(A) Murder, as defined in
- 23       ORS 163.115 .....300 months
- 24 (B) Attempt or conspiracy
- 25       to commit aggravated
- 26       murder, as defined
- 27       in ORS 163.095 .....120 months
- 28 (C) Attempt or conspiracy
- 29       to commit murder, as
- 30       defined in ORS 163.115 .....90 months
- 31 (D) Manslaughter in the
- 32       first degree, as defined
- 33       in ORS 163.118 .....120 months
- 34 (E) Manslaughter in the
- 35       second degree, as defined
- 36       in ORS 163.125 .....75 months
- 37 (F) Assault in the first
- 38       degree, as defined
- 39       in ORS 163.185 .....90 months
- 40 (G) Assault in the second
- 41       degree, as defined
- 42       in ORS 163.175 .....70 months
- 43 (H) Kidnapping in the first
- 44       degree, as defined in
- 45       ORS 163.235 .....90 months

- 1 (I) Kidnapping in the second
- 2 degree, as defined in
- 3 ORS 163.225 .....70 months
- 4 (J) Rape in the first degree,
- 5 as defined in ORS 163.375....100 months
- 6 (K) Rape in the second
- 7 degree, as defined in
- 8 ORS 163.365 .....75 months
- 9 (L) Sodomy in the first
- 10 degree, as defined in
- 11 ORS 163.405 .....100 months
- 12 (M) Sodomy in the second
- 13 degree, as defined in
- 14 ORS 163.395 .....75 months
- 15 (N) Unlawful sexual
- 16 penetration in the first
- 17 degree, as defined
- 18 in ORS 163.411 .....100 months
- 19 (O) Unlawful sexual
- 20 penetration in the
- 21 second degree, as
- 22 defined in ORS 163.408. ....75 months
- 23 (P) Sexual abuse in the first
- 24 degree, as defined in
- 25 ORS 163.427 .....75 months
- 26 (Q) Robbery in the first
- 27 degree, as defined in
- 28 ORS 164.415 .....90 months
- 29 (R) Robbery in the second
- 30 degree, as defined in
- 31 ORS 164.405 .....70 months
- 32 (b)(A) Arson in the first degree,
- 33 as defined in
- 34 ORS 164.325, when
- 35 the offense represented
- 36 a threat of serious
- 37 physical injury. ....90 months
- 38 (B) Using a child in a display
- 39 of sexually explicit
- 40 conduct, as defined in
- 41 ORS 163.670 .....70 months
- 42 (C) Compelling prostitution,
- 43 as defined in ORS 167.017
- 44 (1)(a), (b) or (d).....70 months
- 45 (c) Aggravated vehicular

1 homicide, as defined in  
2 ORS 163.149.....240 months  
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4  
5 (5) If a person charged with an offense under this section is found guilty of a lesser included  
6 offense and the lesser included offense is:

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

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

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

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

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

19 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
20 419C.067 and 419C.411.

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

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

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

26 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
27 419C.067 and 419C.411.

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

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

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

1 does not retain jurisdiction, the court shall:

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

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

5 (C) Enter an order transferring the case to the juvenile court for disposition under ORS  
6 419C.067 and 419C.411.

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

8 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of  
9 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-  
10 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the  
11 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,  
12 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first  
13 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS  
14 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice  
15 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700  
16 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)  
17 of this section and finds that a substantial and compelling reason under the rules of the Oregon  
18 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under  
19 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and  
20 any other statute **and is eligible for a hearing and conditional release under ORS 420A.203 and**  
21 **420A.206.**

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (A) That the victim was not physically injured by means of a deadly weapon;
- 2 (B) That the victim did not suffer a significant physical injury; and
- 3 (C) That the defendant does not have a previous conviction for a crime listed in subsection (4)
- 4 of this section.
- 5 (c) If the conviction is for kidnapping in the second degree:
- 6 (A) That the victim was at least 12 years of age at the time the crime was committed; and
- 7 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)
- 8 of this section.
- 9 (d) If the conviction is for robbery in the second degree:
- 10 (A) That the victim did not suffer a significant physical injury;
- 11 (B) That, if the defendant represented by words or conduct that the defendant was armed with
- 12 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-
- 13 nificant physical injury;
- 14 (C) That, if the defendant represented by words or conduct that the defendant was armed with
- 15 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical
- 16 injury; and
- 17 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)
- 18 of this section.
- 19 (e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual
- 20 abuse in the first degree:
- 21 (A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the
- 22 offense;
- 23 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
- 24 this section;
- 25 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
- 26 court for an act that would have been a felony sexual offense if the act had been committed by an
- 27 adult;
- 28 (D) That the defendant was no more than five years older than the victim at the time of the
- 29 offense;
- 30 (E) That the offense did not involve sexual contact with any minor other than the victim; and
- 31 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
- 32 under 18 years of age at the time of the offense.
- 33 (f) If the conviction is for unlawful sexual penetration in the second degree:
- 34 (A) That the victim was 12 years of age or older at the time of the offense;
- 35 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
- 36 this section;
- 37 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
- 38 court for an act that would have been a felony sexual offense if the act had been committed by an
- 39 adult;
- 40 (D) That the defendant was no more than five years older than the victim at the time of the
- 41 offense;
- 42 (E) That the offense did not involve sexual contact with any minor other than the victim;
- 43 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
- 44 under 18 years of age at the time of the offense; and
- 45 (G) That the object used to commit the unlawful sexual penetration was the hand or any part



1 thereof of the defendant.

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

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

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

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

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

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

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

12 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

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

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

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

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

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

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

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

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

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

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

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

29 (6) As used in this section:

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

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

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

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

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

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

1 (B) Causes a serious and temporary disfigurement;

2 (C) Causes a protracted disfigurement; or

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

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

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