

# Minority Report No. 1

## B-Engrossed

# Senate Bill 1008

Ordered by the House May 23  
Including Senate Amendments dated April 12 and House Minority  
Report No. 1 Amendments dated May 23

Sponsored by nonconcurring members of the House Committee on Judiciary: Representatives MCLANE,  
SPRENGER

### 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.

Requires court to include in judgment document age of defendant at time of committing offense if defendant is sentenced to term of incarceration and physical custody of defendant is related to age of defendant at time of committing offense.

Directs Department of Corrections to transfer person sentenced to term of incarceration for offense committed when person was under 18 years of age to physical custody of Oregon Youth Authority even if criminal proceedings were initiated after person attained 18 years of age.

*[Eliminates mandatory adult prosecution for certain offenses committed when person charged is 15, 16 or 17 years of age at time of offense. Requires juvenile court, upon filing by state of motion requesting waiver hearing, to hold hearing to determine whether person should be prosecuted as adult.]*

Authorizes juvenile offender *[charged with offense subject to mandatory minimum sentence]* **convicted of assault in the second degree or robbery in the second degree, not involving a firearm**, who receives mandatory minimum sentence or other sentence of imprisonment, to be eligible for conditional release hearing after serving at least one-half of sentence imposed.

Provides that person in custody of Oregon Youth Authority for offense committed while person was under 18 years of age, for which person was sentenced to term of imprisonment with projected release date that falls after person attains 25 years of age but before person attains 27 years of age, is eligible for conditional release hearing.

Prohibits person who was under 18 years of age at time of committing offense from being sentenced to life imprisonment without possibility of release or parole.

Requires court to consider certain factors when sentencing person who was under 18 years of age at time of committing offense. Prohibits court from considering age as aggravating factor. *[Directs court to include in judgment document fact that person is eligible for hearing and release after serving 15 years of sentence of imprisonment.]*

*[Establishes process for hearing with State Board of Parole and Post-Prison Supervision for persons who were under 18 years of age at time of committing offense and who have served 15 years of sentence of imprisonment. Authorizes release of person on parole or post-prison supervision if certain findings are made.]*

*[Directs Department of Justice to adopt model policies for providing victim notification concerning conditional release and waiver hearings. Directs district attorney victim assistance programs to provide notice to victims in accordance with model policies.]*

*[Takes effect on 91st day following adjournment sine die.]*

**Directs Oregon Youth Authority to provide grants to county juvenile departments to fund treatment programs for, and psychological evaluations of, youth offenders. Appropriates moneys to authority to fund grants and to increase available placements for youth offenders other than commitment to youth correction facilities.**

**Refers Act to people for their approval or rejection at next regular general election.**

### A BILL FOR AN ACT

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Relating to juvenile offender sentencing; creating new provisions; amending ORS 137.071, 137.124, 137.707, 137.712, 420.011 and 420A.203; providing for criminal sentence reduction that requires approval by a two-thirds majority; and providing that this Act shall be referred to the people for their approval or rejection.

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

2  
3 **CUSTODY OF JUVENILE OFFENDERS**

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5 **SECTION 1.** ORS 137.071 is amended to read:

6 137.071. (1) The judge in a criminal action shall ensure that the creation and filing of a judgment  
7 document complies with this section. On appeal, the appellate court may give leave as provided in  
8 ORS 19.270 for entry of a judgment document that complies with this section but may not reverse  
9 or set aside a judgment, determination or disposition on the sole ground that the judgment document  
10 fails to comply with this section.

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

13 (a) Indicate whether the defendant was determined to be financially eligible for purposes of ap-  
14 pointed counsel in the action.

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

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

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

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

21 (f) Specify clearly the court's determination for each charge in the information, indictment or  
22 complaint.

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

30 (h) Include the identities of the attorney for the state and the attorney, if any, for the defendant.

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

35 (3) A judgment document in a criminal action that includes a money award, as defined in ORS  
36 18.005, must comply with ORS 18.048.

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

42 **(5) For the purposes of determining the defendant's age at the time of committing an**  
43 **offense under subsection (2) of this section:**

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

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

3       **SECTION 2.** ORS 137.124 is amended to read:

4       137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of  
5 incarceration that exceeds 12 months:

6       (a) The court shall not designate the correctional facility in which the defendant is to be con-  
7 fined but shall commit the defendant to the legal and physical custody of the Department of Cor-  
8 rections; and

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

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

17       (b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon  
18 conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall  
19 commit the defendant to the legal and physical custody of the Department of Corrections if the court  
20 orders that the term of incarceration be served consecutively to a term of incarceration that ex-  
21 ceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court  
22 of this state upon conviction of a felony.

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

27       (4) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall  
28 commit the defendant to the custody of the supervisory authority of the county in which the crime  
29 of conviction occurred.

30       (5)(a) When a person under 18 years of age at the time of committing the offense and under 20  
31 years of age at the time of sentencing is committed to the Department of Corrections under ORS  
32 **137.707 or due to the fact that criminal proceedings were initiated after the person attained**  
33 **18 years of age**, the Department of Corrections shall transfer the physical custody of the person to  
34 the Oregon Youth Authority as provided in ORS 420.011 if:

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

36       (B) The Department of Corrections and the Oregon Youth Authority determine that, because of  
37 the person's age, immaturity, mental or emotional condition or risk of physical harm to the person,  
38 the person should not be incarcerated initially in a Department of Corrections institution; or

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

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

45       (c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Cor-

1 rections transfer the person described in this subsection directly to a youth correction facility for  
 2 physical custody without first delivering the person to the Department of Corrections. As part of the  
 3 agreement with the Department of Corrections, the sheriff may designate the county juvenile de-  
 4 partment or the Oregon Youth Authority to conduct the direct transfer described in this paragraph  
 5 if the sheriff has entered into a written agreement with the county juvenile department, the Oregon  
 6 Youth Authority, or both, to provide the direct transfer.

7 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20  
 8 years of age at the time of sentencing is committed to the legal and physical custody of the De-  
 9 partment of Corrections or the supervisory authority of a county following waiver under ORS  
 10 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or  
 11 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the  
 12 person to the physical custody of the Oregon Youth Authority for placement as provided in ORS  
 13 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS  
 14 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Depart-  
 15 ment of Corrections or the supervisory authority of a county transfer the person described in this  
 16 subsection directly to a youth correction facility for physical custody without first delivering the  
 17 person to the Department of Corrections or supervisory authority of the county. As part of the  
 18 agreement with the Department of Corrections or supervisory authority of the county, the sheriff  
 19 may designate the county juvenile department or the Oregon Youth Authority to conduct the direct  
 20 transfer described in this paragraph if the sheriff has entered into a written agreement with the  
 21 county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

22 (b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS  
 23 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment  
 24 in the county jail, the sheriff shall transfer the person to a youth correction facility for physical  
 25 custody as provided in ORS 420.011 (3).

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

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

32 *[(b) The person is under 20 years of age at the time of commitment to the Department of Corrections*  
 33 *or the supervisory authority of the county;]*

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

36 *[(d) The person has not been convicted and sentenced to a term of incarceration for the commission*  
 37 *of a felony in any other state;]*

38 *[(e) The person will complete the term of incarceration imposed before the person attains 25 years*  
 39 *of age;]*

40 *[(f) The person is likely in the foreseeable future to benefit from the rehabilitative and treatment*  
 41 *programs administered by the Oregon Youth Authority;]*

42 *[(g) The person does not pose a substantial danger to Oregon Youth Authority staff or persons in*  
 43 *the custody of the Oregon Youth Authority; and]*

44 *[(h) At the time of the proposed transfer, no more than 50 persons are in the physical custody of*  
 45 *the Oregon Youth Authority under this subsection.]*

1        [(8)] (7) Notwithstanding the provisions of [subsections] **subsection** (5)(a)(A) [or (7)] of this sec-  
2 tion, the department or the supervisory authority of a county may not transfer the physical custody  
3 of the person under subsection (5)(a)(A) [or (7)] of this section if the Director of the Oregon Youth  
4 Authority, after consultation with the Department of Corrections or the supervisory authority of a  
5 county, determines that, because of the person's age, mental or emotional condition or risk of  
6 physical harm to other persons, the person should not be incarcerated in a youth correction facility.

7        [(9)] (8) Notwithstanding any other provision of this section, under no circumstances may a  
8 person under 18 years of age be incarcerated in a Department of Corrections institution.

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

13        **(10) For the purposes of determining the person's age at the time of committing an of-**  
14 **fense under this section:**

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

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

19        **SECTION 3.** ORS 420.011 is amended to read:

20        420.011. (1) Except as provided in subsections (2) and (3) of this section, admissions to the youth  
21 correction facilities are limited to youth offenders who are at least 12 but less than 19 years of age,  
22 found by the juvenile court to have committed an act that if committed by an adult would constitute  
23 aggravated murder, murder, a felony or a Class A misdemeanor and placed in the legal custody of  
24 the Oregon Youth Authority. A youth offender admitted to a youth correction facility may not be  
25 transferred by administrative process to any penal or correctional institution.

26        (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS  
27 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority  
28 or the director's designee, persons who are committed to the Department of Corrections under ORS  
29 137.124 and meet the requirements of ORS 137.124 (5) [or (7)] may be temporarily assigned to a youth  
30 correction facility as provided by ORS 137.124 (5) [or (7)]. A person assigned on such a temporary  
31 basis remains within the legal custody of the Department of Corrections and such reassignment is  
32 subject to termination by the Director of the Oregon Youth Authority by referring the person back  
33 to the Department of Corrections as provided in paragraph (b) of this subsection.

34        (b) After a person is transferred to the physical custody of the youth authority under ORS  
35 137.124 (5) [or (7)], the Director of the Oregon Youth Authority may refer the person back to the  
36 Department of Corrections for physical custody and placement if the director, after consulting with  
37 the Department of Corrections, determines that the person is at least 18 years of age and:

38        (A) Poses a substantial danger to youth authority staff or persons in the custody of the youth  
39 authority; or

40        (B) Is not likely, in the foreseeable future, to benefit from the rehabilitation and treatment pro-  
41 grams administered by the youth authority and is appropriate for placement in a Department of  
42 Corrections institution.

43        (3) Any person under 18 years of age at the time of committing the crime and under 20 years  
44 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349, 419C.352,  
45 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to

1 a term of imprisonment in the custody of the Department of Corrections, and any person under 16  
2 years of age who after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing  
3 under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of imprisonment in the county  
4 jail, shall be temporarily assigned to a youth correction facility by the Department of Corrections,  
5 or by the sheriff to whose custody the person has been committed, pursuant to ORS 137.124 (6). The  
6 director shall designate the appropriate youth correction facility or schools for such assignment. A  
7 person assigned to a youth correction facility under ORS 137.124 (6) and this subsection remains  
8 within the legal custody of the Department of Corrections or sheriff to whose custody the person  
9 was committed. The assignment of such a person to the youth correction facility is subject, when  
10 the person is 18 years of age or older, to termination by the director by referring the person back  
11 to the Department of Corrections or the sheriff to serve the balance of the person's sentence. As-  
12 signment to a youth correction facility pursuant to ORS 137.124 (6) and this subsection, if not ter-  
13 minated earlier by the director, shall terminate upon the person's attaining the age specified in ORS  
14 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and  
15 physical custody of the person, and the person shall be referred to the Department of Corrections  
16 or the sheriff having legal custody of the person to serve the balance of the person's sentence.

17 (4) Whenever a person committed to the custody of the Department of Corrections is temporarily  
18 assigned to a youth correction facility pursuant to this section, the youth authority may provide  
19 programs and treatment for the person, and may adopt rules relating to conditions of confinement  
20 at the youth correction facility, as the youth authority determines are appropriate. However, the  
21 person remains subject to laws and rules of the State Board of Parole and Post-Prison Supervision  
22 relating to parole.

23 **(5) For the purposes of determining the person's age at the time of committing an of-**  
24 **fense under this section:**

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

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

29  
30 **SECOND LOOK**

31  
32 **SECTION 4.** ORS 420A.203 is amended to read:

33 420A.203. (1)(a) This section and ORS 420A.206 apply only to *[persons]* **a person** who:

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

37 *[(A)]* **(i)** Sentenced to a term of imprisonment of at least 24 months following waiver under ORS  
38 419C.349, 419C.352, 419C.364 or 419C.370; or

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

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

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

45 **(iii) Has a projected release date, as determined by the Department of Corrections, that**

1 **falls on or after the person's 25th birthday and before the person's 27th birthday.**

2 (b) When a person described in paragraph (a)(A) of this subsection has served one-half of the  
3 sentence imposed **or when a person described in paragraph (a)(B) of this subsection attains**  
4 **24 years and six months of age**, the sentencing court shall determine what further commitment  
5 or disposition is appropriate as provided in this section. As used in this subsection and subsection  
6 (2) of this section, "sentence imposed" means the total period of mandatory incarceration imposed  
7 for all convictions resulting from a single prosecution or criminal proceeding not including any re-  
8 duction in the sentence under ORS 421.121 or any other statute.

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

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

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

20 (A) The person and, **if the person is under 18 years of age**, 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) The court shall make reasonable efforts to notify the following of the time and place of the  
25 hearing:

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

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

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

32 (3) In a hearing under this section:

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

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

37 (c) The district attorney represents the state.

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

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

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

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

7 (h) The hearing must be recorded.

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

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

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

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

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

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

23 (i) Has been rehabilitated and reformed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (L) The recommendations of the district attorney, the Oregon Youth Authority and the Depart-



1 ment of Corrections; and

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

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

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

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

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

12 or

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

14 **(7) A person described in subsection (1)(a)(B) of this section may waive a hearing under**  
15 **this section.**

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

17 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-  
18 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is  
19 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or  
20 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-  
21 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed  
22 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)  
23 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is  
24 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

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

29 (2) When a person charged under this section is convicted of an offense listed in subsection (4)  
30 of this section, the court shall impose at least the presumptive term of imprisonment provided for  
31 the offense in subsection (4) of this section. The court may impose a greater presumptive term if  
32 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service  
33 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary  
34 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-  
35 tence for any reason under ORS 421.121 or any other provision of law. **The person is eligible for**  
36 **a hearing and conditional release under ORS 420A.203 (1)(a)(A) and 420A.206 only for an of-**  
37 **fense listed in subsection (4)(a)(G) or (R) of this section that did not involve a firearm. The**  
38 **person is eligible for a hearing and conditional release under ORS 420A.203 (1)(a)(B) and**  
39 **420A.206.** ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this  
40 section and convicted of aggravated murder under ORS 163.095 except that a person who was under  
41 18 years of age at the time the offense was committed is not subject to a sentence of death.

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

44 (4) The offenses to which this section applies and the presumptive sentences are:  
45

- 1
- 2 (a)(A) Murder, as defined in
- 3       ORS 163.115 .....300 months
- 4 (B) Attempt or conspiracy
- 5       to commit aggravated
- 6       murder, as defined
- 7       in ORS 163.095 .....120 months
- 8 (C) Attempt or conspiracy
- 9       to commit murder, as
- 10       defined in ORS 163.115 .....90 months
- 11 (D) Manslaughter in the
- 12       first degree, as defined
- 13       in ORS 163.118 .....120 months
- 14 (E) Manslaughter in the
- 15       second degree, as defined
- 16       in ORS 163.125 .....75 months
- 17 (F) Assault in the first
- 18       degree, as defined
- 19       in ORS 163.185 .....90 months
- 20 (G) Assault in the second
- 21       degree, as defined
- 22       in ORS 163.175 .....70 months
- 23 (H) Kidnapping in the first
- 24       degree, as defined in
- 25       ORS 163.235 .....90 months
- 26 (I) Kidnapping in the second
- 27       degree, as defined in
- 28       ORS 163.225 .....70 months
- 29 (J) Rape in the first degree,
- 30       as defined in ORS 163.375....100 months
- 31 (K) Rape in the second
- 32       degree, as defined in
- 33       ORS 163.365 .....75 months
- 34 (L) Sodomy in the first
- 35       degree, as defined in
- 36       ORS 163.405 .....100 months
- 37 (M) Sodomy in the second
- 38       degree, as defined in
- 39       ORS 163.395 .....75 months
- 40 (N) Unlawful sexual
- 41       penetration in the first
- 42       degree, as defined
- 43       in ORS 163.411 .....100 months
- 44 (O) Unlawful sexual
- 45       penetration in the

- 1 second degree, as
- 2 defined in ORS 163.408. ....75 months
- 3 (P) Sexual abuse in the first
- 4 degree, as defined in
- 5 ORS 163.427. ....75 months
- 6 (Q) Robbery in the first
- 7 degree, as defined in
- 8 ORS 164.415. ....90 months
- 9 (R) Robbery in the second
- 10 degree, as defined in
- 11 ORS 164.405. ....70 months
- 12 (b)(A) Arson in the first degree,
- 13 as defined in
- 14 ORS 164.325, when
- 15 the offense represented
- 16 a threat of serious
- 17 physical injury. ....90 months
- 18 (B) Using a child in a display
- 19 of sexually explicit
- 20 conduct, as defined in
- 21 ORS 163.670. ....70 months
- 22 (C) Compelling prostitution,
- 23 as defined in ORS 167.017
- 24 (1)(a), (b) or (d). ....70 months
- 25 (c) Aggravated vehicular
- 26 homicide, as defined in
- 27 ORS 163.149. ....240 months

28  
29

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

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

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

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

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

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

44 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
45 419C.067 and 419C.411.

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

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

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

6 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
7 419C.067 and 419C.411.

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

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

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

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

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

30 (C) Enter an order transferring the case to the juvenile court for disposition under ORS  
31 419C.067 and 419C.411.

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

33 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of  
34 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-  
35 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the  
36 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,  
37 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first  
38 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS  
39 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice  
40 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700  
41 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)  
42 of this section and finds that a substantial and compelling reason under the rules of the Oregon  
43 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under  
44 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and  
45 any other statute. **The person is eligible for a hearing and conditional release under ORS**

1 **420A.203 (1)(a)(A) and 420A.206 only for a sentence imposed pursuant to subsection (2)(b) or**  
2 **(d) of this section for an offense that did not involve a firearm. The person is eligible for a**  
3 **hearing and conditional release under ORS 420A.203 (1)(a)(B) and 420A.206.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (6) As used in this section:

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

13 (A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS  
14 419C.005, if the person was at least 15 years of age at the time the person committed the offense  
15 that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include  
16 a juvenile court adjudication described in this subparagraph if the person successfully asserted the  
17 defense set forth in ORS 419C.522.

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

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

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

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

28 (B) Causes a serious and temporary disfigurement;

29 (C) Causes a protracted disfigurement; or

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

31  
32 **LIFE IMPRISONMENT**

33  
34 **SECTION 7. (1) A court may not impose a sentence of life imprisonment without the**  
35 **possibility of release or parole on a person who was under 18 years of age at the time of**  
36 **committing the offense.**

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

41 **(a) The person's age, intellectual capacity and impetuosity at the time of the offense.**

42 **(b) The person's family and community environment, history of trauma and prior in-**  
43 **volvement in the juvenile dependency system at the time of the offense.**

44 **(c) The person's ability at the time of the offense to appreciate the risks and conse-**  
45 **quences of the conduct constituting the offense.**

1 (d) The person's community involvement prior to the offense.

2 (e) Any peer or familial pressure to which the person was subjected at the time of the  
3 offense.

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

5 (g) The person's capacity for rehabilitation.

6 (h) The person's school records and special education evaluations.

7 (i) Any other mitigating factors or circumstances presented by the person.

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

10 (A) The evaluation was conducted by a psychiatrist or psychologist whose primary prac-  
11 tice involves the treatment of adolescents; and

12 (B) The report includes the assessment of the person's degree of insight, judgment,  
13 self-awareness, emotional regulation and impulse control.

14 (b) Paragraph (a) of this subsection does not constitute a requirement that a person ob-  
15 tain or submit an evaluation for sentencing.

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

19 (5) When sentencing a person who was under 18 years of age at the time of committing  
20 an offense to a term of imprisonment, the court shall indicate in the judgment the age of the  
21 person at the time of committing the offense.

22  
23 **FUNDING FOR JUVENILE SERVICES**

24  
25 **SECTION 8.** The Oregon Youth Authority shall provide grants to county juvenile de-  
26 partments to fund:

27 (1) The provision to youth offenders of treatment, including but not limited to mental  
28 health treatment, drug and alcohol treatment, dual diagnosis treatment, family counseling  
29 and multisystemic therapy.

30 (2) Psychological evaluations of youth offenders to better determine appropriate treat-  
31 ment plans for the youth offenders.

32 **SECTION 9.** In addition to and not in lieu of any other appropriation, there is appropri-  
33 ated to the Oregon Youth Authority, for the biennium beginning July 1, 2019, out of the  
34 General Fund, the amount of \_\_\_\_\_, for distribution to county juvenile departments  
35 to carry out the provisions of section 8 of this 2019 Act.

36 **SECTION 10.** In addition to and not in lieu of any other appropriation, there is appro-  
37 priated to the Oregon Youth Authority, for the biennium beginning July 1, 2019, out of the  
38 General Fund, the amount of \_\_\_\_\_, to be expended on increasing the number of  
39 placements available for youth offenders other than commitment to youth correction facili-  
40 ties.

41  
42 **APPLICABILITY**

43  
44 **SECTION 11.** Section 7 of this 2019 Act and the amendments to ORS 137.071, 137.124,  
45 137.707, 137.712, 420.011 and 420A.203 by sections 1 to 6 of this 2019 Act apply to offenses



1 committed on or after the effective date of this 2019 Act.

2

3

**UNIT CAPTIONS**

4

5 **SECTION 12.** The unit captions used in this 2019 Act are provided only for the conven-  
6 ience of the reader and do not become part of the statutory law of this state or express any  
7 legislative intent in the enactment of this 2019 Act.

8

9

**REFERRAL**

10

11 **SECTION 13.** This 2019 Act shall be submitted to the people for their approval or re-  
12 jection at the next regular general election held throughout this state.

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