

SB 1008-A9
(LC 3109)
5/16/19 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of the Oregon District Attorneys Association)

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 1008**

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

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

9 **“CUSTODY OF JUVENILE OFFENDERS**

10
11 **“SECTION 1. ORS 137.071 is amended to read:**

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

18 “(2) A judgment document in a criminal action must comply with ORS
19 18.038. In addition, a judgment document in a criminal action must:

20 “(a) Indicate whether the defendant was determined to be financially eli-
21 gible for purposes of appointed counsel in the action.

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

3 “(c) If there is no attorney for the defendant, indicate whether the de-
4 fendant knowingly waived any right to an attorney after having been in-
5 formed of that right.

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

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

10 “(f) Specify clearly the court’s determination for each charge in the in-
11 formation, indictment or complaint.

12 “(g) Specify clearly the court’s disposition, including all legal conse-
13 quences the court establishes or imposes. If the determination is one of
14 conviction, the judgment document must include any suspension of sentence,
15 forfeiture, imprisonment, cancellation of license, removal from office, mone-
16 tary obligation, probation, conditions of probation, discharge, restitution,
17 community service and all other sentences and legal consequences imposed
18 by the court. Nothing in this paragraph requires the judgment document to
19 specify any consequences that may result from the determination but are not
20 established or imposed by the court.

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

23 **“(i) If the court sentences the defendant to a term of incarceration,**
24 **and the physical custody of the defendant as determined by ORS**
25 **137.124 is related to the age of the defendant at the time of committing**
26 **an offense, indicate the age of the defendant at the time of committing**
27 **the offense.**

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

30 “(4) The requirements of this section do not apply to a judgment document

1 if the action was commenced by the issuance of a uniform citation adopted
2 under ORS 1.525 and the court has used the space on the citation for the
3 entry of a judgment. The exemption provided by this subsection does not
4 apply if any indictment, information or complaint other than a uniform ci-
5 tation is filed in the action.

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

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

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

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

15 **“137.124. (1) If the court imposes a sentence upon conviction of a felony
16 that includes a term of incarceration that exceeds 12 months:**

17 **“(a) The court shall not designate the correctional facility in which the
18 defendant is to be confined but shall commit the defendant to the legal and
19 physical custody of the Department of Corrections; and**

20 **“(b) If the judgment provides that the term of incarceration be served
21 consecutively to a term of incarceration of 12 months or less that was im-
22 posed in a previous proceeding by a court of this state upon conviction of a
23 felony, the defendant shall serve any remaining part of the previously im-
24 posed term of incarceration in the legal and physical custody of the Depart-
25 ment of Corrections.**

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

30 **“(b) Notwithstanding paragraph (a) of this subsection, when the court**

1 imposes a sentence upon conviction of a felony that includes a term of in-
2 carceration that is 12 months or less, the court shall commit the defendant
3 to the legal and physical custody of the Department of Corrections if the
4 court orders that the term of incarceration be served consecutively to a term
5 of incarceration that exceeds 12 months that was imposed in a previous
6 proceeding or in the same proceeding by a court of this state upon conviction
7 of a felony.

8 “(3) After assuming custody of the convicted person the Department of
9 Corrections may transfer inmates from one correctional facility to another
10 such facility for the purposes of diagnosis and study, rehabilitation and
11 treatment, as best seems to fit the needs of the inmate and for the protection
12 and welfare of the community and the inmate.

13 “(4) If the court imposes a sentence of imprisonment upon conviction of
14 a misdemeanor, it shall commit the defendant to the custody of the supervi-
15 sory authority of the county in which the crime of conviction occurred.

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

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

24 “(B) The Department of Corrections and the Oregon Youth Authority de-
25 termine that, because of the person’s age, immaturity, mental or emotional
26 condition or risk of physical harm to the person, the person should not be
27 incarcerated initially in a Department of Corrections institution; or

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

30 “(b) A person placed in the custody of the Oregon Youth Authority under

1 this subsection who is at least 18 years of age shall be returned to the
2 physical custody of the Department of Corrections whenever the Director of
3 the Oregon Youth Authority, after consultation with the Department of
4 Corrections, determines that the conditions or circumstances that warranted
5 the transfer of custody under this subsection are no longer present.

6 “(c) Notwithstanding ORS 137.320, the sheriff may by agreement with the
7 Department of Corrections transfer the person described in this subsection
8 directly to a youth correction facility for physical custody without first de-
9 livering the person to the Department of Corrections. As part of the agree-
10 ment with the Department of Corrections, the sheriff may designate the
11 county juvenile department or the Oregon Youth Authority to conduct the
12 direct transfer described in this paragraph if the sheriff has entered into a
13 written agreement with the county juvenile department, the Oregon Youth
14 Authority, or both, to provide the direct transfer.

15 “(6)(a) When a person under 18 years of age at the time of committing the
16 offense and under 20 years of age at the time of sentencing is committed to
17 the legal and physical custody of the Department of Corrections or the su-
18 pervisory authority of a county following waiver under ORS 419C.349,
19 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or
20 (7)(b) or 137.712, the Department of Corrections or the supervisory authority
21 of a county shall transfer the person to the physical custody of the Oregon
22 Youth Authority for placement as provided in ORS 420.011 (3). The terms and
23 conditions of the person’s incarceration and custody are governed by ORS
24 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by
25 agreement with the Department of Corrections or the supervisory authority
26 of a county transfer the person described in this subsection directly to a
27 youth correction facility for physical custody without first delivering the
28 person to the Department of Corrections or supervisory authority of the
29 county. As part of the agreement with the Department of Corrections or su-
30 pervisory authority of the county, the sheriff may designate the county ju-

1 venile department or the Oregon Youth Authority to conduct the direct
2 transfer described in this paragraph if the sheriff has entered into a written
3 agreement with the county juvenile department, the Oregon Youth Author-
4 ity, or both, to provide the direct transfer.

5 “(b) Notwithstanding ORS 137.320, when a person under 16 years of age
6 is waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 and subse-
7 quently is sentenced to a term of imprisonment in the county jail, the sheriff
8 shall transfer the person to a youth correction facility for physical custody
9 as provided in ORS 420.011 (3).

10 “[*(7) If the Director of the Oregon Youth Authority concurs in the decision,*
11 *the Department of Corrections or the supervisory authority of a county shall*
12 *transfer the physical custody of a person committed to the Department of Cor-*
13 *rections or the supervisory authority of the county under subsection (1) or (2)*
14 *of this section to the Oregon Youth Authority as provided in ORS 420.011 (2)*
15 *if:]*

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

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

21 “[*(c) The person has not been committed previously to the legal and phys-*
22 *ical custody of the Department of Corrections or the supervisory authority of*
23 *a county;]*

24 “[*(d) The person has not been convicted and sentenced to a term of incar-*
25 *ceration for the commission of a felony in any other state;]*

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

28 “[*(f) The person is likely in the foreseeable future to benefit from the*
29 *rehabilitative and treatment programs administered by the Oregon Youth Au-*
30 *thority;]*

1 “[g] *The person does not pose a substantial danger to Oregon Youth Au-*
2 *thority staff or persons in the custody of the Oregon Youth Authority; and]*

3 “[h] *At the time of the proposed transfer, no more than 50 persons are in*
4 *the physical custody of the Oregon Youth Authority under this subsection.]*

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

13 “[9] **(8)** Notwithstanding any other provision of this section, under no
14 circumstances may a person under 18 years of age be incarcerated in a De-
15 partment of Corrections institution.

16 **“(9) If a defendant is transferred under subsection (5) of this sec-**
17 **tion, the defendant shall also be transferred after a resentencing on**
18 **the same charges resulting from an appellate decision or a post-**
19 **conviction relief proceeding or for any other reason, even if the de-**
20 **fendant is 20 years of age or older at the time of the resentencing.**

21 **“(10) For the purposes of determining the person’s age at the time**
22 **of committing an offense under this section:**

23 **“(a) If the person is convicted of two or more offenses occurring**
24 **on different days, the person’s age shall be calculated using the earli-**
25 **est date.**

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

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

30 “420.011. (1) Except as provided in subsections (2) and (3) of this section,

1 admissions to the youth correction facilities are limited to youth offenders
2 who are at least 12 but less than 19 years of age, found by the juvenile court
3 to have committed an act that if committed by an adult would constitute
4 aggravated murder, murder, a felony or a Class A misdemeanor and placed
5 in the legal custody of the Oregon Youth Authority. A youth offender ad-
6 mitted to a youth correction facility may not be transferred by administra-
7 tive process to any penal or correctional institution.

8 “(2)(a) In addition to the persons placed in the legal custody of the youth
9 authority under ORS 419C.478 (1) or 419C.481, and with the concurrence of
10 the Director of the Oregon Youth Authority or the director’s designee, per-
11 sons who are committed to the Department of Corrections under ORS 137.124
12 and meet the requirements of ORS 137.124 (5) [or (7)] may be temporarily
13 assigned to a youth correction facility as provided by ORS 137.124 (5) [or
14 (7)]. A person assigned on such a temporary basis remains within the legal
15 custody of the Department of Corrections and such reassignment is subject
16 to termination by the Director of the Oregon Youth Authority by referring
17 the person back to the Department of Corrections as provided in paragraph
18 (b) of this subsection.

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

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

27 “(B) Is not likely, in the foreseeable future, to benefit from the rehabili-
28 tation and treatment programs administered by the youth authority and is
29 appropriate for placement in a Department of Corrections institution.

30 “(3) Any person under 18 years of age at the time of committing the crime

1 and under 20 years of age at the time of sentencing and commitment who,
2 after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentenc-
3 ing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to a term
4 of imprisonment in the custody of the Department of Corrections, and any
5 person under 16 years of age who after waiver under ORS 419C.349, 419C.352,
6 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or
7 137.712 is sentenced to a term of imprisonment in the county jail, shall be
8 temporarily assigned to a youth correction facility by the Department of
9 Corrections, or by the sheriff to whose custody the person has been com-
10 mitted, pursuant to ORS 137.124 (6). The director shall designate the appro-
11 priate youth correction facility or schools for such assignment. A person
12 assigned to a youth correction facility under ORS 137.124 (6) and this sub-
13 section remains within the legal custody of the Department of Corrections
14 or sheriff to whose custody the person was committed. The assignment of
15 such a person to the youth correction facility is subject, when the person is
16 18 years of age or older, to termination by the director by referring the
17 person back to the Department of Corrections or the sheriff to serve the
18 balance of the person's sentence. Assignment to a youth correction facility
19 pursuant to ORS 137.124 (6) and this subsection, if not terminated earlier by
20 the director, shall terminate upon the person's attaining the age specified in
21 ORS 420A.010 (5) setting the age limits for which the Oregon Youth Au-
22 thority may retain legal and physical custody of the person, and the person
23 shall be referred to the Department of Corrections or the sheriff having legal
24 custody of the person to serve the balance of the person's sentence.

25 “(4) Whenever a person committed to the custody of the Department of
26 Corrections is temporarily assigned to a youth correction facility pursuant
27 to this section, the youth authority may provide programs and treatment for
28 the person, and may adopt rules relating to conditions of confinement at the
29 youth correction facility, as the youth authority determines are appropriate.
30 However, the person remains subject to laws and rules of the State Board

1 of Parole and Post-Prison Supervision relating to parole.

2 “(5) For the purposes of determining the person’s age at the time
3 of committing an offense under this section:

4 “(a) If the person is convicted of two or more offenses occurring
5 on different days, the person’s age shall be calculated using the earli-
6 est date.

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

10

11

“SECOND LOOK

12

13 “**SECTION 4.** ORS 420A.203 is amended to read:

14 “420A.203. (1)(a) This section and ORS 420A.206 apply only to [*persons*]
15 **a person** who:

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

20 “[A] (i) Sentenced to a term of imprisonment of at least 24 months fol-
21 lowing waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370; or

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

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

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

29 “(iii) **Has a projected release date, as determined by the Department**
30 **of Corrections, that falls on or after the person’s 25th birthday and**

1 **before the person’s 27th birthday.**

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

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

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

24 “(c) The court shall notify the following of the time and place of the
25 hearing:

26 “(A) The person and, **if the person is under 18 years of age**, the
27 person’s parents;

28 “(B) The records supervisor of the correctional institution in which the
29 person is incarcerated; and

30 “(C) The district attorney who prosecuted the case.

1 “(d) The court shall make reasonable efforts to notify the following of the
2 time and place of the hearing:

3 “(A) The victim and, **if the victim is under 18 years of age**, the victim’s
4 parents or legal guardian; and

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

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

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

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

12 “(b) The person has the right to appear with counsel. If the person re-
13 quests that the court appoint counsel and the court determines that the
14 person is financially eligible for appointed counsel at state expense, the
15 court shall order that counsel be appointed.

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

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

19 “(e) The court may consider, when relevant, written reports of the Oregon
20 Youth Authority, the Department of Corrections and qualified experts, in
21 addition to the testimony of witnesses. Within a reasonable time before the
22 hearing, as determined by the court, the person must be given the opportu-
23 nity to examine all reports and other documents concerning the person that
24 the state, the Oregon Youth Authority or the Department of Corrections in-
25 tends to submit for consideration by the court at the hearing.

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

30 “(g) The person may examine all of the witnesses called by the state, may

1 subpoena and call witnesses to testify on the person's behalf and may present
2 evidence and argument. The court may permit witnesses to appear by tele-
3 phone or other two-way electronic communication device.

4 “(h) The hearing must be recorded.

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

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

8 “(k) The person has the burden of proving by clear and convincing evi-
9 dence that the person has been rehabilitated and reformed, and if condi-
10 tionally released, the person would not be a threat to the safety of the
11 victim, the victim's family or the community and that the person would
12 comply with the release conditions.

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

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

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

22 “(i) Has been rehabilitated and reformed;

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

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

26 “(b) In making the determination under this section, the court shall con-
27 sider:

28 “(A) The experiences and character of the person before and after com-
29 mitment to the Oregon Youth Authority or the Department of Corrections;

30 “(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
3 or as part of the criminal act for which the person was convicted and sen-
4 tenced;

5 “(E) The manner in which the person committed the criminal act for
6 which the person was convicted and sentenced;

7 “(F) The person’s efforts, participation and progress in rehabilitation
8 programs since the person’s conviction;

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

10 “(H) Whether the person demonstrates accountability and responsibility
11 for past and future conduct;

12 “(I) Whether the person has made and will continue to make restitution
13 to the victim and the community;

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

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

17 “(L) The recommendations of the district attorney, the Oregon Youth
18 Authority and the Department of Corrections; and

19 “(M) Any other relevant factors or circumstances raised by the state, the
20 Oregon Youth Authority, the Department of Corrections or the person.

21 “(5) The court shall provide copies of its disposition order under sub-
22 section (4) of this section to the parties, to the records supervisor of the
23 correctional institution in which the person is incarcerated and to the man-
24 ager of the institution-based records office of the Department of Corrections.

25 “(6) The person or the state may appeal an order entered under this sec-
26 tion. On appeal, the appellate court’s review is limited to claims that:

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

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

30 “(c) The findings of the court are not supported by substantial evidence

1 in the record.

2 “(7) A person described in subsection (1)(a)(B) of this section may
3 waive a hearing under this section.

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

5 “137.707. (1)(a) Notwithstanding any other provision of law, when a per-
6 son charged with aggravated murder, as defined in ORS 163.095, or an offense
7 listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the
8 time the offense is committed, and the offense is committed on or after April
9 1, 1995, or when a person charged with an offense listed in subsection (4)(b)
10 of this section is 15, 16 or 17 years of age at the time the offense is com-
11 mitted, and the offense is committed on or after October 4, 1997, or when a
12 person charged with the offense described in subsection (4)(c) of this section
13 is 15, 16 or 17 years of age at the time the offense is committed and the of-
14 fense is committed on or after January 1, 2008, the person shall be prosecuted
15 as an adult in criminal court.

16 “(b) A district attorney, the Attorney General or a juvenile department
17 counselor may not file in juvenile court a petition alleging that a person has
18 committed an act that, if committed by an adult, would constitute aggravated
19 murder or an offense listed in subsection (4) of this section if the person was
20 15, 16 or 17 years of age at the time the act was committed.

21 “(2) When a person charged under this section is convicted of an offense
22 listed in subsection (4) of this section, the court shall impose at least the
23 presumptive term of imprisonment provided for the offense in subsection (4)
24 of this section. The court may impose a greater presumptive term if other-
25 wise permitted by law, but may not impose a lesser term. The person is not,
26 during the service of the term of imprisonment, eligible for release on post-
27 prison supervision or any form of temporary leave from custody. The person
28 is not eligible for any reduction in, or based on, the minimum sentence for
29 any reason under ORS 421.121 or any other provision of law. **The person is**
30 **eligible for a hearing and conditional release under ORS 420A.203**

1 **(1)(a)(A) and 420A.206 only for an offense listed in subsection (4)(a)(G)**
2 **or (R) of this section that did not involve a firearm. The person is el-**
3 **igible for a hearing and conditional release under ORS 420A.203**
4 **(1)(a)(B) and 420A.206.** ORS 138.052, 163.105 and 163.150 apply to sentencing
5 a person prosecuted under this section and convicted of aggravated murder
6 under ORS 163.095 except that a person who was under 18 years of age at
7 the time the offense was committed is not subject to a sentence of death.

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

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

- 12 “ _____
- 13 (a)(A) Murder, as defined in
14 ORS 163.115.....300 months
 - 15 (B) Attempt or conspiracy
16 to commit aggravated
17 murder, as defined
18 in ORS 163.095.....120 months
 - 19 (C) Attempt or conspiracy
20 to commit murder, as
21 defined in ORS 163.115.90 months
 - 22 (D) Manslaughter in the
23 first degree, as defined
24 in ORS 163.118.....120 months
 - 25 (E) Manslaughter in the
26 second degree, as defined
27 in ORS 163.125.....75 months
 - 28 (F) Assault in the first
29 degree, as defined
30 in ORS 163.185.....90 months

- 1 (G) Assault in the second
- 2 degree, as defined
- 3 in ORS 163.175.....70 months
- 4 (H) Kidnapping in the first
- 5 degree, as defined in
- 6 ORS 163.235.....90 months
- 7 (I) Kidnapping in the second
- 8 degree, as defined in
- 9 ORS 163.225.....70 months
- 10 (J) Rape in the first degree,
- 11 as defined in ORS 163.375....100 months
- 12 (K) Rape in the second
- 13 degree, as defined in
- 14 ORS 163.365.....75 months
- 15 (L) Sodomy in the first
- 16 degree, as defined in
- 17 ORS 163.405.....100 months
- 18 (M) Sodomy in the second
- 19 degree, as defined in
- 20 ORS 163.395.....75 months
- 21 (N) Unlawful sexual
- 22 penetration in the first
- 23 degree, as defined
- 24 in ORS 163.411.....100 months
- 25 (O) Unlawful sexual
- 26 penetration in the
- 27 second degree, as
- 28 defined in ORS 163.408.75 months
- 29 (P) Sexual abuse in the first
- 30 degree, as defined in

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

24 “ _____

25 “(5) If a person charged with an offense under this section is found guilty

26 of a lesser included offense and the lesser included offense is:

27 “(a) An offense listed in subsection (4) of this section, the court shall

28 sentence the person as provided in subsection (2) of this section.

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

30 “(A) But constitutes an offense for which waiver is authorized under ORS

1 419C.349, the court, upon motion of the district attorney, shall hold a hearing
2 to determine whether to retain jurisdiction or to transfer the case to juvenile
3 court for disposition. In determining whether to retain jurisdiction, the court
4 shall consider the criteria for waiver in ORS 419C.349. If the court retains
5 jurisdiction, the court shall sentence the person as an adult under sentencing
6 guidelines. If the court does not retain jurisdiction, the court shall:

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

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

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

12 “(B) And is not an offense for which waiver is authorized under ORS
13 419C.349, the court may not sentence the person. The court shall:

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

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

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

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

27 “(7)(a) If a person charged and tried as provided in subsection (6) of this
28 section is found guilty of aggravated murder or an offense listed in sub-
29 section (4) of this section and one or more other offenses, the court shall
30 impose the sentence for aggravated murder or the offense listed in subsection

1 (4) of this section as provided in subsection (2) of this section and shall im-
2 pose sentences for the other offenses as otherwise provided by law.

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

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

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

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

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

19 “137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person
20 is convicted of manslaughter in the second degree as defined in ORS 163.125,
21 assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in
22 the second degree as defined in ORS 163.225, rape in the second degree as
23 defined in ORS 163.365, sodomy in the second degree as defined in ORS
24 163.395, unlawful sexual penetration in the second degree as defined in ORS
25 163.408, sexual abuse in the first degree as defined in ORS 163.427 (1)(a)(A)
26 or robbery in the second degree as defined in ORS 164.405, the court may
27 impose a sentence according to the rules of the Oregon Criminal Justice
28 Commission that is less than the minimum sentence that otherwise may be
29 required by ORS 137.700 or 137.707 if the court, on the record at sentencing,
30 makes the findings set forth in subsection (2) of this section and finds that

1 a substantial and compelling reason under the rules of the Oregon Criminal
2 Justice Commission justifies the lesser sentence. When the court imposes a
3 sentence under this subsection, the person is eligible for a reduction in the
4 sentence as provided in ORS 421.121 and any other statute. **The person is**
5 **eligible for a hearing and conditional release under ORS 420A.203**
6 **(1)(a)(A) and 420A.206 only for a sentence imposed pursuant to sub-**
7 **section (2)(b) or (d) of this section for an offense that did not involve**
8 **a firearm. The person is eligible for a hearing and conditional release**
9 **under ORS 420A.203 (1)(a)(B) and 420A.206.**

10 “(b) In order to make a dispositional departure under this section, the
11 court must make the following additional findings on the record:

12 “(A) There exists a substantial and compelling reason not relied upon in
13 paragraph (a) of this subsection;

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

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

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

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

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

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

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

25 “(D) That the defendant treated the injury or illness solely by spiritual
26 treatment in accordance with the religious beliefs or practices of the de-
27 fendant and based on a good faith belief that spiritual treatment would bring
28 about the victim’s recovery from the injury or illness;

29 “(E) That no other person previously under the defendant’s care has died
30 or sustained significant physical injury as a result of or despite the use of

1 spiritual treatment, regardless of whether the spiritual treatment was used
2 alone or in conjunction with medical care; and

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

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

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

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

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

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

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

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

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

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

19 “(B) That, if the defendant represented by words or conduct that the de-
20 fendant was armed with a dangerous weapon, the representation did not
21 reasonably put the victim in fear of imminent significant physical injury;

22 “(C) That, if the defendant represented by words or conduct that the de-
23 fendant was armed with a deadly weapon, the representation did not rea-
24 sonably put the victim in fear of imminent physical injury; and

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

27 “(e) If the conviction is for rape in the second degree, sodomy in the
28 second degree or sexual abuse in the first degree:

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

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

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

6 “(D) That the defendant was no more than five years older than the vic-
7 tim at the time of the offense;

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

10 “(F) That the victim’s lack of consent was due solely to incapacity to
11 consent by reason of being under 18 years of age at the time of the offense.

12 “(f) If the conviction is for unlawful sexual penetration in the second
13 degree:

14 “(A) That the victim was 12 years of age or older at the time of the of-
15 fense;

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

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

21 “(D) That the defendant was no more than five years older than the vic-
22 tim at the time of the offense;

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

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

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

30 “(3) In making the findings required by subsections (1) and (2) of this

1 section, the court may consider any evidence presented at trial and may re-
2 ceive and consider any additional relevant information offered by either
3 party at sentencing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(6) As used in this section:

2 “(a) ‘Conviction’ includes, but is not limited to:

3 “(A) A juvenile court adjudication finding a person within the court’s
4 jurisdiction under ORS 419C.005, if the person was at least 15 years of age
5 at the time the person committed the offense that brought the person within
6 the jurisdiction of the juvenile court. ‘Conviction’ does not include a juvenile
7 court adjudication described in this subparagraph if the person successfully
8 asserted the defense set forth in ORS 419C.522.

9 “(B) A conviction in another jurisdiction for a crime that if committed
10 in this state would constitute a crime listed in subsection (4) of this section.

11 “(b) ‘Previous conviction’ means a conviction that was entered prior to
12 imposing sentence on the current crime provided that the prior conviction
13 is based on a crime committed in a separate criminal episode. ‘Previous
14 conviction’ does not include a conviction for a Class C felony, including an
15 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless
16 the conviction was entered within the 10-year period immediately preceding
17 the date on which the current crime was committed.

18 “(c) ‘Significant physical injury’ means a physical injury that:

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

20 “(B) Causes a serious and temporary disfigurement;

21 “(C) Causes a protracted disfigurement; or

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

24

25 **“LIFE IMPRISONMENT**

26

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

30 **“(2) In determining the appropriate sentence for a person who was**

1 under 18 years of age at the time of committing the offense, if the
2 court is provided information concerning the following circumstances,
3 or any other relevant circumstances, the court shall consider those
4 circumstances in imposing the sentence:

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

7 “(b) The person’s family and community environment, history of
8 trauma and prior involvement in the juvenile dependency system at
9 the time of the offense.

10 “(c) The person’s ability at the time of the offense to appreciate the
11 risks and consequences of the conduct constituting the offense.

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

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

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

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

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

19 “(i) Any other mitigating factors or circumstances presented by the
20 person.

21 “(3)(a) If the court is provided with a report of a mental health
22 evaluation of the person, the court shall give the evaluation substan-
23 tial weight in imposing the sentence if:

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

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

29 “(b) Paragraph (a) of this subsection does not constitute a require-
30 ment that a person obtain or submit an evaluation for sentencing.

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

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

8
9 **“FUNDING FOR JUVENILE SERVICES**

10
11 **“SECTION 8.** The Oregon Youth Authority shall provide grants to
12 county juvenile departments to fund:

13 “(1) The provision to youth offenders of treatment, including but
14 not limited to mental health treatment, drug and alcohol treatment,
15 dual diagnosis treatment, family counseling and multisystemic ther-
16 apy.

17 “(2) Psychological evaluations of youth offenders to better deter-
18 mine appropriate treatment plans for the youth offenders.

19 **“SECTION 9.** In addition to and not in lieu of any other appropri-
20 ation, there is appropriated to the Oregon Youth Authority, for the
21 biennium beginning July 1, 2019, out of the General Fund, the amount
22 of _____, for distribution to county juvenile departments to
23 carry out the provisions of section 8 of this 2019 Act.

24 **“SECTION 10.** In addition to and not in lieu of any other appropri-
25 ation, there is appropriated to the Oregon Youth Authority, for the
26 biennium beginning July 1, 2019, out of the General Fund, the amount
27 of _____, to be expended on increasing the number of placements
28 available for youth offenders other than commitment to youth cor-
29 rection facilities.

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“APPLICABILITY

“SECTION 11. Section 7 of this 2019 Act and the amendments to ORS 137.071, 137.124, 137.707, 137.712, 420.011 and 420A.203 by sections 1 to 6 of this 2019 Act apply to offenses committed on or after the effective date of this 2019 Act.

“UNIT CAPTIONS

“SECTION 12. The unit captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.

“REFERRAL

“SECTION 13. This 2019 Act shall be submitted to the people for their approval or rejection at the next regular general election held throughout this state.”.
