

Requested by Senator THATCHER

**PROPOSED AMENDMENTS TO
SENATE BILL 968**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest
2 of the line and lines 3 and 4 and insert “and amending ORS 137.707 and
3 163.155.”.

4 Delete lines 6 through 26 and delete pages 2 through 14 and insert:

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

8 **“SECTION 2. ORS 137.707 is amended to read:**

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

20 “(b) A district attorney, the Attorney General or a juvenile department
21 counselor may not file in juvenile court a petition alleging that a person has

1 committed an act that, if committed by an adult, would constitute aggravated
2 murder or an offense listed in subsection (4) of this section if the person was
3 15, 16 or 17 years of age at the time the act was committed.

4 “(2) When a person charged under this section is convicted of an offense
5 listed in subsection (4) of this section, the court shall impose at least the
6 presumptive term of imprisonment provided for the offense in subsection (4)
7 of this section. The court may impose a greater presumptive term if other-
8 wise permitted by law, but may not impose a lesser term. The person is not,
9 during the service of the term of imprisonment, eligible for release on post-
10 prison supervision or any form of temporary leave from custody. The person
11 is not eligible for any reduction in, or based on, the minimum sentence for
12 any reason under ORS 421.121 or any other provision of law. ORS 138.052,
13 163.105 and 163.150 apply to sentencing a person prosecuted under this sec-
14 tion and convicted of aggravated murder under ORS 163.095 except that a
15 person who was under 18 years of age at the time the offense was committed
16 is not subject to a sentence of death **or life imprisonment without the**
17 **possibility of release or parole.**

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

20 “(4) The offenses to which this section applies and the presumptive sen-
21 tences are:

- 22 “ _____
- 23 (a)(A) Murder, as defined in
24 ORS 163.115.....300 months
 - 25 (B) Attempt or conspiracy
26 to commit aggravated
27 murder, as defined
28 in ORS 163.095.....120 months
 - 29 (C) Attempt or conspiracy
30 to commit murder, as

1 defined in ORS 163.115.90 months

2 (D) Manslaughter in the

3 first degree, as defined

4 in ORS 163.118.120 months

5 (E) Manslaughter in the

6 second degree, as defined

7 in ORS 163.125.75 months

8 (F) Assault in the first

9 degree, as defined

10 in ORS 163.185.90 months

11 (G) Assault in the second

12 degree, as defined

13 in ORS 163.175.70 months

14 (H) Kidnapping in the first

15 degree, as defined in

16 ORS 163.235.90 months

17 (I) Kidnapping in the second

18 degree, as defined in

19 ORS 163.225.70 months

20 (J) Rape in the first degree,

21 as defined in ORS 163.375.100 months

22 (K) Rape in the second

23 degree, as defined in

24 ORS 163.365.75 months

25 (L) Sodomy in the first

26 degree, as defined in

27 ORS 163.405.100 months

28 (M) Sodomy in the second

29 degree, as defined in

30 ORS 163.395.75 months

- 1 (N) Unlawful sexual
2 penetration in the first
3 degree, as defined
4 in ORS 163.411.....100 months
- 5 (O) Unlawful sexual
6 penetration in the
7 second degree, as
8 defined in ORS 163.408.75 months
- 9 (P) Sexual abuse in the first
10 degree, as defined in
11 ORS 163.427.....75 months
- 12 (Q) Robbery in the first
13 degree, as defined in
14 ORS 164.415.....90 months
- 15 (R) Robbery in the second
16 degree, as defined in
17 ORS 164.405.....70 months
- 18 (b)(A) Arson in the first degree,
19 as defined in
20 ORS 164.325, when
21 the offense represented
22 a threat of serious
23 physical injury.90 months
- 24 (B) Using a child in a display
25 of sexually explicit
26 conduct, as defined in
27 ORS 163.670.....70 months
- 28 (C) Compelling prostitution,
29 as defined in ORS 167.017
30 (1)(a), (b) or (d).....70 months

1 (c) Aggravated vehicular
2 homicide, as defined in
3 ORS 163.149.....240 months

4 “
5 (5) If a person charged with an offense under this section is found guilty
6 of a lesser included offense and the lesser included offense is:

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

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

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

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

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

20 “(iii) Enter an order transferring the case to the juvenile court for dis-
21 position under ORS 419C.067 and 419C.411.

22 “(B) And is not an offense for which waiver is authorized under ORS
23 419C.349, the court may not sentence the person. The court shall:

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

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

27 “(iii) Enter an order transferring the case to the juvenile court for dis-
28 position under ORS 419C.067 and 419C.411.

29 “(6) When a person is charged under this section, other offenses based on
30 the same act or transaction shall be charged as separate counts in the same

1 accusatory instrument and consolidated for trial, whether or not the other
2 offenses are aggravated murder or offenses listed in subsection (4) of this
3 section. If it appears, upon motion, that the state or the person charged is
4 prejudiced by the joinder and consolidation of offenses, the court may order
5 an election or separate trials of counts or provide whatever other relief jus-
6 tice requires.

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

13 “(b) If a person charged and tried as provided in subsection (6) of this
14 section is not found guilty of aggravated murder or an offense listed in
15 subsection (4) of this section, but is found guilty of one of the other charges
16 that constitutes an offense for which waiver is authorized under ORS
17 419C.349, the court, upon motion of the district attorney, shall hold a hearing
18 to determine whether to retain jurisdiction or to transfer the case to juvenile
19 court for disposition. In determining whether to retain jurisdiction, the court
20 shall consider the criteria for waiver in ORS 419C.349. If the court retains
21 jurisdiction, the court shall sentence the person as an adult under sentencing
22 guidelines. If the court does not retain jurisdiction, the court shall:

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

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

26 “(C) Enter an order transferring the case to the juvenile court for dispo-
27 sition under ORS 419C.067 and 419C.411.

28 **“SECTION 3.** ORS 163.155 is amended to read:

29 “163.155. (1) When a defendant, who was at least 15 years of age at the
30 time of committing the murder, is convicted of murdering a pregnant victim

1 under ORS 163.115 (1)(a) and the defendant knew that the victim was preg-
2 nant, the defendant shall be sentenced to life imprisonment without the
3 possibility of release or parole **if the person was at least 18 years of age**
4 **at the time of committing the offense** or to life imprisonment. The court
5 shall conduct a sentencing proceeding to determine whether the defendant
6 shall be sentenced to life imprisonment without the possibility of release or
7 parole as described in subsection (4) of this section or to life imprisonment
8 as described in subsection (5) of this section. If the defendant waives all
9 rights to a jury sentencing proceeding, the court shall conduct the sentenc-
10 ing proceeding as the trier of fact. The procedure for the sentencing pro-
11 ceeding, whether before a court or a jury, shall follow the procedure of ORS
12 163.150 (1)(a), as modified by this section.

13 “(2) Following the presentation of evidence and argument under sub-
14 section (1) of this section, the court shall instruct the jury that the trial
15 court shall sentence the defendant to life imprisonment without the possi-
16 bility of release or parole as described in subsection (4) of this section, un-
17 less after considering all of the evidence submitted, 10 or more members of
18 the jury find there are sufficient mitigating circumstances to warrant life
19 imprisonment with the possibility of release or parole as described in sub-
20 section (5) of this section. If 10 or more members of the jury do not find there
21 are sufficient mitigating circumstances to warrant life imprisonment with
22 the possibility of release or parole, the trial court shall sentence the de-
23 fendant to life imprisonment without the possibility of release or parole as
24 described in subsection (4) of this section. If 10 or more members of the jury
25 find there are sufficient mitigating circumstances to warrant life
26 imprisonment with the possibility of release or parole, the trial court shall
27 sentence the defendant to life imprisonment as described in subsection (5)
28 of this section.

29 “(3) Nothing in this section precludes the court from sentencing the de-
30 fendant to life imprisonment, as described in subsection (5) of this section,

1 or life imprisonment without the possibility of release or parole, as described
2 in subsection (4) of this section, pursuant to a stipulation of sentence or
3 stipulation of sentencing facts agreed to and offered by both parties if the
4 defendant waives all rights to a jury sentencing proceeding.

5 “(4) A sentence of life imprisonment without the possibility of release or
6 parole under this section may not be suspended, deferred or commuted by any
7 judicial officer, and the State Board of Parole and Post-Prison Supervision
8 may neither parole the prisoner nor reduce the period of confinement in any
9 manner whatsoever. The Department of Corrections or any executive official
10 may not permit the prisoner to participate in any sort of release or furlough
11 program.

12 “(5) If the defendant is sentenced to life imprisonment, the court shall
13 order that the defendant be confined for a minimum of 30 years without
14 possibility of parole, release to post-prison supervision, release on work re-
15 lease or any form of temporary leave or employment at a forest or work
16 camp.

17 “(6) At any time after completion of the minimum period of confinement
18 pursuant to subsection (5) of this section, the board, upon the petition of a
19 prisoner so confined, shall hold a hearing to determine if the prisoner is
20 likely to be rehabilitated within a reasonable period of time. The sole issue
21 shall be whether the prisoner is likely to be rehabilitated within a reason-
22 able period of time. The proceeding shall be conducted in the manner pre-
23 scribed for a contested case hearing under ORS chapter 183, except that:

24 “(a) The prisoner has the burden of proving by a preponderance of the
25 evidence the likelihood of rehabilitation within a reasonable period of time;

26 “(b) The prisoner has the right, if the prisoner is without sufficient funds
27 to employ an attorney, to be represented by legal counsel, appointed by the
28 board, at board expense; and

29 “(c) The prisoner has the right to a subpoena upon a showing of the
30 general relevance and reasonable scope of the evidence sought, provided that

1 any subpoena issued on behalf of the prisoner must be issued by the board
2 pursuant to rules adopted by the board.

3 “(7) If, upon hearing all of the evidence, the board, upon a unanimous
4 vote of three board members or, if the chairperson requires all voting mem-
5 bers to participate, a unanimous vote of all voting members, finds that the
6 prisoner is capable of rehabilitation and that the terms of the prisoner’s
7 confinement should be changed to life imprisonment with the possibility of
8 parole, release on post-prison supervision or work release, it shall enter an
9 order to that effect and the order shall convert the terms of the prisoner’s
10 confinement to life imprisonment with the possibility of parole, release on
11 post-prison supervision or work release and may set a release date. Otherwise
12 the board shall deny the relief sought in the petition.

13 “(8) Not less than two years after the denial of the relief sought in a pe-
14 tition under this section, the prisoner may petition again for a change in the
15 terms of confinement. Further petitions for a change may be filed at inter-
16 vals of not less than two years thereafter.

17 **“SECTION 4. Section 1 of this 2019 Act and the amendments to ORS**
18 **137.707 and 163.155 by sections 2 and 3 of this 2019 Act apply to sen-**
19 **tences imposed on or after the effective date of this 2019 Act.”.**

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