

# Senate Bill 401

Sponsored by Senator PROZANSKI (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Converts mandatory minimum sentences for specified felonies other than murder to presumptive sentences. Authorizes court to impose greater or lesser sentence according to sentencing guidelines of Oregon Criminal Justice Commission. Authorizes person receiving presumptive sentence to be eligible for certain programs and sentence reductions.

## A BILL FOR AN ACT

1  
2 Relating to sentencing; creating new provisions; amending ORS 137.124, 137.700, 137.707, 137.751,  
3 138.045, 138.105, 138.115, 144.101, 144.397, 161.620, 165.072, 420.011, 420.240, 420A.203, 421.121  
4 and 421.168; repealing ORS 137.712; and providing for criminal sentence reduction that requires  
5 approval by a two-thirds majority.

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

## MEASURE 11 SENTENCE AS PRESUMPTIVE SENTENCE

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8  
9  
10 **SECTION 1.** ORS 137.700 is amended to read:

11 137.700. (1)(a) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses  
12 listed in subsection (2)(a)(A) **or (B)** of this section and the offense was committed on or after April  
13 1, 1995, [*or of one of the offenses listed in subsection (2)(b) of this section and the offense was com-*  
14 *mitted on or after October 4, 1997, or of the offense described in subsection (2)(c) of this section and*  
15 *the offense was committed on or after January 1, 2008,*] the court shall impose, and the person shall  
16 serve, at least the entire term of imprisonment listed in subsection (2)(a)(A) **or (B)** of this section.  
17 The person is not, during the service of the term of imprisonment, eligible for release on post-prison  
18 supervision or any form of temporary leave from custody. The person is not eligible for any re-  
19 duction in[, *or based on,*] the minimum sentence for any reason whatsoever under ORS 421.121 or  
20 any other statute. The court may impose a greater sentence if otherwise permitted by law, but may  
21 not impose a lower sentence than the sentence specified in subsection (2)(a)(A) **or (B)** of this sec-  
22 tion.

23 **(b) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses listed**  
24 **in subsection (2)(a)(C) to (S), (b) or (c) of this section, the presumptive sentence is the cor-**  
25 **responding term of imprisonment listed with each offense. The court may impose a greater**  
26 **or lesser sentence as permitted under the sentencing guidelines of the Oregon Criminal**  
27 **Justice Commission. The person may request that the court, pursuant to ORS 137.751, de-**  
28 **termine the person's eligibility for release on post-prison supervision under ORS 421.508.**  
29 **Unless the court orders otherwise under ORS 137.750, and provided that the person is oth-**  
30 **erwise eligible, during the service of the term of imprisonment the person may be considered**

**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 **for any form of temporary leave from custody, work release, conditional or supervised re-**  
2 **lease program or reduction in sentence under ORS 421.121 or any other statute.**

3 (2) The offenses to which subsection (1) of this section applies and the applicable [*mandatory*  
4 *minimum*] sentences are:



- 6
- 7 (a)(A) Murder in the second
- 8 degree, as defined in
- 9 ORS 163.115.....300 months
- 10 (B) Murder in the first
- 11 degree, as defined
- 12 in ORS 163.107.....360 months
- 13 (C) Attempt or conspiracy
- 14 to commit aggravated
- 15 murder, as defined
- 16 in ORS 163.095.....120 months
- 17 (D) Attempt or conspiracy
- 18 to commit murder
- 19 in any degree.....90 months
- 20 (E) Manslaughter in the
- 21 first degree, as defined
- 22 in ORS 163.118.....120 months
- 23 (F) Manslaughter in the
- 24 second degree, as defined
- 25 in ORS 163.125.....75 months
- 26 (G) Assault in the first
- 27 degree, as defined in
- 28 ORS 163.185.....90 months
- 29 (H) Assault in the second
- 30 degree, as defined in
- 31 ORS 163.175.....70 months
- 32 (I) Except as provided in
- 33 paragraph (b)(G) of
- 34 this subsection,
- 35 kidnapping in the first
- 36 degree, as defined
- 37 in ORS 163.235.....90 months
- 38 (J) Kidnapping in the second
- 39 degree, as defined in
- 40 ORS 163.225.....70 months
- 41 (K) Rape in the first degree,
- 42 as defined in ORS 163.375
- 43 (1)(a), (c) or (d).....100 months
- 44 (L) Rape in the second degree,
- 45 as defined in

1		ORS 163.365.....75 months
2	(M)	Sodomy in the first degree,
3		as defined in ORS 163.405
4		(1)(a), (c) or (d).....100 months
5	(N)	Sodomy in the second
6		degree, as defined in
7		ORS 163.395.....75 months
8	(O)	Unlawful sexual penetration
9		in the first degree, as
10		defined in ORS 163.411
11		(1)(a) or (c).....100 months
12	(P)	Unlawful sexual penetration
13		in the second degree, as
14		defined in ORS 163.408.....75 months
15	(Q)	Sexual abuse in the first
16		degree, as defined in
17		ORS 163.427.....75 months
18	(R)	Robbery in the first degree,
19		as defined in
20		ORS 164.415.....90 months
21	(S)	Robbery in the second
22		degree, as defined in
23		ORS 164.405.....70 months
24	(b)(A)	Arson in the first degree,
25		as defined in ORS 164.325,
26		when the offense represented
27		a threat of serious
28		physical injury. ....90 months
29	(B)	Using a child in a display
30		of sexually explicit
31		conduct, as defined in
32		ORS 163.670.....70 months
33	(C)	Compelling prostitution,
34		as defined in
35		ORS 167.017.....70 months
36	(D)	Rape in the first degree,
37		as defined in
38		ORS 163.375 (1)(b). ....300 months
39	(E)	Sodomy in the first degree,
40		as defined in
41		ORS 163.405 (1)(b). ....300 months
42	(F)	Unlawful sexual penetration
43		in the first degree, as
44		defined in
45		ORS 163.411 (1)(b). ....300 months

- 1 (G) Kidnapping in the first
- 2 degree, as defined in
- 3 ORS 163.235, when the
- 4 offense is committed in
- 5 furtherance of the commission
- 6 or attempted commission of an
- 7 offense listed in subparagraph
- 8 (D), (E) or (F) of
- 9 this paragraph.....300 months
- 10 (c) Aggravated vehicular
- 11 homicide, as defined in
- 12 ORS 163.149.....240 months

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14

15 **SECTION 2.** ORS 137.707 is amended to read:

16 137.707. (1)(a) When a person waived under ORS 419C.349 (1)(a) is convicted of an offense listed

17 in subsection (4)(a)(A) or (B) of this section, the court shall impose at least the presumptive term

18 of imprisonment provided for the offense in subsection (4)(a)(A) or (B) of this section. The court

19 may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser

20 term. The person is not, during the service of the term of imprisonment, eligible for release on

21 post-prison supervision or any form of temporary leave from custody. The person is not eligible for

22 any reduction in the minimum sentence for any reason under ORS 421.121 or any other provision

23 of law. The person is eligible for a hearing and conditional release under ORS 420A.203 and

24 420A.206.

25 **(b) When a person waived under ORS 419C.349 (1)(a) is convicted of an offense listed in**

26 **subsection (4)(a)(C) to (S), (b) or (c) of this section, the presumptive sentence is the corre-**

27 **sponding term of imprisonment listed with each offense. The court may impose a greater or**

28 **lesser sentence as permitted under the sentencing guidelines of the Oregon Criminal Justice**

29 **Commission. The person may request that the court, pursuant to ORS 137.751, determine the**

30 **person’s eligibility for release on post-prison supervision under ORS 421.508. Unless the court**

31 **orders otherwise under ORS 137.750, and provided that the person is otherwise eligible, dur-**

32 **ing the service of the term of imprisonment the person may be considered for any form of**

33 **temporary leave from custody, work release, conditional or supervised release program or**

34 **reduction in sentence under ORS 421.121 or any other statute. The person is eligible for a**

35 **hearing and conditional release under ORS 420A.203 and 420A.206.**

36 (2) ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this section

37 and convicted of aggravated murder under ORS 163.095 except that a person who was under 18

38 years of age at the time the offense was committed is not subject to a sentence of death or life

39 imprisonment without the possibility of release or parole.

40 (3) The court shall commit the person to the legal and physical custody of the Department of

41 Corrections.

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

- 
- 45 (a)(A) Murder in the second degree, as defined in

1           ORS 163.115 .....300 months  
2       (B) Murder in the first  
3           degree, as defined  
4           in ORS 163.107.....360 months  
5       (C) Attempt or conspiracy  
6           to commit aggravated  
7           murder, as defined  
8           in ORS 163.095.....120 months  
9       (D) Attempt or conspiracy  
10          to commit murder  
11          in any degree.....90 months  
12       (E) Manslaughter in the  
13          first degree, as defined  
14          in ORS 163.118.....120 months  
15       (F) Manslaughter in the  
16          second degree, as defined  
17          in ORS 163.125.....75 months  
18       (G) Assault in the first  
19          degree, as defined  
20          in ORS 163.185.....90 months  
21       (H) Assault in the second  
22          degree, as defined  
23          in ORS 163.175.....70 months  
24       (I) Kidnapping in the first  
25          degree, as defined in  
26          ORS 163.235.....90 months  
27       (J) Kidnapping in the second  
28          degree, as defined in  
29          ORS 163.225.....70 months  
30       (K) Rape in the first degree,  
31          as defined in ORS 163.375....100 months  
32       (L) Rape in the second  
33          degree, as defined in  
34          ORS 163.365.....75 months  
35       (M) Sodomy in the first  
36          degree, as defined in  
37          ORS 163.405.....100 months  
38       (N) Sodomy in the second  
39          degree, as defined in  
40          ORS 163.395.....75 months  
41       (O) Unlawful sexual  
42          penetration in the first  
43          degree, as defined  
44          in ORS 163.411.....100 months  
45       (P) Unlawful sexual

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

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30

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

33 (a) An offense listed in subsection (4) of this section, the court shall sentence the person as  
34 provided in subsections (1) and (2) of this section.

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

36 (A) But constitutes an offense for which waiver is authorized under ORS 419C.349 (1)(b), the  
37 court, upon motion of the district attorney, shall hold a hearing to determine whether to retain ju-  
38 risdiction or to transfer the case to juvenile court for disposition. In determining whether to retain  
39 jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains  
40 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court  
41 does not retain jurisdiction, the court shall:

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

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

45 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS

1 419C.067 and 419C.411; and

2 (iv) Enter an order providing that all court records of the case are subject to the same limita-  
 3 tions on inspection, copying and disclosure of records, reports and materials as those set forth under  
 4 ORS 419A.255.

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

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

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

10 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
 11 419C.067 and 419C.411; and

12 (iv) Enter an order providing that all court records of the case are subject to the same limita-  
 13 tions on inspection, copying and disclosure of records, reports and materials as those set forth under  
 14 ORS 419A.255.

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

21 (7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty  
 22 of aggravated murder or an offense listed in subsection (4) of this section and one or more other  
 23 offenses, the court shall impose the sentence for aggravated murder or the offense listed in sub-  
 24 section (4) of this section as provided in subsections (1) and (2) of this section and shall impose  
 25 sentences for the other offenses as otherwise provided by law.

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

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

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

37 (C) Enter an order transferring the case to the juvenile court for disposition under ORS  
 38 419C.067 and 419C.411; and

39 (D) Enter an order providing that all court records of the case are subject to the same limita-  
 40 tions on inspection, copying and disclosure of records, reports and materials as those set forth under  
 41 ORS 419A.255.

42  
 43 **CONFORMING AMENDMENTS**

44  
 45 **SECTION 3.** ORS 137.124 is amended to read:

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

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

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

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

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

20       (3) After assuming custody of the convicted person the Department of Corrections may transfer  
21 adults in custody from one correctional facility to another such facility for the purposes of diagnosis  
22 and study, rehabilitation and treatment, as best seems to fit the needs of the adult in custody and  
23 for the protection and welfare of the community and the adult in custody.

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

27       (5)(a) When a person under 18 years of age at the time of committing the offense and under 20  
28 years of age at the time of sentencing is committed to the Department of Corrections under ORS  
29 137.707 or due to the fact that criminal proceedings were initiated after the person attained 18 years  
30 of age, the Department of Corrections shall transfer the physical custody of the person to the  
31 Oregon Youth Authority as provided in ORS 420.011 if:

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

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

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

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

42       (c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Cor-  
43 rections transfer the person described in this subsection directly to a youth correction facility for  
44 physical custody without first delivering the person to the Department of Corrections. As part of the  
45 agreement with the Department of Corrections, the sheriff may designate the county juvenile de-



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

4 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20  
5 years of age at the time of sentencing is committed to the legal and physical custody of the De-  
6 partment of Corrections or the supervisory authority of a county following waiver under ORS  
7 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b)  
8 [or 137.712], the Department of Corrections or the supervisory authority of a county shall transfer  
9 the person to the physical custody of the Oregon Youth Authority for placement as provided in ORS  
10 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS  
11 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Depart-  
12 ment of Corrections or the supervisory authority of a county transfer the person described in this  
13 subsection directly to a youth correction facility for physical custody without first delivering the  
14 person to the Department of Corrections or supervisory authority of the county. As part of the  
15 agreement with the Department of Corrections or supervisory authority of the county, the sheriff  
16 may designate the county juvenile department or the Oregon Youth Authority to conduct the direct  
17 transfer described in this paragraph if the sheriff has entered into a written agreement with the  
18 county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

19 (b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS  
20 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of  
21 imprisonment in the county jail, the sheriff shall transfer the person to a youth correction facility  
22 for physical custody as provided in ORS 420.011 (3).

23 (7) Notwithstanding the provisions of subsection (5)(a)(A) of this section, the department or the  
24 supervisory authority of a county may not transfer the physical custody of the person under sub-  
25 section (5)(a)(A) of this section if the Director of the Oregon Youth Authority, after consultation  
26 with the Department of Corrections or the supervisory authority of a county, determines that, be-  
27 cause of the person's age, mental or emotional condition or risk of physical harm to other persons,  
28 the person should not be incarcerated in a youth correction facility.

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

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

35 (10) For the purposes of determining the person's age at the time of committing an offense under  
36 this section:

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

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

41 **SECTION 4.** ORS 137.751 is amended to read:

42 137.751. (1) When a court sentences a defendant to a term of incarceration that exceeds one  
43 year, the defendant may request a determination of the defendant's eligibility for release on post-  
44 prison supervision under ORS 421.508 (4). The court shall order in the judgment that the Department  
45 of Corrections may release the defendant on post-prison supervision under ORS 421.508 (4) only if,

1 after a hearing, the court finds that:

2 (a) The defendant meets the eligibility requirements of subsections (2) and (3) of this section;

3 (b) The defendant was not on probation, parole or post-prison supervision for an offense listed  
4 in ORS [137.712 (4) or] 811.705 (3)(b) at the time of the commission of the current crime of con-  
5 viction;

6 (c) The defendant has not previously been released on post-prison supervision under ORS 421.508  
7 (4);

8 (d) The harm or loss caused by the crime is not greater than usual for that type of crime;

9 (e) The crime was not part of an organized criminal operation; and

10 (f) After considering the nature of the offense and the harm to the victim, the defendant's suc-  
11 cessful completion of the program would:

12 (A) Increase public safety;

13 (B) Enhance the likelihood that the defendant would be rehabilitated; and

14 (C) Not unduly reduce the appropriate punishment.

15 (2) Except as provided in subsection (4) of this section, a defendant may not be released on  
16 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime under  
17 ORS 163.145, 163.165 (1)(a) or (b), 163.525 or 811.705 (3)(b).

18 (3) A defendant may not be released on post-prison supervision under ORS 421.508 (4) if the de-  
19 fendant is being sentenced for a crime listed in ORS 137.700 **(2)(a)(A) or (B)**, 137.707 **(4)(a)(A) or**  
20 **(B)** or 163.095 or a sex crime as defined in ORS 163A.005.

21 (4) Notwithstanding subsection (1) of this section, the parties may stipulate to a defendant's el-  
22 igibility for release on post-prison supervision under ORS 421.508 (4). If the court accepts the stip-  
23 ulation, the court does not need to make explicit findings regarding the factors described in  
24 subsection (1)(b) to (f) of this section. The parties may not stipulate to the defendant's release on  
25 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime de-  
26 scribed in subsection (3) of this section.

27 (5) If the court makes the findings described in subsection (1) of this section or accepts the  
28 stipulation of the parties under subsection (4) of this section, the court shall:

29 (a) Order on the record in open court as part of the sentence imposed that the defendant may  
30 be considered by the department for release on post-prison supervision under ORS 421.508 (4); and

31 (b) Include the order described in paragraph (a) of this subsection in the judgment.

32 (6) Subject to the requirements of this section, the court may order that the defendant serve a  
33 minimum period of incarceration before the defendant is released on post-prison supervision under  
34 ORS 421.508 (4). Nothing in this section authorizes the release of the defendant on post-prison  
35 supervision before the defendant has served the period of time described in ORS 421.508 (4)(b).

36 **SECTION 5.** ORS 138.045 is amended to read:

37 138.045. (1) The state may take an appeal from the circuit court, or from a municipal court or  
38 a justice court that has become a court of record under ORS 51.025 or 221.342, to the Court of Ap-  
39 peals from:

40 (a) An order made prior to trial dismissing or setting aside one or more counts in the accusatory  
41 instrument;

42 (b) An order allowing a demurrer;

43 (c) An order arresting the judgment;

44 (d) An order made prior to trial suppressing evidence;

45 (e) An order made prior to trial for the return or restoration of things seized;

1 (f) For a felony committed on or after November 1, 1989, a judgment, amended judgment or  
 2 corrected judgment of conviction;

3 (g) For any felony, a judgment, amended judgment, supplemental judgment, corrected judgment  
 4 or post-judgment order, that denied restitution or awarded less than the amount of restitution re-  
 5 quested by the state;

6 *[(h) An order or judgment in a probation revocation hearing finding that a defendant who was*  
 7 *sentenced to probation under ORS 137.712 has not violated a condition of probation by committing a*  
 8 *new crime;]*

9 *[(i) (h) An order made after a guilty finding dismissing or setting aside one or more counts in*  
 10 *the accusatory instrument; or*

11 *[(j) (i) An order granting a new trial.*

12 (2) Notwithstanding subsection (1) of this section, when the state chooses to appeal an order  
 13 described in subsection (1)(a), (b) or (d) of this section, the state shall take the appeal to the Su-  
 14 preme Court if the defendant is charged with murder or aggravated murder.

15 **SECTION 6.** ORS 138.105 is amended to read:

16 138.105. (1) On appeal by a defendant, the appellate court has authority to review the judgment  
 17 or order being appealed, subject to the provisions of this section.

18 (2) The appellate court has authority to review only questions of law appearing on the record.

19 (3) Except as otherwise provided in this section, the appellate court has authority to review any  
 20 intermediate decision of the trial court.

21 (4) On appeal from a judgment of conviction and sentence, the appellate court has authority to  
 22 review:

23 (a) The denial of a motion for new trial based on juror misconduct or newly discovered evidence;  
 24 and

25 (b) The denial of a motion in arrest of judgment.

26 (5) The appellate court has no authority to review the validity of the defendant's plea of guilty  
 27 or no contest, or a conviction based on the defendant's plea of guilty or no contest, except that:

28 (a) The appellate court has authority to review the trial court's adverse determination of a  
 29 pretrial motion reserved in a conditional plea of guilty or no contest under ORS 135.335.

30 (b) The appellate court has authority to review whether the trial court erred by not merging  
 31 determinations of guilt of two or more offenses, unless the entry of separate convictions results from  
 32 an agreement between the state and the defendant.

33 (6) On appeal from a judgment ordering payment of restitution but not specifying the amount  
 34 of restitution, the appellate court has no authority to review the decision to award restitution.

35 (7) Except as otherwise provided in subsections (8) and (9) of this section, the appellate court  
 36 has authority to review any sentence to determine whether the trial court failed to comply with  
 37 requirements of law in imposing or failing to impose a sentence.

38 (8) Except as otherwise provided in subsection (9) of this section, for a sentence imposed on  
 39 conviction of a felony committed on or after November 1, 1989:

40 (a) The appellate court has no authority to review:

41 (A) A sentence that is within the presumptive sentence prescribed by the rules of the Oregon  
 42 Criminal Justice Commission.

43 (B) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe  
 44 a presumptive sentence of imprisonment but allow a sentence of probation without departure.

45 (C) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission

1 prescribe a presumptive sentence of imprisonment but allow a sentence of probation without depar-  
2 ture.

3 (b) If the trial court imposed a sentence that departs from the presumptive sentence prescribed  
4 by the rules of the Oregon Criminal Justice Commission, the appellate court's authority to review  
5 is limited to whether the trial court's findings of fact and reasons justifying a departure from the  
6 sentence prescribed by the rules of the Oregon Criminal Justice Commission:

7 (A) Are supported by the evidence in the record; and

8 (B) Constitute substantial and compelling reasons for departure.

9 (c) Notwithstanding paragraph (a) of this subsection, the appellate court has authority to review  
10 whether the sentencing court erred:

11 (A) In ranking the crime seriousness classification of the current crime or in determining the  
12 appropriate classification of a prior conviction or juvenile adjudication for criminal history pur-  
13 poses.

14 (B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 (1)(a) or  
15 137.707 (1)(a).

16 (9) The appellate court has no authority to review any part of a sentence resulting from a  
17 stipulated sentencing agreement between the state and the defendant.

18 (10)(a) On appeal from a corrected or amended judgment that is entered before expiration of the  
19 applicable period under ORS 138.071 (1) or (2) during which the original judgment can be appealed,  
20 the appellate court has authority to review the judgment, including the corrections or amendments,  
21 as provided in this section.

22 (b) On appeal from a corrected or amended judgment that is entered after expiration of the ap-  
23 plicable period under ORS 138.071 (1) or (2) during which the original judgment was or could have  
24 been appealed, the appellate court has authority to review, as provided in this section, only the  
25 corrected or amended part of the judgment, any part of the judgment affected by the correction or  
26 amendment, or the trial court's decision under ORS 137.172 not to correct or amend the judgment.

27 (c) As used in this subsection, "judgment" means any appealable judgment or order.

28 (11)(a) On a defendant's cross-appeal under ORS 138.035 (5), the appellate court may, in its dis-  
29 cretion, limit review to any decision by the trial court that is inextricably linked, either factually  
30 or legally, to the state's appeal.

31 (b) The failure to file a cross-appeal under ORS 138.035 (5) does not waive a defendant's right  
32 to assign error to a particular ruling of the trial court on appeal from a judgment.

33 **SECTION 7.** ORS 138.115 is amended to read:

34 138.115. (1) On appeal by the state, the appellate court has authority to review the judgment or  
35 order being appealed, subject to the provisions of this section.

36 (2) The appellate court has authority to review only questions of law appearing on the record.

37 (3) Except as otherwise provided in this section, the appellate court has authority to review any  
38 intermediate decision involving the merits of, or necessarily affecting, the judgment or order from  
39 which the appeal is taken.

40 (4)(a) Except as provided in paragraph (b) of this subsection, on appeal from a judgment of  
41 conviction of any felony, the appellate court has authority to review only the sentence as provided  
42 by subsections (5) and (6) of this section.

43 (b) The appellate court has authority to review whether the trial court erred in merging deter-  
44 minations of guilt of two or more offenses, unless the merger of determinations of guilt resulted from  
45 an agreement between the state and the defendant.

1 (5) Except as otherwise provided in subsections (6) and (7) of this section, the appellate court  
2 has authority to review the sentence imposed on conviction of any felony to determine whether the  
3 trial court failed to comply with requirements of law in imposing or failing to impose a sentence.

4 (6) Except as otherwise provided in subsection (7) of this section, for a sentence imposed on  
5 conviction of a felony committed on or after November 1, 1989:

6 (a) The appellate court has no authority to review:

7 (A) A sentence that is within the presumptive sentence prescribed by the rules of the Oregon  
8 Criminal Justice Commission.

9 (B) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe  
10 a presumptive sentence of imprisonment but allow a sentence of probation without departure.

11 (C) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission  
12 prescribe a presumptive sentence of imprisonment but allow a sentence of probation without depar-  
13 ture.

14 (b) If the trial court imposed a sentence that departs from the presumptive sentence prescribed  
15 by the rules of the Oregon Criminal Justice Commission, the appellate court's authority to review  
16 is limited to whether the trial court's findings of fact and reasons justifying a departure from the  
17 sentence prescribed by the rules of the Oregon Criminal Justice Commission:

18 (A) Are supported by the evidence in the record; and

19 (B) Constitute substantial and compelling reasons for departure.

20 (c) Notwithstanding paragraph (a) of this subsection, the appellate court has authority to review  
21 whether the sentencing court erred:

22 (A) In ranking the crime seriousness classification of the current crime or in determining the  
23 appropriate classification of a prior conviction or juvenile adjudication for criminal history pur-  
24 poses.

25 (B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 (1)(a) or  
26 137.707 (1)(a).

27 (7) The appellate court has no authority to review any part of a sentence resulting from a  
28 stipulated sentencing agreement between the state and the defendant.

29 (8)(a) On appeal from a corrected or amended judgment that is entered before expiration of the  
30 applicable period under ORS 138.071 (1) or (2) during which the original judgment can be appealed,  
31 the appellate court has authority to review the judgment, including the corrections or amendments,  
32 as provided in this section.

33 (b) On appeal from a corrected or amended judgment that is entered after expiration of the ap-  
34 plicable period under ORS 138.071 (1) or (2) during which the original judgment was or could have  
35 been appealed, the appellate court has authority to review, as provided in this section, only the  
36 corrected or amended part of the judgment, any part of the judgment affected by the correction or  
37 amendment, or the trial court's decision under ORS 137.172 not to correct or amend the judgment.

38 (c) As used in this subsection, "judgment" means any appealable judgment or order.

39 **SECTION 8.** ORS 144.101 is amended to read:

40 144.101. (1) The State Board of Parole and Post-Prison Supervision has jurisdiction over the  
41 imposition of conditions of post-prison supervision and sanctions for violations of those conditions  
42 for a person convicted of a felony if:

43 (a) The term of imprisonment imposed on the person is more than 12 months;

44 (b) The felony is classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid of  
45 the Oregon Criminal Justice Commission;

1 (c) The person is [*subject to a sentence under*] **sentenced for an offense described in ORS**  
 2 137.700 or 137.707;

3 (d) The person is sentenced as a dangerous offender under ORS 161.725 and 161.737;

4 (e) The person is subject to a term of post-prison supervision under ORS 144.103;

5 (f) The person is committed to the custody of the Department of Corrections under ORS 137.124;

6 (g) The responsibility for correctional services for the person has reverted to the department  
 7 under ORS 423.483; or

8 (h) No local supervisory authority is responsible for correctional services for the person under  
 9 the laws of this state.

10 (2) Except as provided in subsection (1) of this section, a local supervisory authority has juris-  
 11 diction over the imposition of conditions of post-prison supervision and sanctions for violations of  
 12 those conditions for a person sentenced to a term of imprisonment of 12 months or less.

13 (3) If a local supervisory authority imposes conditions of post-prison supervision or sanctions for  
 14 violations of those conditions, the person may request the board to review the conditions or sanc-  
 15 tions. The board shall review the request and may, at its discretion, review the conditions and  
 16 sanctions, under rules adopted by the board.

17 (4) If a circuit court in a participating county, as defined in section 29, chapter 649, Oregon  
 18 Laws 2013, enters an order admitting a person into a reentry court under section 29 (3), chapter 649,  
 19 Oregon Laws 2013, the reentry court has concurrent jurisdiction over the imposition of sanctions  
 20 for violations of the conditions of post-prison supervision.

21 (5) Nothing in this section affects the jurisdiction of the board over the imposition of conditions  
 22 of parole and sanctions for violations of those conditions.

23 **SECTION 9.** ORS 144.101, as amended by section 34, chapter 649, Oregon Laws 2013, is  
 24 amended to read:

25 144.101. (1) The State Board of Parole and Post-Prison Supervision has jurisdiction over the  
 26 imposition of conditions of post-prison supervision and sanctions for violations of those conditions  
 27 for a person convicted of a felony if:

28 (a) The term of imprisonment imposed on the person is more than 12 months;

29 (b) The felony is classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid of  
 30 the Oregon Criminal Justice Commission;

31 (c) The person is [*subject to a sentence under*] **sentenced for an offense described in ORS**  
 32 137.700 or 137.707;

33 (d) The person is sentenced as a dangerous offender under ORS 161.725 and 161.737;

34 (e) The person is subject to a term of post-prison supervision under ORS 144.103;

35 (f) The person is committed to the custody of the Department of Corrections under ORS 137.124;

36 (g) The responsibility for correctional services for the person has reverted to the department  
 37 under ORS 423.483; or

38 (h) No local supervisory authority is responsible for correctional services for the person under  
 39 the laws of this state.

40 (2) Except as provided in subsection (1) of this section, a local supervisory authority has juris-  
 41 diction over the imposition of conditions of post-prison supervision and sanctions for violations of  
 42 those conditions for a person sentenced to a term of imprisonment of 12 months or less.

43 (3) If a local supervisory authority imposes conditions of post-prison supervision or sanctions for  
 44 violations of those conditions, the person may request the board to review the conditions or sanc-  
 45 tions. The board shall review the request and may, at its discretion, review the conditions and

1 sanctions, under rules adopted by the board.

2 (4) Nothing in this section affects the jurisdiction of the board over the imposition of conditions  
3 of parole and sanctions for violations of those conditions.

4 **SECTION 10.** ORS 144.397 is amended to read:

5 144.397. (1)(a) A person convicted of an offense or offenses committed when the person was un-  
6 der 18 years of age, who is serving a sentence of imprisonment for the offense or offenses, is eligible  
7 for release on parole or post-prison supervision as provided in this section after the person has  
8 served 15 years of imprisonment.

9 (b) Nothing in this section is intended to prevent a person from being released prior to serving  
10 15 years of imprisonment under any other provision of law.

11 (c) As used in this subsection, “served 15 years of imprisonment” means that 15 years have  
12 passed since the person began serving the sentence, including pretrial incarceration but not in-  
13 cluding any reduction in sentence under ORS 421.121 or any other statute.

14 (2) This section applies notwithstanding ORS 144.110 or the fact that the person was:

15 (a) Sentenced to a minimum sentence under ORS 163.105, 163.107, 163.115 or 163.155.

16 (b) Sentenced to a mandatory minimum sentence under ORS 137.700 (1)(a), 137.707 (1)(a) or  
17 137.717, a determinate sentence under ORS 137.635 or a sentence required by any other provision  
18 of law.

19 (c) Sentenced to two or more consecutive sentences under ORS 137.123.

20 (3) When a person eligible for release on parole or post-prison supervision as described in sub-  
21 section (1) of this section has served 15 years of imprisonment, the State Board of Parole and Post-  
22 Prison Supervision shall hold a hearing. The hearing must provide the person a meaningful  
23 opportunity to be released on parole or post-prison supervision.

24 (4) The board may require the person, before holding a hearing described in this section, to be  
25 examined by a psychiatrist or psychologist with expertise in adolescent development. Within 60 days  
26 of the evaluation, the examining psychiatrist or psychologist shall file a written report of the  
27 findings and conclusions of the examination with the board. A certified copy of the report shall be  
28 provided to the person and the person’s attorney.

29 (5) During a hearing under this section, the board shall consider and give substantial weight to  
30 the fact that a person under 18 years of age is incapable of the same reasoning and impulse control  
31 as an adult and the diminished culpability of minors as compared to that of adults. The board shall  
32 also consider the following circumstances, if relevant to the specific person and offense:

33 (a) The age and immaturity of the person at the time of the offense.

34 (b) Whether and to what extent an adult was involved in the offense.

35 (c) The person’s family and community circumstances at the time of the offense, including any  
36 history of abuse, trauma and involvement in the juvenile dependency system.

37 (d) The person’s subsequent emotional growth and increased maturity during the person’s  
38 imprisonment.

39 (e) The person’s participation in rehabilitative and educational programs while in custody if  
40 such programs have been made available to the person and use of self-study for self-improvement.

41 (f) A mental health diagnosis.

42 (g) Any other mitigating factors or circumstances presented by the person.

43 (6) Under no circumstances may the board consider the age of the person as an aggravating  
44 factor.

45 (7) If the board finds that, based on the consideration of the age and immaturity of the person

1 at the time of the offense and the person's behavior thereafter, the person has demonstrated maturity and rehabilitation, the board shall release the person as follows:

3 (a) For a person sentenced under ORS 163.105, 163.107, 163.115 or 163.155, the board shall set  
4 a release date that is not more than 60 days from the date of the hearing and, notwithstanding  
5 section 28, chapter 790, Oregon Laws 1989, the person shall be released on parole in accordance  
6 with ORS 144.125, 144.260 and 144.270.

7 (b) A person sentenced to a term of imprisonment under a provision of law other than ORS  
8 163.105, 163.107, 163.115 or 163.155 shall be released on post-prison supervision in accordance with  
9 ORS 144.096 and 144.098 within 60 days of the date of the hearing.

10 (8) Unless the context requires otherwise, the provisions of ORS 144.260 to 144.380 apply to a  
11 person released on parole under subsection (7)(a) of this section.

12 (9) If the board determines that the person has not demonstrated maturity and rehabilitation  
13 under subsection (7) of this section, the board may postpone a subsequent hearing to a date that is  
14 at least two years but no more than 10 years from the date of the hearing.

15 (10) The person may waive a hearing under this section. Notwithstanding waiver of the hearing,  
16 the board shall hold a hearing under this section upon the person's written request.

17 (11) The board shall provide notice of the hearing to:

18 (a) The district attorney of the county in which the person was convicted; and

19 (b) The victim of any offense for which the person is serving a sentence, if the victim requests  
20 to be notified and furnishes the board with a current address.

21 (12) A person has the right to counsel, including counsel appointed at board expense, at a  
22 hearing under this section.

23 (13) The board may adopt rules to carry out the provisions of this section.

24 **SECTION 11.** ORS 161.620 is amended to read:

25 161.620. Notwithstanding any other provision of law, a sentence imposed upon any person  
26 waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not include any sentence of death  
27 or life imprisonment without the possibility of release or parole nor imposition of any mandatory  
28 minimum sentence except that a mandatory minimum sentence under:

29 (1) ORS 137.707 (1)(a) shall be imposed[, *except as provided in ORS 137.712*];

30 (2) ORS 163.105 (1)(c) shall be imposed; and

31 (3) ORS 161.610 may be imposed.

32 **SECTION 12.** ORS 165.072 is amended to read:

33 165.072. As used in this section and ORS 165.074, unless the context requires otherwise:

34 (1) "Cardholder" means a person to whom a payment card is issued or a person who is author-  
35 ized to use the payment card.

36 (2) "Credit card" means a card, plate, booklet, credit card number, credit card account number  
37 or other identifying symbol, instrument or device that can be used to pay for, or to obtain on credit,  
38 goods or services.

39 (3) "Financial institution" means a financial institution as that term is defined in ORS 706.008.

40 (4) "Merchant" means:

41 (a) An owner or operator of a retail mercantile establishment;

42 (b) An agent, employee, lessee, consignee, franchisee, officer, director or independent contractor  
43 of an owner or operator of a retail mercantile establishment; and

44 (c) A person who receives what the person believes to be a payment card or information from  
45 a payment card from a cardholder as the instrument for obtaining something of value from the per-



1 son.

2 (5) "Payment card" means a credit card, charge card, debit card, stored value card or any card  
3 that is issued to a person and allows the user to obtain something of value from a merchant.

4 (6) "Payment card transaction" means a sale or other transaction or act in which a payment  
5 card is used to pay for, or to obtain on credit, goods or services.

6 (7) "Payment card transaction record" means any record or evidence of a payment card trans-  
7 action, including, without limitation, any paper, sales draft, instrument or other writing and any  
8 electronic or magnetic transmission or record.

9 (8) "Person" does not include a financial institution or its authorized employee, representative  
10 or agent.

11 (9)(a) "Previous conviction" [*has the meaning given that term in ORS 137.712*] **means a con-**  
12 **viction that was entered prior to imposing sentence on the current crime provided that the**  
13 **prior conviction is based on a crime committed in a separate criminal episode.**

14 (b) **"Previous 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 the conviction**  
16 **was entered within the 10-year period immediately preceding the date on which the current**  
17 **crime was committed.**

18 (10) "Reencoder" means an electronic device that places encoded information from one payment  
19 card onto another payment card.

20 (11) "Scanning device" means an electronic device that is used to access, read, scan, obtain,  
21 memorize or store, temporarily or permanently, information encoded on a payment card.

22 **SECTION 13.** ORS 420.011 is amended to read:

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

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

37 (b) After a person is transferred to the physical custody of the youth authority under ORS  
38 137.124 (5), the Director of the Oregon Youth Authority may refer the person back to the Depart-  
39 ment of Corrections for physical custody and placement if the director, after consulting with the  
40 Department of Corrections, determines that the person is at least 18 years of age and:

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

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

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

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

27 (5) For the purposes of determining the person's age at the time of committing an offense under  
28 this section:

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

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

33 **SECTION 14.** ORS 420.240 is amended to read:

34 420.240. (1) The Oregon Youth Authority may establish and administer a work release program  
35 in which persons who are committed to the custody of the Department of Corrections and placed in  
36 the physical custody of the youth authority under ORS 137.124 or other statute may be authorized  
37 to leave assigned quarters for the purpose of:

38 (a) Participating in private, gainful employment;

39 (b) Participating in a work program approved by the youth authority, including work with public  
40 or private agencies or persons, with or without compensation;

41 (c) Obtaining in this state additional education, including but not limited to vocational, technical  
42 and general education;

43 (d) Participating in alcohol or drug treatment programs;

44 (e) Participating in mental health programs;

45 (f) Specific treatment to develop independent living skills; or

1 (g) Other purposes established by the youth authority by rule.

2 (2) After consulting with the Department of Corrections, the youth authority shall adopt rules  
3 to carry out the provisions of ORS 420.240 to 420.265.

4 (3) The provisions of this section do not apply to persons sentenced under ORS 137.635, 137.700  
5 (1)(a) or 137.707 (1)(a) or any other provision of law that prohibits eligibility for any form of tem-  
6 porary leave from custody.

7 **SECTION 15.** ORS 420A.203 is amended to read:

8 420A.203. (1)(a) This section and ORS 420A.206 apply only to a person who:

9 (A) Was under 18 years of age at the time of the commission of the offense for which the person  
10 was sentenced to a term of imprisonment, who committed the offense on or after June 30, 1995, and  
11 who was:

12 (i) Sentenced to a term of imprisonment of at least 24 months following waiver under ORS  
13 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370; or

14 (ii) Sentenced to a term of imprisonment of at least 24 months under ORS 137.707 [*or 137.712*];  
15 or

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

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

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

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

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

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

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

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

40 (B) The records supervisor of the correctional institution in which the person is incarcerated;  
41 and

42 (C) The district attorney who prosecuted the case.

43 (d) The court shall make reasonable efforts to notify the following of the time and place of the  
44 hearing:

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

1 and

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

4 (e) Notwithstanding paragraph (b) of this subsection, the court may delay the hearing for good  
5 cause.

6 (3) In a hearing under this section:

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

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

11 (c) The district attorney represents the state.

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

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

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

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

26 (h) The hearing must be recorded.

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

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

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

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

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

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

42 (i) Has been rehabilitated and reformed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (L) The recommendations of the district attorney, the Oregon Youth Authority and the Depart-  
20 ment of Corrections; and

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

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

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

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

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

31 or

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

33 (7) A person described in subsection (1)(a)(B) of this section may waive a hearing under this  
34 section.

35 **SECTION 16.** ORS 421.121 is amended to read:

36 421.121. (1) Except as provided in ORS 137.635, 137.700 (1)(a), 137.707 (1)(a), 163.105, 163.107 and  
37 163.115, each adult in custody sentenced to the custody of the Department of Corrections for felonies  
38 committed on or after November 1, 1989, is eligible for a reduction in the term of incarceration for:

39 (a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and

40 (b) Participation in the adult basic skills development program described in ORS 421.084.

41 (2) The maximum amount of time credits earned for appropriate institutional behavior or for  
42 participation in the adult basic skills development program described in ORS 421.084 may not exceed  
43 20 percent of the total term of incarceration in a Department of Corrections institution.

44 (3) The time credits may not be used to shorten the term of actual prison confinement to less  
45 than six months.

1 (4) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183  
2 to establish a process for granting, retracting and restoring the time credits earned by the offender  
3 as allowed in subsections (1) to (3) of this section.

4 **SECTION 17.** ORS 421.168 is amended to read:

5 421.168. (1) The Department of Corrections shall establish a short-term transitional leave pro-  
6 gram. The program shall provide adults in custody with an opportunity to secure appropriate tran-  
7 sitional support when necessary for successful reintegration into the community prior to the adult's  
8 discharge to post-prison supervision.

9 (2) The Department of Corrections shall identify each adult in custody who is eligible for the  
10 short-term transitional leave program and shall, in conjunction with the supervisory authority for  
11 the county to which the adult in custody will be released, assist each eligible adult in custody in  
12 preparing a transition plan and in identifying and applying for an employment, educational or other  
13 transitional opportunity in the community.

14 (3) If the transition plan for the adult in custody is approved by the department and is an es-  
15 sential part of successful reintegration into the community, the department may grant a transitional  
16 leave no more than 120 days before the discharge date of the adult in custody.

17 (4) An adult in custody is not eligible for transitional leave before having served six months of  
18 prison incarceration.

19 (5) The department shall adopt rules to carry out the provisions of this section. The rules must  
20 include a set of release conditions for adults in custody released on transitional leave status. An  
21 adult in custody on transitional leave status is subject to immediate return to prison for any vio-  
22 lation of the conditions of release.

23 (6) The provisions of this section do not apply to adults in custody whose sentences were im-  
24 posed under ORS 137.635, 137.690, 137.700 (1)(a), 137.707 (1)(a), 164.061, 475.907, 475.925, 475.930 or  
25 813.011 or under a provision of law that prohibits release on any form of temporary leave from  
26 custody.

27  
28 **MISCELLANEOUS**

29  
30 **SECTION 18.** ORS 137.712 is repealed.

31 **SECTION 19.** (1) **The amendments to ORS 137.124, 137.700, 137.707, 137.751, 138.045,**  
32 **138.105, 138.115, 144.101, 144.397, 161.620, 165.072, 420.011, 420.240, 420A.203, 421.121 and 421.168**  
33 **by sections 1 to 17 of this 2021 Act and the repeal of ORS 137.712 by section 18 of this 2021**  
34 **Act apply to sentences imposed on or after the effective date of this 2021 Act, including the**  
35 **sentences of persons originally sentenced before the effective date of this 2021 Act who are**  
36 **subsequently resentenced, on or after the effective date of this 2021 Act, after a new trial**  
37 **resulting from an appellate decision or a post-conviction relief proceeding or for any other**  
38 **reason.**

39 (2) **Notwithstanding subsection (1) of this section, the amendments to ORS 137.124,**  
40 **137.700, 137.707, 137.751, 138.045, 138.105, 138.115, 144.101, 144.397, 161.620, 165.072, 420.011,**  
41 **420.240, 420A.203, 421.121 and 421.168 by sections 1 to 17 of this 2021 Act and the repeal of**  
42 **ORS 137.712 by section 18 of this 2021 Act do not apply to the sentences of persons originally**  
43 **sentenced before the effective date of this 2021 Act who are subsequently resentenced, on**  
44 **or after the effective date of this 2021 Act, as the result of an appellate decision or a post-**  
45 **conviction relief proceeding or for any other reason, but who did not receive a new trial as**

1 a result of the appellate decision, post-conviction relief proceeding or other reason.

2 SECTION 20. The unit captions used in this 2021 Act are provided only for the conven-  
3 ience of the reader and do not become part of the statutory law of this state or express any  
4 legislative intent in the enactment of this 2021 Act.

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