

D R A F T

SUMMARY

Permits person who is 20 years of age or older at time of resentencing for crime committed when person was under 18 years of age to continue temporary assignment to youth correction facility if person was temporarily assigned to youth correction facility following original sentence.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to temporary assignment to youth correction facility; creating new provisions; amending ORS 137.124; and declaring an emergency.

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

SECTION 1. ORS 137.124 is amended to read:

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

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

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

(2)(a) If the court imposes a sentence upon conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall

1 commit the defendant to the legal and physical custody of the supervisory
2 authority of the county in which the crime of conviction occurred.

3 (b) Notwithstanding paragraph (a) of this subsection, when the court im-
4 poses a sentence upon conviction of a felony that includes a term of incar-
5 ceration that is 12 months or less, the court shall commit the defendant to
6 the legal and physical custody of the Department of Corrections if the court
7 orders that the term of incarceration be served consecutively to a term of
8 incarceration that exceeds 12 months that was imposed in a previous pro-
9 ceeding or in the same proceeding by a court of this state upon conviction
10 of a felony.

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

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

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

25 (A) The person will complete the sentence imposed before the person at-
26 tains 25 years of age;

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

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

1 commitment.

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

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

17 (6)(a) When a person under 18 years of age at the time of committing the
18 offense and under 20 years of age at the time of sentencing is committed to
19 the legal and physical custody of the Department of Corrections or the su-
20 pervisory authority of a county following waiver under ORS 419C.349 (1)(b),
21 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or
22 (7)(b) or 137.712, the Department of Corrections or the supervisory authority
23 of a county shall transfer the person to the physical custody of the Oregon
24 Youth Authority for placement as provided in ORS 420.011 (3). The terms and
25 conditions of the person's incarceration and custody are governed by ORS
26 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by
27 agreement with the Department of Corrections or the supervisory authority
28 of a county transfer the person described in this subsection directly to a
29 youth correction facility for physical custody without first delivering the
30 person to the Department of Corrections or supervisory authority of the
31 county. As part of the agreement with the Department of Corrections or su-

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

6 (b) Notwithstanding ORS 137.320, when a person under 16 years of age is
7 waived under ORS 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370 and subse-
8 quently is sentenced to a term of imprisonment in the county jail, the sheriff
9 shall transfer the person to a youth correction facility for physical custody
10 as provided in ORS 420.011 (3).

11 (7) Notwithstanding the provisions of subsection (5)(a)(A) of this section,
12 the department or the supervisory authority of a county may not transfer the
13 physical custody of the person under subsection (5)(a)(A) of this section if
14 the Director of the Oregon Youth Authority, after consultation with the
15 Department of Corrections or the supervisory authority of a county, deter-
16 mines that, because of the person's age, mental or emotional condition or
17 risk of physical harm to other persons, the person should not be incarcerated
18 in a youth correction facility.

19 (8) Notwithstanding any other provision of this section, under no cir-
20 cumstances may a person under 18 years of age be incarcerated in a De-
21 partment of Corrections institution.

22 (9) If a defendant is transferred under subsection (5) **or** (6) of this section,
23 the defendant shall also be transferred after a resentencing on the same
24 charges resulting from an appellate decision or a post-conviction relief pro-
25 ceeding or for any other reason, even if the defendant is 20 years of age or
26 older at the time of the resentencing.

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

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

31 (b) If the person is convicted of an offense occurring within a range of

1 dates, the person's age shall be calculated using the date at the beginning
2 of the range.

3 **SECTION 2.** (1) **Notwithstanding section 32, chapter 634, Oregon**
4 **Laws 2019, as amended by section 3c, chapter 635, Oregon Laws 2019,**
5 **and section 4, chapter 685, Oregon Laws 2019, the amendments to ORS**
6 **137.124 by section 2, chapter 634, Oregon Laws 2019, and section 1 of**
7 **this 2023 Act apply to persons who were originally sentenced before,**
8 **on or after January 1, 2020, and who are subsequently resentenced on**
9 **or after the effective date of this 2023 Act, for any reason.**

10 (2) **Notwithstanding section 32, chapter 634, Oregon Laws 2019, as**
11 **amended by section 3c, chapter 635, Oregon Laws 2019, and section 4,**
12 **chapter 685, Oregon Laws 2019, the amendments to ORS 137.124 by**
13 **section 2, chapter 634, Oregon Laws 2019, and section 1 of this 2023 Act**
14 **apply to persons who were originally sentenced before, on or after**
15 **January 1, 2020, and who were subsequently resentenced on or after**
16 **January 1, 2020, but before the effective date of this 2023 Act, for any**
17 **reason, if the Department of Corrections and the Oregon Youth Au-**
18 **thority determine that, because of the person's age, immaturity,**
19 **mental or emotional condition or risk of physical harm to the person,**
20 **the person should not be incarcerated in a Department of Corrections**
21 **institution.**

22 **SECTION 3.** **This 2023 Act being necessary for the immediate pres-**
23 **ervation of the public peace, health and safety, an emergency is de-**
24 **clared to exist, and this 2023 Act takes effect on its passage.**

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