

Senate Bill 862

Sponsored by Senator FREDERICK; Senators DEMBROW, FAGAN, RILEY, Representatives GORSEK, HERNANDEZ, PILUSO, SALINAS, SANCHEZ, SOLLMAN

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**.

Prohibits court from imposing certain sentences on juvenile offenders. Requires court to authorize leave from custody, conditional release and sentencing reductions unless otherwise prohibited by law.

Prohibits State Board of Parole and Post-Prison Supervision from taking any action that causes juvenile offender to serve greater sentence than minimum required by law.

Directs court to hold resentencing proceedings for juvenile offenders previously sentenced to terms of imprisonment within this state.

A BILL FOR AN ACT

1
2 Relating to sentencing for juvenile offenders; creating new provisions; and amending ORS 137.707.

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

4 **SECTION 1. The Legislative Assembly finds that a person who commits an offense when**
5 **the person is under 18 years of age should never be punished more severely than an adult**
6 **who commits the same offense, or a more serious offense, under similar circumstances.**

7 **SECTION 2. (1) A court imposing a sentence on a juvenile offender for conviction of an**
8 **offense:**

9 (a) **May not impose a sentence that is greater than any minimum sentence required by**
10 **law for the offense committed;**

11 (b) **May not impose an upward dispositional or durational departure sentence otherwise**
12 **authorized by the rules of the Oregon Criminal Justice Commission;**

13 (c) **May only impose a consecutive sentence under ORS 137.123 (5) if each offense was**
14 **committed against a separate victim; and**

15 (d) **Unless otherwise prohibited by law, shall indicate in the judgment of conviction that**
16 **the juvenile offender is eligible for any:**

17 (A) **Form of temporary leave from custody;**

18 (B) **Reduction in sentence under ORS 421.121 or any other provision of law;**

19 (C) **Work release; or**

20 (D) **Program of conditional or supervised release.**

21 (2)(a) **As used in this section, "juvenile offender" means a person prosecuted as an adult**
22 **in criminal court for an offense committed when the person was under 18 years of age.**

23 (b) **For the purposes of this section, an offense alleged to have occurred during a range**
24 **of dates beginning when the person was under 18 years of age and ending after the person**
25 **attained 18 years of age shall be deemed to have occurred when the person was under 18**
26 **years of age.**

27 **SECTION 3. (1) When making any determination that will have an effect on the length**
28 **of a sentence of imprisonment for a juvenile offender, including the establishment of a prison**

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 term under ORS 144.120 or a sentence conversion under ORS 163.105 or 163.115, the State
2 Board of Parole and Post-Prison Supervision may not take any action that causes the juve-
3 nile offender to serve a sentence of imprisonment that is greater than any minimum sen-
4 tence required by law for the offense.

5 (2) As used in this section, the term “juvenile offender” has the meaning given that term
6 in section 2 of this 2019 Act.

7 **SECTION 4.** ORS 137.707 is amended to read:

8 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
9 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
10 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
11 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
12 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
13 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)
14 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is
15 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

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

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

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

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

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- 35 (a)(A) Murder, as defined in
 - 36 ORS 163.115.300 months
 - 37 (B) Attempt or conspiracy
 - 38 to commit aggravated
 - 39 murder, as defined
 - 40 in ORS 163.095.120 months
 - 41 (C) Attempt or conspiracy
 - 42 to commit murder, as
 - 43 defined in ORS 163.115.90 months
 - 44 (D) Manslaughter in the
 - 45 first degree, as defined

1 in ORS 163.118.....120 months
 2 (E) Manslaughter in the
 3 second degree, as defined
 4 in ORS 163.125.....75 months
 5 (F) Assault in the first
 6 degree, as defined
 7 in ORS 163.185.....90 months
 8 (G) Assault in the second
 9 degree, as defined
 10 in ORS 163.175.....70 months
 11 (H) Kidnapping in the first
 12 degree, as defined in
 13 ORS 163.235.....90 months
 14 (I) Kidnapping in the second
 15 degree, as defined in
 16 ORS 163.225.....70 months
 17 (J) Rape in the first degree,
 18 as defined in ORS 163.375....100 months
 19 (K) Rape in the second
 20 degree, as defined in
 21 ORS 163.365.....75 months
 22 (L) Sodomy in the first
 23 degree, as defined in
 24 ORS 163.405.....100 months
 25 (M) Sodomy in the second
 26 degree, as defined in
 27 ORS 163.395.....75 months
 28 (N) Unlawful sexual
 29 penetration in the first
 30 degree, as defined
 31 in ORS 163.411.....100 months
 32 (O) Unlawful sexual
 33 penetration in the
 34 second degree, as
 35 defined in ORS 163.408.75 months
 36 (P) Sexual abuse in the first
 37 degree, as defined in
 38 ORS 163.427.....75 months
 39 (Q) Robbery in the first
 40 degree, as defined in
 41 ORS 164.415.....90 months
 42 (R) Robbery in the second
 43 degree, as defined in
 44 ORS 164.405.....70 months
 45 (b)(A) Arson in the first degree,

- 1 as defined in
- 2 ORS 164.325, when
- 3 the offense represented
- 4 a threat of serious
- 5 physical injury.90 months
- 6 (B) Using a child in a display
- 7 of sexually explicit
- 8 conduct, as defined in
- 9 ORS 163.670.70 months
- 10 (C) Compelling prostitution,
- 11 as defined in ORS 167.017
- 12 (1)(a), (b) or (d).70 months
- 13 (c) Aggravated vehicular
- 14 homicide, as defined in
- 15 ORS 163.149.240 months

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

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

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

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

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

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

32 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 33 419C.067 and 419C.411.

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

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

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

39 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 40 419C.067 and 419C.411.

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

1 counts or provide whatever other relief justice requires.

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

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

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

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

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

20 **SECTION 5. (1) Section 2 of this 2019 Act and the amendments to ORS 137.707 by section**
 21 **4 of this 2019 Act apply to crimes committed before, on or after the effective date of this 2019**
 22 **Act.**

23 **(2) Within one year after the effective date of this 2019 Act, the sentencing court shall**
 24 **resentence, in accordance with section 2 of this 2019 Act and the amendments to ORS 137.707**
 25 **by section 4 of this 2019 Act, any juvenile offender who has been previously sentenced to a**
 26 **term of imprisonment in this state and who is, on the effective date of this 2019 Act, still**
 27 **servng a sentence of imprisonment.**

28 **(3) Section 3 of this 2019 Act applies to State Board of Parole and Post-Prison Supervision**
 29 **actions taken on or after the effective date of this 2019 Act following resentencing pro-**
 30 **ceedings held pursuant to subsection (2) of this section.**

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