

**HOUSE MINORITY REPORT NO. 1
AMENDMENTS TO
A-ENGROSSED SENATE BILL 1008**

By Nonconcurring Members of COMMITTEE ON JUDICIARY

May 23

1 On page 1 of the printed A-engrossed bill, line 2, after “provisions;” delete the rest of the line
2 and delete lines 3 through 6 and insert “amending ORS 137.071, 137.124, 137.707, 137.712, 420.011 and
3 420A.203; providing for criminal sentence reduction that requires approval by a two-thirds majority;
4 and providing that this Act shall be referred to the people for their approval or rejection.”.

5 Delete lines 8 through 10 and delete pages 2 through 33 and insert:
6

7 **“CUSTODY OF JUVENILE OFFENDERS**
8

9 **“SECTION 1.** ORS 137.071 is amended to read:

10 “137.071. (1) The judge in a criminal action shall ensure that the creation and filing of a judg-
11 ment document complies with this section. On appeal, the appellate court may give leave as provided
12 in ORS 19.270 for entry of a judgment document that complies with this section but may not reverse
13 or set aside a judgment, determination or disposition on the sole ground that the judgment document
14 fails to comply with this section.

15 “(2) A judgment document in a criminal action must comply with ORS 18.038. In addition, a
16 judgment document in a criminal action must:

17 “(a) Indicate whether the defendant was determined to be financially eligible for purposes of
18 appointed counsel in the action.

19 “(b) Indicate whether the court appointed counsel for the defendant in the action.

20 “(c) If there is no attorney for the defendant, indicate whether the defendant knowingly waived
21 any right to an attorney after having been informed of that right.

22 “(d) Include the identity of the recorder or reporter for the proceeding or action who is to be
23 served under ORS 138.081.

24 “(e) Include any information specifically required by statute or by court rule.

25 “(f) Specify clearly the court’s determination for each charge in the information, indictment or
26 complaint.

27 “(g) Specify clearly the court’s disposition, including all legal consequences the court establishes
28 or imposes. If the determination is one of conviction, the judgment document must include any sus-
29 pension of sentence, forfeiture, imprisonment, cancellation of license, removal from office, monetary
30 obligation, probation, conditions of probation, discharge, restitution, community service and all other
31 sentences and legal consequences imposed by the court. Nothing in this paragraph requires the
32 judgment document to specify any consequences that may result from the determination but are not
33 established or imposed by the court.

34 “(h) Include the identities of the attorney for the state and the attorney, if any, for the defend-

1 ant.

2 **“(i) If the court sentences the defendant to a term of incarceration, and the physical**
3 **custody of the defendant as determined by ORS 137.124 is related to the age of the defendant**
4 **at the time of committing an offense, indicate the age of the defendant at the time of com-**
5 **mitting the offense.**

6 **“(3) A judgment document in a criminal action that includes a money award, as defined in ORS**
7 **18.005, must comply with ORS 18.048.**

8 **“(4) The requirements of this section do not apply to a judgment document if the action was**
9 **commenced by the issuance of a uniform citation adopted under ORS 1.525 and the court has used**
10 **the space on the citation for the entry of a judgment. The exemption provided by this subsection**
11 **does not apply if any indictment, information or complaint other than a uniform citation is filed in**
12 **the action.**

13 **“(5) For the purposes of determining the defendant’s age at the time of committing an**
14 **offense under subsection (2) of this section:**

15 **“(a) If the defendant is convicted of two or more offenses occurring on different days,**
16 **the defendant’s age shall be calculated using the earliest date.**

17 **“(b) If the defendant is convicted of an offense occurring within a range of dates, the**
18 **defendant’s age shall be calculated using the date at the beginning of the range.**

19 **“SECTION 2.** ORS 137.124 is amended to read:

20 **“137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term**
21 **of incarceration that exceeds 12 months:**

22 **“(a) The court shall not designate the correctional facility in which the defendant is to be con-**
23 **fined but shall commit the defendant to the legal and physical custody of the Department of Cor-**
24 **rections; and**

25 **“(b) If the judgment provides that the term of incarceration be served consecutively to a term**
26 **of incarceration of 12 months or less that was imposed in a previous proceeding by a court of this**
27 **state upon conviction of a felony, the defendant shall serve any remaining part of the previously**
28 **imposed term of incarceration in the legal and physical custody of the Department of Corrections.**

29 **“(2)(a) If the court imposes a sentence upon conviction of a felony that includes a term of**
30 **incarceration that is 12 months or less, the court shall commit the defendant to the legal and**
31 **physical custody of the supervisory authority of the county in which the crime of conviction oc-**
32 **curred.**

33 **“(b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon**
34 **conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall**
35 **commit the defendant to the legal and physical custody of the Department of Corrections if the court**
36 **orders that the term of incarceration be served consecutively to a term of incarceration that ex-**
37 **ceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court**
38 **of this state upon conviction of a felony.**

39 **“(3) After assuming custody of the convicted person the Department of Corrections may transfer**
40 **inmates from one correctional facility to another such facility for the purposes of diagnosis and**
41 **study, rehabilitation and treatment, as best seems to fit the needs of the inmate and for the pro-**
42 **tection and welfare of the community and the inmate.**

43 **“(4) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall**
44 **commit the defendant to the custody of the supervisory authority of the county in which the crime**
45 **of conviction occurred.**

1 “(5)(a) When a person under 18 years of age at the time of committing the offense and under
2 20 years of age at the time of sentencing is committed to the Department of Corrections under ORS
3 137.707 **or due to the fact that criminal proceedings were initiated after the person attained**
4 **18 years of age**, the Department of Corrections shall transfer the physical custody of the person to
5 the Oregon Youth Authority as provided in ORS 420.011 if:

6 “(A) The person will complete the sentence imposed before the person attains 25 years of age;

7 “(B) The Department of Corrections and the Oregon Youth Authority determine that, because
8 of the person’s age, immaturity, mental or emotional condition or risk of physical harm to the per-
9 son, the person should not be incarcerated initially in a Department of Corrections institution; or

10 “(C) The person is under 18 years of age at the time of sentencing and commitment.

11 “(b) A person placed in the custody of the Oregon Youth Authority under this subsection who
12 is at least 18 years of age shall be returned to the physical custody of the Department of Corrections
13 whenever the Director of the Oregon Youth Authority, after consultation with the Department of
14 Corrections, determines that the conditions or circumstances that warranted the transfer of custody
15 under this subsection are no longer present.

16 “(c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Cor-
17 rections transfer the person described in this subsection directly to a youth correction facility for
18 physical custody without first delivering the person to the Department of Corrections. As part of the
19 agreement with the Department of Corrections, the sheriff may designate the county juvenile de-
20 partment or the Oregon Youth Authority to conduct the direct transfer described in this paragraph
21 if the sheriff has entered into a written agreement with the county juvenile department, the Oregon
22 Youth Authority, or both, to provide the direct transfer.

23 “(6)(a) When a person under 18 years of age at the time of committing the offense and under
24 20 years of age at the time of sentencing is committed to the legal and physical custody of the De-
25 partment of Corrections or the supervisory authority of a county following waiver under ORS
26 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or
27 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the
28 person to the physical custody of the Oregon Youth Authority for placement as provided in ORS
29 420.011 (3). The terms and conditions of the person’s incarceration and custody are governed by ORS
30 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Depart-
31 ment of Corrections or the supervisory authority of a county transfer the person described in this
32 subsection directly to a youth correction facility for physical custody without first delivering the
33 person to the Department of Corrections or supervisory authority of the county. As part of the
34 agreement with the Department of Corrections or supervisory authority of the county, the sheriff
35 may designate the county juvenile department or the Oregon Youth Authority to conduct the direct
36 transfer described in this paragraph if the sheriff has entered into a written agreement with the
37 county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

38 “(b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS
39 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment
40 in the county jail, the sheriff shall transfer the person to a youth correction facility for physical
41 custody as provided in ORS 420.011 (3).

42 “[(7) *If the Director of the Oregon Youth Authority concurs in the decision, the Department of*
43 *Corrections or the supervisory authority of a county shall transfer the physical custody of a person*
44 *committed to the Department of Corrections or the supervisory authority of the county under subsection*
45 *(1) or (2) of this section to the Oregon Youth Authority as provided in ORS 420.011 (2) if:]*

1 “(a) The person was at least 18 years of age but under 20 years of age at the time of committing
2 the felony for which the person is being sentenced to a term of incarceration;]

3 “(b) The person is under 20 years of age at the time of commitment to the Department of Cor-
4 rections or the supervisory authority of the county;]

5 “(c) The person has not been committed previously to the legal and physical custody of the De-
6 partment of Corrections or the supervisory authority of a county;]

7 “(d) The person has not been convicted and sentenced to a term of incarceration for the commis-
8 sion of a felony in any other state;]

9 “(e) The person will complete the term of incarceration imposed before the person attains 25 years
10 of age;]

11 “(f) The person is likely in the foreseeable future to benefit from the rehabilitative and treatment
12 programs administered by the Oregon Youth Authority;]

13 “(g) The person does not pose a substantial danger to Oregon Youth Authority staff or persons
14 in the custody of the Oregon Youth Authority; and]

15 “(h) At the time of the proposed transfer, no more than 50 persons are in the physical custody of
16 the Oregon Youth Authority under this subsection.]

17 “(8) (7) Notwithstanding the provisions of [subsections] **subsection** (5)(a)(A) [or (7)] of this
18 section, the department or the supervisory authority of a county may not transfer the physical cus-
19 tody of the person under subsection (5)(a)(A) [or (7)] of this section if the Director of the Oregon
20 Youth Authority, after consultation with the Department of Corrections or the supervisory authority
21 of a county, determines that, because of the person’s age, mental or emotional condition or risk of
22 physical harm to other persons, the person should not be incarcerated in a youth correction facility.

23 “(9) (8) Notwithstanding any other provision of this section, under no circumstances may a
24 person under 18 years of age be incarcerated in a Department of Corrections institution.

25 “(9) **If a defendant is transferred under subsection (5) of this section, the defendant shall**
26 **also be transferred after a resentencing on the same charges resulting from an appellate**
27 **decision or a post-conviction relief proceeding or for any other reason, even if the defendant**
28 **is 20 years of age or older at the time of the resentencing.**

29 “(10) **For the purposes of determining the person’s age at the time of committing an of-**
30 **fense under this section:**

31 “(a) **If the person is convicted of two or more offenses occurring on different days, the**
32 **person’s age shall be calculated using the earliest date.**

33 “(b) **If the person is convicted of an offense occurring within a range of dates, the**
34 **person’s age shall be calculated using the date at the beginning of the range.**

35 “**SECTION 3.** ORS 420.011 is amended to read:

36 “420.011. (1) Except as provided in subsections (2) and (3) of this section, admissions to the youth
37 correction facilities are limited to youth offenders who are at least 12 but less than 19 years of age,
38 found by the juvenile court to have committed an act that if committed by an adult would constitute
39 aggravated murder, murder, a felony or a Class A misdemeanor and placed in the legal custody of
40 the Oregon Youth Authority. A youth offender admitted to a youth correction facility may not be
41 transferred by administrative process to any penal or correctional institution.

42 “(2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS
43 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority
44 or the director’s designee, persons who are committed to the Department of Corrections under ORS
45 137.124 and meet the requirements of ORS 137.124 (5) [or (7)] may be temporarily assigned to a youth

1 correction facility as provided by ORS 137.124 (5) [or (7)]. A person assigned on such a temporary
2 basis remains within the legal custody of the Department of Corrections and such reassignment is
3 subject to termination by the Director of the Oregon Youth Authority by referring the person back
4 to the Department of Corrections as provided in paragraph (b) of this subsection.

5 “(b) After a person is transferred to the physical custody of the youth authority under ORS
6 137.124 (5) [or (7)], the Director of the Oregon Youth Authority may refer the person back to the
7 Department of Corrections for physical custody and placement if the director, after consulting with
8 the Department of Corrections, determines that the person is at least 18 years of age and:

9 “(A) Poses a substantial danger to youth authority staff or persons in the custody of the youth
10 authority; or

11 “(B) Is not likely, in the foreseeable future, to benefit from the rehabilitation and treatment
12 programs administered by the youth authority and is appropriate for placement in a Department of
13 Corrections institution.

14 “(3) Any person under 18 years of age at the time of committing the crime and under 20 years
15 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349, 419C.352,
16 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to
17 a term of imprisonment in the custody of the Department of Corrections, and any person under 16
18 years of age who after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing
19 under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of imprisonment in the county
20 jail, shall be temporarily assigned to a youth correction facility by the Department of Corrections,
21 or by the sheriff to whose custody the person has been committed, pursuant to ORS 137.124 (6). The
22 director shall designate the appropriate youth correction facility or schools for such assignment. A
23 person assigned to a youth correction facility under ORS 137.124 (6) and this subsection remains
24 within the legal custody of the Department of Corrections or sheriff to whose custody the person
25 was committed. The assignment of such a person to the youth correction facility is subject, when
26 the person is 18 years of age or older, to termination by the director by referring the person back
27 to the Department of Corrections or the sheriff to serve the balance of the person’s sentence. As-
28 signment to a youth correction facility pursuant to ORS 137.124 (6) and this subsection, if not ter-
29 minated earlier by the director, shall terminate upon the person’s attaining the age specified in ORS
30 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and
31 physical custody of the person, and the person shall be referred to the Department of Corrections
32 or the sheriff having legal custody of the person to serve the balance of the person’s sentence.

33 “(4) Whenever a person committed to the custody of the Department of Corrections is tempo-
34 rarily assigned to a youth correction facility pursuant to this section, the youth authority may pro-
35 vide programs and treatment for the person, and may adopt rules relating to conditions of
36 confinement at the youth correction facility, as the youth authority determines are appropriate.
37 However, the person remains subject to laws and rules of the State Board of Parole and Post-Prison
38 Supervision relating to parole.

39 “(5) **For the purposes of determining the person’s age at the time of committing an of-**
40 **fense under this section:**

41 “(a) **If the person is convicted of two or more offenses occurring on different days, the**
42 **person’s age shall be calculated using the earliest date.**

43 “(b) **If the person is convicted of an offense occurring within a range of dates, the**
44 **person’s age shall be calculated using the date at the beginning of the range.**

1 "SECOND LOOK

2
3 "SECTION 4. ORS 420A.203 is amended to read:

4 "420A.203. (1)(a) This section and ORS 420A.206 apply only to *[persons]* **a person** who:

5 "(A) *[Were]* **Was** under 18 years of age at the time of the commission of the offense for which
6 the *[persons were]* **person was** sentenced to a term of imprisonment, who committed the offense on
7 or after June 30, 1995, and who *[were]* **was**:

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

10 "[B] (ii) Sentenced to a term of imprisonment of at least 24 months under ORS 137.707
11 *[(5)(b)(A) or (7)(b).]* **(4)(a)(G) or (R) or 137.712 (2)(b) or (d) for an offense that did not involve**
12 **a firearm; or**

13 "**(B)(i) Was under 18 years of age at the time of the commission of all offenses for which**
14 **the person was sentenced to a term of imprisonment;**

15 "**(ii) Is in the physical custody of the Oregon Youth Authority; and**

16 "**(iii) Has a projected release date, as determined by the Department of Corrections, that**
17 **falls on or after the person's 25th birthday and before the person's 27th birthday.**

18 "(b) When a person described in paragraph (a)(A) of this subsection has served one-half of the
19 sentence imposed **or when a person described in paragraph (a)(B) of this subsection attains**
20 **24 years and six months of age**, the sentencing court shall determine what further commitment
21 or disposition is appropriate as provided in this section. As used in this subsection and subsection
22 (2) of this section, 'sentence imposed' means the total period of mandatory incarceration imposed for
23 all convictions resulting from a single prosecution or criminal proceeding not including any re-
24 duction in the sentence under ORS 421.121 or any other statute.

25 "(2)(a) No more than 120 days and not less than 60 days before the date on which a person has
26 served one-half of the sentence imposed **or attains 24 years and six months of age**, the Oregon
27 Youth Authority or the Department of Corrections, whichever has physical custody of the person,
28 shall file in the sentencing court a notice and request that the court set a time and place for the
29 hearing required under this section. The youth authority or department shall serve the person with
30 a copy of the notice and request for hearing on or before the date of filing.

31 "(b) Upon receiving the notice and request for a hearing under paragraph (a) of this subsection,
32 the sentencing court shall schedule a hearing for a date not more than 30 days after the date on
33 which the person will have served one-half of the sentence imposed **or attains 24 years and six**
34 **months of age**, or such later date as is agreed upon by the parties.

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

36 "(A) The person and, **if the person is under 18 years of age**, the person's parents;

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

39 "(C) The district attorney who prosecuted the case.

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

42 "(A) The victim and, **if the victim is under 18 years of age**, the victim's parents or legal
43 guardian; and

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

1 “(e) **Notwithstanding paragraph (b) of this subsection, the court may delay the hearing**
2 **for good cause.**

3 “(3) In a hearing under this section:

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

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

8 “(c) The district attorney represents the state.

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

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

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

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

23 “(h) The hearing must be recorded.

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

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

27 “(k) The person has the burden of proving by clear and convincing evidence that the person has
28 been rehabilitated and reformed, and if conditionally released, the person would not be a threat to
29 the safety of the victim, the victim’s family or the community and that the person would comply with
30 the release conditions.

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

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

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

39 “(i) Has been rehabilitated and reformed;

40 “(ii) Is not a threat to the safety of the victim, the victim’s family or the community; and

41 “(iii) Will comply with the conditions of release.

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

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

45 “(B) The person’s juvenile and criminal records;

1 “(C) The person’s mental, emotional and physical health;

2 “(D) The gravity of the loss, damage or injury caused or attempted, during or as part of the

3 criminal act for which the person was convicted and sentenced;

4 “(E) The manner in which the person committed the criminal act for which the person was

5 convicted and sentenced;

6 “(F) The person’s efforts, participation and progress in rehabilitation programs since the

7 person’s conviction;

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

9 “(H) Whether the person demonstrates accountability and responsibility for past and future

10 conduct;

11 “(I) Whether the person has made and will continue to make restitution to the victim and the

12 community;

13 “(J) Whether the person will comply with and benefit from all conditions that will be imposed

14 if the person is conditionally released;

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

16 “(L) The recommendations of the district attorney, the Oregon Youth Authority and the De-

17 partment of Corrections; and

18 “(M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Au-

19 thority, the Department of Corrections or the person.

20 “(5) The court shall provide copies of its disposition order under subsection (4) of this section

21 to the parties, to the records supervisor of the correctional institution in which the person is

22 incarcerated and to the manager of the institution-based records office of the Department of Cor-

23 rections.

24 “(6) The person or the state may appeal an order entered under this section. On appeal, the

25 appellate court’s review is limited to claims that:

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

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

28 or

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

30 “(7) **A person described in subsection (1)(a)(B) of this section may waive a hearing under**

31 **this section.**

32 “**SECTION 5.** ORS 137.707 is amended to read:

33 “137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-

34 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is

35 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or

36 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-

37 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed

38 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)

39 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is

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

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

42 in juvenile court a petition alleging that a person has committed an act that, if committed by an

43 adult, would constitute aggravated murder or an offense listed in subsection (4) of this section if the

44 person was 15, 16 or 17 years of age at the time the act was committed.

45 “(2) When a person charged under this section is convicted of an offense listed in subsection (4)

1 of this section, the court shall impose at least the presumptive term of imprisonment provided for
2 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
3 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
4 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
5 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-
6 tence for any reason under ORS 421.121 or any other provision of law. **The person is eligible for**
7 **a hearing and conditional release under ORS 420A.203 (1)(a)(A) and 420A.206 only for an of-**
8 **fense listed in subsection (4)(a)(G) or (R) of this section that did not involve a firearm. The**
9 **person is eligible for a hearing and conditional release under ORS 420A.203 (1)(a)(B) and**
10 **420A.206.** ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this
11 section and convicted of aggravated murder under ORS 163.095 except that a person who was under
12 18 years of age at the time the offense was committed is not subject to a sentence of death.

13 “(3) The court shall commit the person to the legal and physical custody of the Department of
14 Corrections.

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

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- (a)(A) Murder, as defined in
ORS 163.115300 months
- (B) Attempt or conspiracy
to commit aggravated
murder, as defined
in ORS 163.095120 months
- (C) Attempt or conspiracy
to commit murder, as
defined in ORS 163.115.90 months
- (D) Manslaughter in the
first degree, as defined
in ORS 163.118120 months
- (E) Manslaughter in the
second degree, as defined
in ORS 163.12575 months
- (F) Assault in the first
degree, as defined
in ORS 163.18590 months
- (G) Assault in the second
degree, as defined
in ORS 163.17570 months
- (H) Kidnapping in the first
degree, as defined in
ORS 163.23590 months
- (I) Kidnapping in the second
degree, as defined in
ORS 163.22570 months
- (J) Rape in the first degree,

1 as defined in ORS 163.375....100 months

2 (K) Rape in the second

3 degree, as defined in

4 ORS 163.36575 months

5 (L) Sodomy in the first

6 degree, as defined in

7 ORS 163.405100 months

8 (M) Sodomy in the second

9 degree, as defined in

10 ORS 163.39575 months

11 (N) Unlawful sexual

12 penetration in the first

13 degree, as defined

14 in ORS 163.411100 months

15 (O) Unlawful sexual

16 penetration in the

17 second degree, as

18 defined in ORS 163.408.75 months

19 (P) Sexual abuse in the first

20 degree, as defined in

21 ORS 163.42775 months

22 (Q) Robbery in the first

23 degree, as defined in

24 ORS 164.41590 months

25 (R) Robbery in the second

26 degree, as defined in

27 ORS 164.40570 months

28 (b)(A) Arson in the first degree,

29 as defined in

30 ORS 164.325, when

31 the offense represented

32 a threat of serious

33 physical injury.90 months

34 (B) Using a child in a display

35 of sexually explicit

36 conduct, as defined in

37 ORS 163.67070 months

38 (C) Compelling prostitution,

39 as defined in ORS 167.017

40 (1)(a), (b) or (d).....70 months

41 (c) Aggravated vehicular

42 homicide, as defined in

43 ORS 163.149240 months

44 “

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

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

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

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

12 “(i) Order that a presentence report be prepared;

13 “(ii) Set forth in a memorandum any observations and recommendations that the court deems
14 appropriate; and

15 “(iii) Enter an order transferring the case to the juvenile court for disposition under ORS
16 419C.067 and 419C.411.

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

19 “(i) Order that a presentence report be prepared;

20 “(ii) Set forth in a memorandum any observations and recommendations that the court deems
21 appropriate; and

22 “(iii) Enter an order transferring the case to the juvenile court for disposition under ORS
23 419C.067 and 419C.411.

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

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

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

43 “(A) Order that a presentence report be prepared;

44 “(B) Set forth in a memorandum any observations and recommendations that the court deems
45 appropriate; and

1 “(C) Enter an order transferring the case to the juvenile court for disposition under ORS
2 419C.067 and 419C.411.

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

4 “137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
5 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
6 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
7 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
8 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
9 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
10 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
11 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
12 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
13 of this section and finds that a substantial and compelling reason under the rules of the Oregon
14 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
15 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and
16 any other statute. **The person is eligible for a hearing and conditional release under ORS**
17 **420A.203 (1)(a)(A) and 420A.206 only for a sentence imposed pursuant to subsection (2)(b) or**
18 **(d) of this section for an offense that did not involve a firearm. The person is eligible for a**
19 **hearing and conditional release under ORS 420A.203 (1)(a)(B) and 420A.206.**

20 “(b) In order to make a dispositional departure under this section, the court must make the
21 following 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
28 on 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
31 years 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 signif-
39 icant physical injury as a result of or despite the use of spiritual treatment, regardless of whether
40 the 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

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

2
3 **“LIFE IMPRISONMENT**

4
5 **“SECTION 7. (1) A court may not impose a sentence of life imprisonment without the**
6 **possibility of release or parole on a person who was under 18 years of age at the time of**
7 **committing the offense.**

8 **“(2) In determining the appropriate sentence for a person who was under 18 years of age**
9 **at the time of committing the offense, if the court is provided information concerning the**
10 **following circumstances, or any other relevant circumstances, the court shall consider those**
11 **circumstances in imposing the sentence:**

12 **“(a) The person’s age, intellectual capacity and impetuosity at the time of the offense.**

13 **“(b) The person’s family and community environment, history of trauma and prior in-**
14 **volvement in the juvenile dependency system at the time of the offense.**

15 **“(c) The person’s ability at the time of the offense to appreciate the risks and conse-**
16 **quences of the conduct constituting the offense.**

17 **“(d) The person’s community involvement prior to the offense.**

18 **“(e) Any peer or familial pressure to which the person was subjected at the time of the**
19 **offense.**

20 **“(f) Whether and to what extent an adult was involved in the commission of the offense.**

21 **“(g) The person’s capacity for rehabilitation.**

22 **“(h) The person’s school records and special education evaluations.**

23 **“(i) Any other mitigating factors or circumstances presented by the person.**

24 **“(3)(a) If the court is provided with a report of a mental health evaluation of the person,**
25 **the court shall give the evaluation substantial weight in imposing the sentence if:**

26 **“(A) The evaluation was conducted by a psychiatrist or psychologist whose primary**
27 **practice involves the treatment of adolescents; and**

28 **“(B) The report includes the assessment of the person’s degree of insight, judgment,**
29 **self-awareness, emotional regulation and impulse control.**

30 **“(b) Paragraph (a) of this subsection does not constitute a requirement that a person**
31 **obtain or submit an evaluation for sentencing.**

32 **“(4) When sentencing a person who was under 18 years of age at the time of committing**
33 **the offense, under no circumstances may the court consider the age of the person as an**
34 **aggravating factor.**

35 **“(5) When sentencing a person who was under 18 years of age at the time of committing**
36 **an offense to a term of imprisonment, the court shall indicate in the judgment the age of the**
37 **person at the time of committing the offense.**

38
39 **“FUNDING FOR JUVENILE SERVICES**

40
41 **“SECTION 8. The Oregon Youth Authority shall provide grants to county juvenile de-**
42 **partments to fund:**

43 **“(1) The provision to youth offenders of treatment, including but not limited to mental**
44 **health treatment, drug and alcohol treatment, dual diagnosis treatment, family counseling**
45 **and multisystemic therapy.**

