Senate Bill 320

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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.

Provides that person sentenced to mandatory minimum sentence under Ballot Measure 11 (1994), for crime other than murder, who has not been previously sentenced under measure is eligible for reduction in sentence for appropriate institutional behavior and participation in certain programming unless otherwise ordered by court for substantial and compelling reasons.

Creates procedure by which sentencing court may enter supplemental judgment authorizing persons currently serving sentences under Ballot Measure 11 (1994) who were not previously sentenced under measure to be eligible for reduction in sentence for appropriate institutional behavior and participation in certain programming.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to sentencing; creating new provisions; amending ORS 137.700, 137.707 and 421.121; prescribing an effective date; and providing for criminal sentence reduction that requires approval by a two-thirds majority.

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

MEASURE 11 SENTENCE REDUCTIONS FOR CERTAIN OFFENDERS

SECTION 1. ORS 137.700 is amended to read:

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

(b) Notwithstanding paragraph (a) of this subsection, when a person is convicted of one of the offenses listed in subsection (2)(a)(C) to (S), (b) or (c) of this section and the person has not previously been sentenced under this section or ORS 137.707 or 137.712, the court shall impose the sentence described in paragraph (a) of this subsection, except that the person is eligible for a reduction in the minimum sentence under ORS 421.121 unless the court orders otherwise under ORS 137.750.

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

3		sentences are.
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5	(a)(A)	Murder in the second
6		degree, as defined in
7		ORS 163.115300 months
8	(B)	Murder in the first
9		degree, as defined
10		in ORS 163.107360 months
11	(C)	Attempt or conspiracy
12		to commit aggravated
13		murder, as defined
14		in ORS 163.095120 months
15	(D)	Attempt or conspiracy
16		to commit murder
17		in any degree90 months
18	(E)	Manslaughter in the
19		first degree, as defined
20		in ORS 163.118120 months
21	(F)	Manslaughter in the
22		second degree, as defined
23		in ORS 163.12575 months
24	(G)	Assault in the first
25		degree, as defined in
26		ORS 163.18590 months
27	(H)	Assault in the second
28		degree, as defined in
29		ORS 163.17570 months
30	(I)	Except as provided in
31		paragraph (b)(G) of
32		this subsection,
33		kidnapping in the first
34		degree, as defined
35		in ORS 163.23590 months
36	(J)	Kidnapping in the second
37		degree, as defined in
38		ORS 163.22570 months
39	(K)	Rape in the first degree,
40		as defined in ORS 163.375
41		(1)(a), (c) or (d)100 months
42	(L)	
43	. ,	
44		
	(M)	
42 43	(L) (M)	(1)(a), (c) or (d)100 months Rape in the second degree, as defined in ORS 163.36575 months Sodomy in the first degree,

1		as defined in ORS 163.405
2		(1)(a), (c) or (d)100 months
3	(N)	Sodomy in the second
4		degree, as defined in
5		ORS 163.39575 months
6	(O)	Unlawful sexual penetration
7		in the first degree, as
8		defined in ORS 163.411
9		(1)(a) or (c)100 months
10	(P)	Unlawful sexual penetration
11		in the second degree, as
12		defined in ORS 163.40875 months
13	(Q)	Sexual abuse in the first
14		degree, as defined in
15		ORS 163.42775 months
16	(R)	Robbery in the first degree,
17		as defined in
18		ORS 164.41590 months
19	(S)	Robbery in the second
20		degree, as defined in
21		ORS 164.40570 months
22	(b)(A)	Arson in the first degree,
23		as defined in ORS 164.325,
24		when the offense represented
25		a threat of serious
26		physical injury90 months
27	(B)	Using a child in a display
28		of sexually explicit
29		conduct, as defined in
30		ORS 163.67070 months
31	(C)	Compelling prostitution,
32		as defined in
33		ORS 167.01770 months
34	(D)	Rape in the first degree,
35		as defined in
36		ORS 163.375 (1)(b)300 months
37	(E)	Sodomy in the first degree,
38		as defined in
39		ORS 163.405 (1)(b)300 months
40	(F)	Unlawful sexual penetration
41		in the first degree, as
42		defined in
43		ORS 163.411 (1)(b)300 months
44	(G)	Kidnapping in the first
45		degree, as defined in

1		ORS 163.235, when the
2		offense is committed in
3		furtherance of the commission
4		or attempted commission of an
5		offense listed in subparagraph
6		(D), (E) or (F) of
7		this paragraph300 months
8	(c)	Aggravated vehicular
9		homicide, as defined in
10		ORS 163.149240 months

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SECTION 2. ORS 137.707 is amended to read:

137.707. (1)(a) When a person waived under ORS 419C.349 (1)(a) is convicted of an offense listed in subsection (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for the offense in subsection (4) of this section. The court may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser term. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in the minimum sentence for any reason under ORS 421.121 or any other provision of law. The person is eligible for a hearing and conditional release under ORS 420A.203 and 420A.206.

- (b) Notwithstanding paragraph (a) of this subsection, when a person waived under ORS 419C.349 (1)(a) is convicted of an offense listed in subsection (4)(a)(C) to (S), (b) or (c) of this section and the person has not previously been sentenced under this section or ORS 137.712, the court shall impose the sentence described in paragraph (a) of this subsection, except that the person is eligible for a reduction in the minimum sentence under ORS 421.121 unless the court orders otherwise under ORS 137.750.
- (2) ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated murder under ORS 163.095 except that a person who was under 18 years of age at the time the offense was committed is not subject to a sentence of death or life imprisonment without the possibility of release or parole.
- (3) The court shall commit the person to the legal and physical custody of the Department of Corrections.
 - (4) The offenses to which this section applies and the presumptive sentences are:

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37 (a)(A) Murder in the second degree, as defined in 38 ORS 163.115......300 months 39 (B) Murder in the first 40 degree, as defined 41 in ORS 163.107......360 months 42 (C) Attempt or conspiracy 43 to commit aggravated 44 murder, as defined

1		in ORS 163.095120 months
2	(D)	Attempt or conspiracy
3		to commit murder
4		in any degree90 months
5	(E)	Manslaughter in the
6		first degree, as defined
7		in ORS 163.118120 months
8	(F)	Manslaughter in the
9		second degree, as defined
10		in ORS 163.12575 months
11	(G)	Assault in the first
12		degree, as defined
13		in ORS 163.18590 months
14	(H)	Assault in the second
15		degree, as defined
16		in ORS 163.17570 months
17	(I)	Kidnapping in the first
18		degree, as defined in
19		ORS 163.23590 months
20	(J)	Kidnapping in the second
21		degree, as defined in
22		ORS 163.22570 months
23	(K)	Rape in the first degree,
24		as defined in ORS 163.375100 months
25	(L)	Rape in the second
26		degree, as defined in
27		ORS 163.36575 months
28	(M)	Sodomy in the first
29		degree, as defined in
30		ORS 163.405100 months
31	(N)	Sodomy in the second
32		degree, as defined in
33		ORS 163.39575 months
34	(O)	Unlawful sexual
35		penetration in the first
36		degree, as defined
37		in ORS 163.411100 months
38	(P)	Unlawful sexual
39		penetration in the
40		second degree, as
41		defined in ORS 163.40875 months
42	(Q)	Sexual abuse in the first
43		degree, as defined in
44		ORS 163.42775 months
45	(R)	Robbery in the first

1		degree, as defined in
2		ORS 164.41590 months
3	(S)	Robbery in the second
4		degree, as defined in
5		ORS 164.40570 months
6	(b)(A)	Arson in the first degree,
7		as defined in ORS 164.325,
8		when the offense represented
9		a threat of serious
10		physical injury90 months
11	(B)	Using a child in a display
12		of sexually explicit
13		conduct, as defined in
14		ORS 163.67070 months
15	(C)	Compelling prostitution,
16		as defined in ORS 167.017
17		(1)(a), (b) or (d)70 months
18	(c)	Aggravated vehicular
19		homicide, as defined in
20		ORS 163.149240 months
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(5) If a person charged with an offense under this section is found guilty of a lesser included offense and the lesser included offense is:

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

- (b) Not an offense listed in subsection (4) of this section:
- (A) But constitutes an offense for which waiver is authorized under ORS 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:
 - (i) Order that a presentence report be prepared;
- (ii) Set forth in a memorandum any observations and recommendations that the court deems appropriate;
- (iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411; and
- (iv) Enter an order providing that all court records of the case are subject to the same limitations on inspection, copying and disclosure of records, reports and materials as those set forth under ORS 419A.255.
- (B) And is not an offense for which waiver is authorized under ORS 419C.349 (1)(b), the court may not sentence the person. The court shall:
 - (i) Order that a presentence report be prepared;
 - (ii) Set forth in a memorandum any observations and recommendations that the court deems

appropriate;

- (iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411; and
- (iv) Enter an order providing that all court records of the case are subject to the same limitations on inspection, copying and disclosure of records, reports and materials as those set forth under ORS 419A.255.
- (6) When a person is charged under this section, other offenses based on the same act or transaction shall be charged as separate counts in the same accusatory instrument and consolidated for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by the joinder and consolidation of offenses, the court may order an election or separate trials of counts or provide whatever other relief justice requires.
- (7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty of aggravated murder or an offense listed in subsection (4) of this section and one or more other offenses, the court shall impose the sentence for aggravated murder or the offense listed in subsection (4) of this section as provided in subsections (1) and (2) of this section and shall impose sentences for the other offenses as otherwise provided by law.
- (b) If a person charged and tried as provided in subsection (6) of this section is not found guilty of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:
 - (A) Order that a presentence report be prepared;
- (B) Set forth in a memorandum any observations and recommendations that the court deems appropriate;
- (C) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411; and
- (D) Enter an order providing that all court records of the case are subject to the same limitations on inspection, copying and disclosure of records, reports and materials as those set forth under ORS 419A.255.

SECTION 3. ORS 421.121 is amended to read:

- 421.121. (1) Except as provided in ORS 137.635, 137.700 (1)(a), 137.707 (1)(a), 163.105, 163.107 and 163.115, each adult in custody sentenced to the custody of the Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a reduction in the term of incarceration for:
 - (a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and
 - (b) Participation in the adult basic skills development program described in ORS 421.084.
- (2) The maximum amount of time credits earned for appropriate institutional behavior or for participation in the adult basic skills development program described in ORS 421.084 may not exceed 20 percent of the total term of incarceration in a Department of Corrections institution.
- (3) The time credits may not be used to shorten the term of actual prison confinement to less than six months.
 - (4) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183

to establish a process for granting, retracting and restoring the time credits earned by the offender as allowed in subsections (1) to (3) of this section.

PROCEDURE FOR PERSONS CURRENTLY IN CUSTODY

SECTION 4. (1)(a) Except as provided in paragraph (b) of this subsection, if the court enters the supplemental judgment described in subsection (5)(b) or (7)(b) of this section, the amendments to ORS 137.700, 137.707 and 421.121 by sections 1, 2 and 3 of this 2023 Act apply to persons:

- (A) Sentenced before the effective date of this 2023 Act;
- (B) Who, prior to the imposition of the sentence being served, had not previously been sentenced under ORS 137.700, 137.707 or 137.712; and
- (C) Who are not prohibited by any other provision of law from obtaining a reduction in the term of incarceration under ORS 421.121.
- (b) The amendments to ORS 137.707 and 421.121 by sections 2 and 3 of this 2023 Act do not apply to persons on conditional release under ORS 420A.206 on or before the operative date specified in section 5 of this 2023 Act.
- (2)(a) If the Department of Corrections determines, pursuant to rules adopted by the department, that a person in the legal custody of the department and in the physical custody of either the department or the Oregon Youth Authority, who was sentenced before the effective date of this 2023 Act, is eligible for a reduction in the term of incarceration under ORS 421.121 pursuant to the amendments to ORS 137.700, 137.707 and 421.121 by sections 1, 2 and 3 of this 2023 Act, the department shall notify:
 - (A) The person in custody; and
- (B) The presiding judge, trial court administrator and district attorney, in the county in which the person was convicted.
- (b) The notice described in paragraph (a) of this subsection shall indicate the sentences and counts for which the person is eligible for a reduction in the term of incarceration.
- (c) In addition to the notice described in paragraph (a) of this subsection, the department and authority shall provide the presiding judge and trial court administrator with a supplemental judgment described in subsection (12) of this section for the person.
- (3) Upon receipt of the notice, the trial court administrator shall file the notice with the court, and the district attorney shall make reasonable efforts to inform the victim:
- (a) That the person may be eligible for a reduction in the term of incarceration under ORS 421.121;
 - (b) Of the victim's rights implicated by the person's eligibility for the reduction;
- (c) That if the victim wishes to object to the person's eligibility for the reduction, the victim must notify the district attorney within 20 days of the date the notice described in subsection (2) of this section is filed with the court by the trial court administrator; and
- (d) That if the victim fails to object in accordance with paragraph (c) of this subsection, the sentencing court may authorize the department to consider the person for the reduction.
- (4)(a) If the district attorney receives a timely notice of objection from a victim or if the district attorney objects to the person's eligibility for a reduction in the term of incarceration under ORS 421.121, the district attorney must file notice of the objection with the court no later than 21 days after the date the notice described in subsection (2) of this

section is filed with the court by the trial court administrator.

- (b) Unless the court has entered the judgment described in subsection (5)(b) of this section, the court may, for good cause shown, allow the filing of a notice of objection on a date later than the date described in paragraph (a) of this subsection.
- (5)(a) If a notice of objection is filed with the court within the time period described in subsection (4) of this section or if the sentencing court, on its own motion, determines that a hearing is necessary, the court shall set a hearing within 35 days of the date the notice described in subsection (2) of this section is filed with the court by the trial court administrator, unless the court finds good cause to hold the hearing at a later date.
- (b) If a notice of objection is not filed with the court within the time period described in subsection (4) of this section and the sentencing court determines that it is appropriate to authorize the department to consider the person for a reduction in the term of incarceration under ORS 421.121, the court shall enter a supplemental judgment using the form of judgment submitted by the department under subsection (12)(a) of this section.
- (6)(a) When the court sets a hearing under subsection (5)(a) of this section, the court shall appoint counsel for the person and notify the person, the person's counsel, the department and the district attorney of the hearing date. Upon receipt of the notice, the district attorney shall make reasonable efforts to inform the victim of:
 - (A) The hearing date; and

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- (B) The victim's rights implicated in the hearing.
- (b) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall provide for the representation of a person for whom counsel is appointed under this subsection.
- (7)(a) At the hearing, the person, the district attorney and the victim may introduce evidence relevant to the determination of whether, under ORS 137.750 and based on the information available to the parties and the court at the time the sentence was originally imposed, there are substantial and compelling reasons to order that the person not be considered for a reduction in the term of incarceration under ORS 421.121.
- (b) Upon the conclusion of the hearing, the court shall order on the record in open court that the department is authorized to consider the person for a reduction in the term of incarceration under ORS 421.121 unless the court finds, on the record and in open court, substantial and compelling reasons to order that the person not be considered for the reduction. If the court orders that the person may be considered for the reduction, the court shall enter a supplemental judgment using the form of judgment submitted by the department under subsection (12)(a) of this section.
- (c) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply to a hearing conducted under this section.
- (d) The sentencing court has jurisdiction to modify its judgment and sentence to enter the supplemental judgment described in subsection (5)(b) of this section or to reflect the results of a hearing described in this subsection.
- (8) Unless the court orders otherwise, a person shall appear at a hearing described in subsection (7) of this section by simultaneous electronic transmission as defined in ORS 131.045.
- (9) Notwithstanding the grant of a reduction in the term of incarceration under ORS 421.121 by the department under this section, the department may defer the release of a

person for no more than 90 days when, in the judgment of the department, the deferral is necessary or advisable in order for the department to provide for transitional planning or for the continuity of medical or mental health care or treatment to the person.

- (10) The post-prison supervision term of a person who is released from a facility of the department or the Oregon Youth Authority after having been granted a reduction in the term of incarceration under ORS 421.121 commences upon the person's physical release from the facility.
- (11)(a) Nothing in this section or the amendments to ORS 137.700, 137.707 and 421.121 by sections 1, 2 and 3 of this 2023 Act:
 - (A) Creates any cause of action for compensation or damages;
- (B) Entitles a person to a hearing before the date set by the court under subsection (5)(a) of this section; or
- (C) Entitles a person sentenced under ORS 137.700 or 137.707 to a reduction in the term of incarceration, except as authorized by the sentencing court and granted by the department in accordance with department rules.
- (b) Notwithstanding ORS 30.265 or any other provision of law, the department and its officers, employees and agents are immune from any claim or action arising from:
- (A) The failure to identify a person who is eligible for a reduction in the term of incarceration under the amendments to ORS 137.700, 137.707 and 421.121 by sections 1, 2 and 3 this 2023 Act or to provide the notice described in subsection (2) of this section;
- (B) The failure to grant a reduction in the term of incarceration under ORS 421.121 after the reduction has been authorized by the sentencing court under subsection (5)(b) or (7)(b) of this section; or
 - (C) The deferral of a person's release under subsection (9) of this section.
 - (12) The Department of Corrections:
- (a) Shall, after consulting with the Judicial Department, prepare a form of supplemental judgment that specifies the sentences and counts for which a person sentenced under ORS 137.700 or 137.707 is eligible for a reduction in the term of incarceration under ORS 421.121.
 - (b) May adopt rules to carry out the provisions of this section.
 - (13) As used in this section:
- (a) "Reasonable efforts to inform the victim" has the meaning given that phrase in ORS 147.500.
 - (b) "Victim" has the meaning given that term in ORS 147.500.
- SECTION 5. (1) Section 4 of this 2023 Act becomes operative on the date that is 60 days after the effective date of this 2023 Act.
- (2) The Department of Corrections, the Judicial Department, the State Board of Parole and Post-Prison Supervision and the district attorneys of this state may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the departments, board or district attorneys to exercise, on or after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the departments, board or district attorneys by section 4 of this 2023 Act.
 - SECTION 6. Section 4 of this 2023 Act is repealed on January 1, 2026.

APPLICABILITY

1	SECTION 7. Except as provided in section 4 of this 2023 Act, the amendments to ORS
2	137.700, 137.707 and 421.121 by sections 1 to 3 of this 2023 Act apply to sentences imposed on
3	or after the effective date of this 2023 Act.
4	
5	CAPTIONS
6	
7	SECTION 8. The unit captions used in this 2023 Act are provided only for the convenience
8	of the reader and do not become part of the statutory law of this state or express any leg-
9	islative intent in the enactment of this 2023 Act.
10	
11	EFFECTIVE DATE
12	
13	SECTION 9. This 2023 Act takes effect on the 91st day after the date on which the 2023
14	regular session of the Eighty-second Legislative Assembly adjourns sine die.
15	