

D R A F T

SUMMARY

Eliminates mandatory adult prosecution for certain offenses committed when person charged is 15, 16 or 17 years of age at time of offense. Requires juvenile court, upon filing by state of motion requesting waiver hearing, to hold hearing to determine whether person should be prosecuted as adult.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the prosecution of juveniles as adults; creating new provisions;
3 amending ORS 137.124, 137.705, 137.707, 161.610, 161.620, 163A.130,
4 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349,
5 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203; pre-
6 scribing an effective date; and providing for criminal sentence reduction
7 that requires approval by a two-thirds majority.

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

9 **SECTION 1.** ORS 137.705 is amended to read:

10 137.705. (1)(a) As used in this section and ORS 137.707:

11 (A) "Charged" means the filing of an accusatory instrument in a court
12 of criminal jurisdiction [*alleging the commission of an offense listed in ORS*
13 *137.707*].

14 (B) "Detention facility" has the meaning given that term in ORS 419A.004.

15 (C) "Prosecuted" includes pretrial and trial procedures, requirements and
16 limitations provided for in criminal cases.

17 (b) Unless otherwise provided in ORS 137.707, ORS chapters 137 and 138
18 apply to proceedings under ORS 137.707.

19 [(2)(a) *Notwithstanding ORS 419B.100 and 419C.005, a person 15, 16 or 17*

1 *years of age at the time of committing the offense may be charged with the*
2 *commission of an offense listed in ORS 137.707 and may be prosecuted as an*
3 *adult.]*

4 *[(b) The district attorney shall notify the juvenile court and the juvenile*
5 *department when a person under 18 years of age is charged with an offense*
6 *listed in ORS 137.707.]*

7 *[(c) The filing of an accusatory instrument in a criminal court under ORS*
8 *137.707 divests the juvenile court of jurisdiction in the matter if juvenile court*
9 *jurisdiction is based on the conduct alleged in the accusatory instrument or*
10 *any conduct arising out of the same act or transaction. Upon receiving notice*
11 *from the district attorney under paragraph (b) of this subsection, the juvenile*
12 *court shall dismiss, without prejudice, the juvenile court proceeding and enter*
13 *any order necessary to transfer the matter or transport the person to the*
14 *criminal court for further proceedings. Nothing in this paragraph affects the*
15 *authority or jurisdiction of the juvenile court with respect to other matters or*
16 *conduct.]*

17 *[(3)(a)]* **(2)(a)** *[A person charged with a crime under ORS 137.707 who is*
18 *16 or 17 years of age shall] If the juvenile court enters an order of waiver*
19 **under ORS 419C.349 (1)(a), the person waived may be charged with the**
20 **commission of an offense listed in ORS 137.707 and may be prosecuted**
21 **as an adult. The person may** be detained in custody **only** in a detention
22 facility, unless the **person is 16 or 17 years of age and the** director of the
23 county juvenile department and the sheriff agree to detain the person in a
24 jail or other place where adults are detained. A person detained in accord-
25 ance with this paragraph is subject to release on the same terms and condi-
26 tions as for adults.

27 (b) If a person *[charged with a crime under ORS 137.707]* **waived under**
28 **ORS 419C.349 (1)(a)** is under 16 years of age, the person may not be
29 detained, *[either]* before conviction, or after conviction but before execution
30 of the sentence, in a jail or other place where adults are detained.

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

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

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

17 [(2)] (1) When a person [*charged under this section*] **waived under ORS**
18 **419C.349 (1)(a)** is convicted of an offense listed in subsection (4) of this
19 section, the court shall impose at least the presumptive term of imprisonment
20 provided for the offense in subsection (4) of this section. The court may im-
21 pose a greater presumptive term if otherwise permitted by law, but may not
22 impose a lesser term. The person is not, during the service of the term of
23 imprisonment, eligible for release on post-prison supervision or any form of
24 temporary leave from custody. The person is not eligible for any reduction
25 in[, *or based on,*] the minimum sentence for any reason under ORS 421.121
26 or any other provision of law.

27 (2) ORS 138.052, 163.105 and 163.150 apply to sentencing a person prose-
28 cuted under this section and convicted of aggravated murder under ORS
29 163.095 except that a person who was under 18 years of age at the time the
30 offense was committed is not subject to a sentence of death.

31 (3) The court shall commit the person to the legal and physical custody

1 of the Department of Corrections.

2 (4) The offenses to which this section applies and the presumptive sen-
3 tences are:

4 _____

5 (a)(A) Murder, as defined in
6 ORS 163.115.....300 months

7 (B) Attempt or conspiracy
8 to commit aggravated
9 murder, as defined
10 in ORS 163.095.....120 months

11 (C) Attempt or conspiracy
12 to commit murder, as
13 defined in ORS 163.115.90 months

14 (D) Manslaughter in the
15 first degree, as defined
16 in ORS 163.118.....120 months

17 (E) Manslaughter in the
18 second degree, as defined
19 in ORS 163.125.....75 months

20 (F) Assault in the first
21 degree, as defined
22 in ORS 163.185.....90 months

23 (G) Assault in the second
24 degree, as defined
25 in ORS 163.175.....70 months

26 (H) Kidnapping in the first
27 degree, as defined in
28 ORS 163.235.....90 months

29 (I) Kidnapping in the second
30 degree, as defined in
31 ORS 163.225.....70 months

- 1 (J) Rape in the first degree,
- 2 as defined in ORS 163.375....100 months
- 3 (K) Rape in the second
- 4 degree, as defined in
- 5 ORS 163.365.....75 months
- 6 (L) Sodomy in the first
- 7 degree, as defined in
- 8 ORS 163.405.....100 months
- 9 (M) Sodomy in the second
- 10 degree, as defined in
- 11 ORS 163.395.....75 months
- 12 (N) Unlawful sexual
- 13 penetration in the first
- 14 degree, as defined
- 15 in ORS 163.411.....100 months
- 16 (O) Unlawful sexual
- 17 penetration in the
- 18 second degree, as
- 19 defined in ORS 163.408.75 months
- 20 (P) Sexual abuse in the first
- 21 degree, as defined in
- 22 ORS 163.427.....75 months
- 23 (Q) Robbery in the first
- 24 degree, as defined in
- 25 ORS 164.415.....90 months
- 26 (R) Robbery in the second
- 27 degree, as defined in
- 28 ORS 164.405.....70 months
- 29 (b)(A) Arson in the first degree,
- 30 as defined in
- 31 ORS 164.325, when

- 1 the offense represented
- 2 a threat of serious
- 3 physical injury.90 months
- 4 (B) Using a child in a display
- 5 of sexually explicit
- 6 conduct, as defined in
- 7 ORS 163.670.70 months
- 8 (C) Compelling prostitution,
- 9 as defined in ORS 167.017
- 10 (1)(a), (b) or (d).70 months
- 11 (c) Aggravated vehicular
- 12 homicide, as defined in
- 13 ORS 163.149.240 months

14

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

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

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

21 (A) But constitutes an offense for which waiver is authorized under ORS
22 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a
23 hearing to determine whether to retain jurisdiction or to transfer the case
24 to juvenile court for disposition. In determining whether to retain jurisdic-
25 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the
26 court retains jurisdiction, the court shall sentence the person as an adult
27 under sentencing guidelines. If the court does not retain jurisdiction, the
28 court shall:

- 29 (i) Order that a presentence report be prepared;
- 30 (ii) Set forth in a memorandum any observations and recommendations
31 that the court deems appropriate; [and]

1 (iii) Enter an order transferring the case to the juvenile court for dispo-
2 sition under ORS 419C.067 and 419C.411; **and**

3 **(iv) Enter an order providing that all court records of the case are**
4 **subject to the same limitations on inspection, copying and disclosure**
5 **of records, reports and materials as those set forth under ORS**
6 **419A.255.**

7 (B) And is not an offense for which waiver is authorized under ORS
8 419C.349 (1)(b), the court may not sentence the person. The court shall:

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

10 (ii) Set forth in a memorandum any observations and recommendations
11 that the court deems appropriate; [*and*]

12 (iii) Enter an order transferring the case to the juvenile court for dispo-
13 sition under ORS 419C.067 and 419C.411; **and**

14 **(iv) Enter an order providing that all court records of the case are**
15 **subject to the same limitations on inspection, copying and disclosure**
16 **of records, reports and materials as those set forth under ORS**
17 **419A.255.**

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

26 (7)(a) If a person charged and tried as provided in subsection (6) of this
27 section is found guilty of aggravated murder or an offense listed in sub-
28 section (4) of this section and one or more other offenses, the court shall
29 impose the sentence for aggravated murder or the offense listed in subsection
30 (4) of this section as provided in [*subsection (2)*] **subsections (1) and (2)** of
31 this section and shall impose sentences for the other offenses as otherwise

1 provided by law.

2 (b) If a person charged and tried as provided in subsection (6) of this
3 section is not found guilty of aggravated murder or an offense listed in
4 subsection (4) of this section, but is found guilty of one of the other charges
5 that constitutes an offense for which waiver is authorized under ORS
6 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a
7 hearing to determine whether to retain jurisdiction or to transfer the case
8 to juvenile court for disposition. In determining whether to retain jurisdic-
9 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the
10 court retains jurisdiction, the court shall sentence the person as an adult
11 under sentencing guidelines. If the court does not retain jurisdiction, the
12 court shall:

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

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

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

18 **(D) Enter an order providing that all court records of the case are**
19 **subject to the same limitations on inspection, copying and disclosure**
20 **of records, reports and materials as those set forth under ORS**
21 **419A.255.**

22 **SECTION 3.** ORS 419C.349 is amended to read:

23 419C.349. (1) *[The juvenile court, after a hearing]* Except as otherwise
24 provided in ORS 419C.364 or 419C.370, *[may waive a youth to a circuit, justice*
25 *or municipal court of competent jurisdiction for prosecution as an adult if]* **the**
26 **juvenile court shall conduct a waiver hearing when:**

27 *[(1) The youth is 15 years of age or older at the time of the commission of*
28 *the alleged offense;]*

29 *[(2) The youth, except as otherwise provided in ORS 419C.364 and 419C.370,*
30 *is alleged to have committed a criminal offense constituting:]*

31 **(a) The state files a motion requesting a waiver hearing in a case**

1 **in which a petition has been filed alleging that a youth has committed**
2 **an act when the youth was 15, 16 or 17 years of age that, if committed**
3 **by an adult, would constitute aggravated murder or an offense listed**
4 **in ORS 137.707; or**

5 **(b) The state files a motion requesting a waiver hearing in a case**
6 **in which a petition has been filed alleging that a youth has committed**
7 **an act when the youth was 15, 16 or 17 years of age that, if committed**
8 **by an adult, would constitute:**

9 [(a) *Murder under ORS 163.115 or any aggravated form thereof;*]

10 [(b)] **(A)** A Class A or Class B felony;

11 [(c)] **(B)** Any of the following Class C felonies:

12 [(A)] **(i)** Escape in the second degree under ORS 162.155;

13 [(B)] **(ii)** Assault in the third degree under ORS 163.165;

14 [(C)] **(iii)** Coercion under ORS 163.275 (1)(a);

15 [(D)] **(iv)** Arson in the second degree under ORS 164.315; or

16 [(E)] **(v)** Robbery in the third degree under ORS 164.395;

17 [(d)] **(C)** Any Class C felony in which the youth used or threatened to use
18 a firearm; or

19 [(e)] **(D)** Any other [*felony or any misdemeanor if the youth and the state*
20 *stipulate to the waiver;*] **crime that the state and the youth stipulate is**
21 **subject to waiver.**

22 **(2) Following the hearing, the juvenile court shall enter an order**
23 **waiving the youth to a circuit, justice or municipal court of competent**
24 **jurisdiction if the court finds, by a preponderance of the evidence,**
25 **that:**

26 [(3)] **(a)** The youth at the time of the alleged offense was of sufficient
27 sophistication and maturity to appreciate the nature and quality of the con-
28 duct involved; and

29 [(4)] **(b)** [*The juvenile court, after considering the following criteria, deter-*
30 *mines by a preponderance of the evidence that*] Retaining jurisdiction will not
31 serve the best interests of the youth and of society and therefore is not

1 justified[:]. **For the purposes of this paragraph, the juvenile court shall**
2 **consider:**

3 [(a)] **(A)** The amenability of the youth to treatment and rehabilitation
4 given the techniques, facilities and personnel for rehabilitation available to
5 the juvenile court and to the criminal court [*which*] **that** would have juris-
6 diction after transfer;

7 [(b)] **(B)** The protection required by the community, given the seriousness
8 of the offense alleged, **and whether the youth can be safely rehabilitated**
9 **under the jurisdiction of the juvenile court;**

10 [(c)] **(C)** The aggressive, violent, premeditated or willful manner in which
11 the offense was alleged to have been committed;

12 [(d)] **(D)** The previous history of the youth, including:

13 [(A)] **(i)** Prior treatment efforts and out-of-home placements; and

14 [(B)] **(ii)** The physical, emotional and mental health of the youth;

15 [(e)] **(E)** The youth's prior record of acts [*which*] **that** would be crimes
16 if committed by an adult;

17 [(f)] **(F)** The gravity of the loss, damage or injury caused or attempted
18 during the offense;

19 [(g)] **(G)** The prosecutive merit of the case against the youth; and

20 [(h)] **(H)** The desirability of disposing of all cases in one trial if there
21 were adult co-offenders.

22 **(3) The victim of the alleged offense has the right to appear at a**
23 **hearing under this section and to provide the court with any infor-**
24 **mation reasonably related to the court's determination.**

25 **(4) The right to counsel, and the appointment of counsel under ORS**
26 **419C.200, applies to a hearing under this section.**

27 **SECTION 4.** ORS 137.124 is amended to read:

28 137.124. (1) If the court imposes a sentence upon conviction of a felony
29 that includes a term of incarceration that exceeds 12 months:

30 (a) The court shall not designate the correctional facility in which the
31 defendant is to be confined but shall commit the defendant to the legal and

1 physical custody of the Department of Corrections; and

2 (b) If the judgment provides that the term of incarceration be served
3 consecutively to a term of incarceration of 12 months or less that was im-
4 posed in a previous proceeding by a court of this state upon conviction of a
5 felony, the defendant shall serve any remaining part of the previously im-
6 posed term of incarceration in the legal and physical custody of the Depart-
7 ment of Corrections.

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

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

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

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

28 (5)(a) When a person under 18 years of age at the time of committing the
29 offense and under 20 years of age at the time of sentencing is committed to
30 the Department of Corrections under ORS 137.707, the Department of Cor-
31 rections shall transfer the physical custody of the person to the Oregon

1 Youth Authority as provided in ORS 420.011 if:

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

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

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

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

16 (c) Notwithstanding ORS 137.320, the sheriff may by agreement with the
17 Department of Corrections transfer the person described in this subsection
18 directly to a youth correction facility for physical custody without first de-
19 livering the person to the Department of Corrections. As part of the agree-
20 ment with the Department of Corrections, the sheriff may designate the
21 county juvenile department or the Oregon Youth Authority to conduct the
22 direct transfer described in this paragraph if the sheriff has entered into a
23 written agreement with the county juvenile department, the Oregon Youth
24 Authority, or both, to provide the direct transfer.

25 (6)(a) When a person under 18 years of age at the time of committing the
26 offense and under 20 years of age at the time of sentencing is committed to
27 the legal and physical custody of the Department of Corrections or the su-
28 pervisory authority of a county following waiver under ORS 419C.349
29 **(1)(b)**, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707
30 (5)(b)(A) or (7)(b) or 137.712, the Department of Corrections or the supervi-
31 sory authority of a county shall transfer the person to the physical custody

1 of the Oregon Youth Authority for placement as provided in ORS 420.011 (3).
2 The terms and conditions of the person's incarceration and custody are gov-
3 erned by ORS 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff
4 may by agreement with the Department of Corrections or the supervisory
5 authority of a county transfer the person described in this subsection di-
6 rectly to a youth correction facility for physical custody without first deliv-
7 ering the person to the Department of Corrections or supervisory authority
8 of the county. As part of the agreement with the Department of Corrections
9 or supervisory authority of the county, the sheriff may designate the county
10 juvenile department or the Oregon Youth Authority to conduct the direct
11 transfer described in this paragraph if the sheriff has entered into a written
12 agreement with the county juvenile department, the Oregon Youth Author-
13 ity, or both, to provide the direct transfer.

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

19 (7) If the Director of the Oregon Youth Authority concurs in the decision,
20 the Department of Corrections or the supervisory authority of a county shall
21 transfer the physical custody of a person committed to the Department of
22 Corrections or the supervisory authority of the county under subsection (1)
23 or (2) of this section to the Oregon Youth Authority as provided in ORS
24 420.011 (2) if:

25 (a) The person was at least 18 years of age but under 20 years of age at
26 the time of committing the felony for which the person is being sentenced
27 to a term of incarceration;

28 (b) The person is under 20 years of age at the time of commitment to the
29 Department of Corrections or the supervisory authority of the county;

30 (c) The person has not been committed previously to the legal and phys-
31 ical custody of the Department of Corrections or the supervisory authority

1 of a county;

2 (d) The person has not been convicted and sentenced to a term of incar-
3 ceration for the commission of a felony in any other state;

4 (e) The person will complete the term of incarceration imposed before the
5 person attains 25 years of age;

6 (f) The person is likely in the foreseeable future to benefit from the
7 rehabilitative and treatment programs administered by the Oregon Youth
8 Authority;

9 (g) The person does not pose a substantial danger to Oregon Youth Au-
10 thority staff or persons in the custody of the Oregon Youth Authority; and

11 (h) At the time of the proposed transfer, no more than 50 persons are in
12 the physical custody of the Oregon Youth Authority under this subsection.

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

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

24 **SECTION 5.** ORS 161.610 is amended to read:

25 161.610. (1) As used in this section, "firearm" has the meaning given that
26 term in ORS 166.210.

27 (2) The use or threatened use of a firearm, whether operable or inopera-
28 ble, by a defendant during the commission of a felony may be pleaded in the
29 accusatory instrument and proved at trial as an element in aggravation of
30 the crime as provided in this section. When a crime is so pleaded, the ag-
31 gravated nature of the crime may be indicated by adding the words "with a

1 firearm” to the title of the offense. The unaggravated crime shall be consid-
2 ered a lesser included offense.

3 (3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and ex-
4 cept as otherwise provided in subsection (6) of this section, if a defendant is
5 convicted of a felony having as an element the defendant’s use or threatened
6 use of a firearm during the commission of the crime, the court shall impose
7 at least the minimum term of imprisonment as provided in subsection (4) of
8 this section. Except as provided in ORS 144.122 and 144.126 and subsection
9 (5) of this section, in no case shall any person punishable under this section
10 become eligible for work release, parole, temporary leave or terminal leave
11 until the minimum term of imprisonment is served, less a period of time
12 equivalent to any reduction of imprisonment granted for good time served
13 or time credits earned under ORS 421.121, nor shall the execution of the
14 sentence imposed upon such person be suspended by the court.

15 (4) The minimum terms of imprisonment for felonies having as an element
16 the defendant’s use or threatened use of a firearm in the commission of the
17 crime shall be as follows:

18 (a) Except as provided in subsection (5) of this section, upon the first
19 conviction for such felony, five years, except that if the firearm is a machine
20 gun, short-barreled rifle, short-barreled shotgun or is equipped with a
21 firearms silencer, the term of imprisonment shall be 10 years.

22 (b) Upon conviction for such felony committed after punishment pursuant
23 to paragraph (a) of this subsection or subsection (5) of this section, 10 years,
24 except that if the firearm is a machine gun, short-barreled rifle, short-
25 barreled shotgun or is equipped with a firearms silencer, the term of
26 imprisonment shall be 20 years.

27 (c) Upon conviction for such felony committed after imprisonment pursu-
28 ant to paragraph (b) of this subsection, 30 years.

29 (5) If it is the first time that the defendant is subject to punishment under
30 this section, rather than impose the sentence otherwise required by sub-
31 section (4)(a) of this section, the court may:

1 (a) For felonies committed prior to November 1, 1989, suspend the exe-
2 cution of the sentence or impose a lesser term of imprisonment, when the
3 court expressly finds mitigating circumstances justifying such lesser sentence
4 and sets forth those circumstances in its statement on sentencing; or

5 (b) For felonies committed on or after November 1, 1989, impose a lesser
6 sentence in accordance with the rules of the Oregon Criminal Justice Com-
7 mission.

8 (6) When a defendant who is convicted of a felony having as an element
9 the defendant's use or threatened use of a firearm during the commission of
10 the crime is a person who was waived [*from juvenile court*] under ORS 137.707
11 (5)(b)(A), 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370, the court is not re-
12 quired to impose a minimum term of imprisonment under this section.

13 **SECTION 6.** ORS 161.620 is amended to read:

14 161.620. Notwithstanding any other provision of law, a sentence imposed
15 upon any person waived [*from the juvenile court*] under ORS 419C.349,
16 419C.352, 419C.364 or 419C.370 shall not include any sentence of death or life
17 imprisonment without the possibility of release or parole nor imposition of
18 any mandatory minimum sentence except that a mandatory minimum sen-
19 tence under:

20 **(1) ORS 137.707 shall be imposed, except as provided in ORS 137.712;**

21 [(1)] **(2) ORS 163.105 (1)(c) shall be imposed; and**

22 [(2)] **(3) ORS 161.610 may be imposed.**

23 **SECTION 7.** ORS 163A.130 is amended to read:

24 163A.130. (1) A person required to report as a sex offender under ORS
25 163A.025 (1)(a), (b) or (c), or required to report as a sex offender under the
26 laws of another state as a result of an adjudication in an Oregon juvenile
27 court, may file a petition for an order relieving the person of the obligation
28 to report. The person must pay the filing fee established under ORS 21.135.
29 If the person resides:

30 (a) In this state and is required to report under ORS 163A.025 (2) or (3),
31 the petition must be filed in the juvenile court in which the person was ad-

1 adjudicated for the act that requires reporting.

2 (b) In another state and is required to report under ORS 163A.025 (4), the
3 petition must be filed in the juvenile court in the county in which the person
4 attends school or works.

5 (c) In another state and is required to report under the laws of the other
6 state, the petition must be filed in the juvenile court in which the person
7 was adjudicated for the act that requires reporting.

8 (2) If the act giving rise to the obligation to report would constitute:

9 (a) A Class A or Class B felony sex crime if committed by an adult, the
10 petition may be filed no sooner than two years after the termination of ju-
11 venile court jurisdiction over the person or, if the person is placed under the
12 jurisdiction of the Psychiatric Security Review Board, no sooner than two
13 years after the person is discharged from the jurisdiction of the board.

14 (b) A Class C felony sex crime if committed by an adult, the petition may
15 be filed no sooner than 30 days before the termination of juvenile court ju-
16 risdiction over the person or, if the person is placed under the jurisdiction
17 of the Psychiatric Security Review Board, no sooner than 30 days before the
18 person is discharged from the jurisdiction of the board.

19 (3)(a) The juvenile court in which a petition under this section is filed
20 may transfer the matter to the juvenile court of the county that last super-
21 vised the person if the court determines that the convenience of the parties,
22 the victim and witnesses require the transfer.

23 (b) The juvenile court has exclusive original jurisdiction in any proceed-
24 ing under this section.

25 (c) The person, the district attorney and the juvenile department are
26 parties to a hearing on a petition filed under this section.

27 (4) The person filing the petition has the burden of proving by clear and
28 convincing evidence that the person is rehabilitated and does not pose a
29 threat to the safety of the public. In determining whether the person has
30 met the burden of proof, the juvenile court may consider but need not be
31 limited to considering:

- 1 (a) The extent and impact of any physical or emotional injury to the
2 victim;
- 3 (b) The nature of the act that subjected the person to the obligation of
4 reporting as a sex offender;
- 5 (c) Whether the person used or threatened to use force in committing the
6 act;
- 7 (d) Whether the act was premeditated;
- 8 (e) Whether the person took advantage of a position of authority or trust
9 in committing the act;
- 10 (f) The age of any victim at the time of the act, the age difference between
11 any victim and the person and the number of victims;
- 12 (g) The vulnerability of the victim;
- 13 (h) Other acts committed by the person that would be crimes if committed
14 by an adult and criminal activities engaged in by the person before and after
15 the adjudication;
- 16 (i) Statements, documents and recommendations by or on behalf of the
17 victim or the parents of the victim;
- 18 (j) The person's willingness to accept personal responsibility for the act
19 and personal accountability for the consequences of the act;
- 20 (k) The person's ability and efforts to pay the victim's expenses for
21 counseling and other trauma-related expenses or other efforts to mitigate the
22 effects of the act;
- 23 (L) Whether the person has participated in and satisfactorily completed
24 a sex offender treatment program or any other intervention, and if so the
25 juvenile court may also consider:
- 26 (A) The availability, duration and extent of the treatment activities;
- 27 (B) Reports and recommendations from the providers of the treatment;
- 28 (C) The person's compliance with court, board or supervision require-
29 ments regarding treatment; and
- 30 (D) The quality and thoroughness of the treatment program;
- 31 (m) The person's academic and employment history;

- 1 (n) The person's use of drugs or alcohol before and after the adjudication;
- 2 (o) The person's history of public or private indecency;
- 3 (p) The person's compliance with and success in completing the terms of
- 4 supervision;
- 5 (q) The results of psychological examinations of the person;
- 6 (r) The protection afforded the public by the continued existence of the
- 7 records; and
- 8 (s) Any other relevant factors.

9 (5) In a hearing under this section, the juvenile court may receive testi-
10 mony, reports and other evidence without regard to whether the evidence is
11 admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is
12 relevant to the determination and findings required under this section. As
13 used in this subsection, "relevant evidence" has the meaning given that term
14 in ORS 40.150.

15 (6) When a petition is filed under this section, the state has the right to
16 have a psychosexual evaluation of the person conducted. The state shall file
17 notice with the juvenile court of its intention to have the person evaluated.
18 If the person objects to the evaluator chosen by the state, the juvenile court
19 for good cause shown may direct the state to select a different evaluator.

20 (7) As soon as practicable after a petition has been filed under this sec-
21 tion, the district attorney or juvenile department shall make a reasonable
22 effort to notify the victim of the crime that the person has filed a petition
23 seeking relief under this section and, if the victim has requested, to inform
24 the victim of the date, time and place of a hearing on the petition in advance
25 of the hearing.

26 (8)(a) When a petition filed under this section is filed:

27 (A) While the person is under the jurisdiction of the juvenile court or the
28 Psychiatric Security Review Board or less than three years after the date the
29 jurisdiction is terminated, the court shall hold a hearing no sooner than 60
30 days and no later than 120 days after the date of filing.

31 (B) Three years or more after the date the juvenile court or board juris-

1 diction is terminated, the court shall hold a hearing no sooner than 90 days
2 and no later than 150 days after the date of filing.

3 (b) Notwithstanding paragraph (a) of this subsection, upon a showing of
4 good cause, the court may extend the period of time in which a hearing on
5 the petition must be held.

6 (9)(a) When the person proves by clear and convincing evidence that the
7 person is rehabilitated and does not pose a threat to the safety of the public,
8 the court shall grant the petition.

9 (b) Notwithstanding paragraph (a) of this subsection, the court may not
10 grant a petition filed under this section before the date the juvenile court
11 or board jurisdiction over the person is terminated.

12 (10) When a juvenile court enters an order relieving a person of the re-
13 quirement to report under ORS 163A.025, the person shall send a certified
14 copy of the juvenile court order to the Department of State Police.

15 (11) If a person commits an act [*that could be charged as a sex crime listed*
16 *in ORS 137.707*] **for which the person could be waived under ORS**
17 **419C.349 (1)(a)** and the person is 15, 16 or 17 years of age at the time the
18 act is committed, the state and the person may stipulate that the person may
19 not petition for relief under this section as part of an agreement that the
20 [*person be subject to the jurisdiction of the juvenile court rather than being*
21 *prosecuted as an adult under ORS 137.707*] **state not file a motion re-**
22 **questing waiver under ORS 419C.349 (1)(a).**

23 (12) When a petition is filed under subsection (2)(b) of this section before
24 the termination of juvenile court or board jurisdiction, if the person, or the
25 parent or guardian of the person if the person is less than 18 years of age,
26 requests counsel and is without sufficient financial means to employ suitable
27 counsel to represent the person, for purposes of the petition described in this
28 section, the court shall appoint suitable counsel to represent the person.
29 Appointment of counsel under this subsection is subject to ORS 419C.200,
30 419C.203, 419C.206 and 419C.209.

31 **SECTION 8.** ORS 163A.135 is amended to read:

1 163A.135. (1) Except as provided in subsection (7) of this section, a person
2 required to report under ORS 163A.025 (1)(d) may file a petition in the ju-
3 venile court for an order relieving the person of the duty to report. The
4 person must pay the filing fee established under ORS 21.135. If the person
5 resides:

6 (a) In this state and is required to report under ORS 163A.025 (2) or (3),
7 the petition must be filed in the juvenile court of the county in which the
8 person resides.

9 (b) In another state and is required to report under ORS 163A.025 (4), the
10 petition must be filed in the juvenile court of the county in which the person
11 attends school or works.

12 (2) If the act giving rise to the obligation to report would constitute:

13 (a) A Class A or Class B felony sex crime if committed in this state by
14 an adult, the petition may be filed no sooner than two years after the ter-
15 mination of the other United States court's jurisdiction over the person.

16 (b) A Class C felony sex crime if committed in this state by an adult, the
17 petition may be filed no sooner than 30 days before the termination of the
18 other United States court's jurisdiction over the person.

19 (3) The person filing the petition must submit with the petition all re-
20 leases and waivers necessary to allow the district attorney for the county in
21 which the petition is filed to obtain the following documents from the ju-
22 risdiction in which the person was adjudicated for the act for which report-
23 ing is required:

24 (a) The juvenile court petition;

25 (b) The dispositional report to the court;

26 (c) The order of adjudication or jurisdiction;

27 (d) Any other relevant court documents;

28 (e) The police report relating to the act for which reporting is required;

29 (f) The order terminating jurisdiction for the act for which reporting is
30 required; and

31 (g) The evaluation and treatment records or reports of the person that

1 are related to the act for which reporting is required.

2 (4) A person filing a petition under this section has the burden of proving
3 by clear and convincing evidence that the person is rehabilitated and does
4 not pose a threat to the safety of the public.

5 (5) Unless the court finds good cause for a continuance, the court shall
6 hold a hearing on the petition no sooner than 90 days and no later than 150
7 days after the date the petition is filed.

8 (6) If a person who files a petition under this section is required to report
9 as a sex offender for having committed an act that if committed in this state
10 could have subjected the person to [*prosecution as an adult under ORS*
11 *137.707*] **waiver under ORS 419C.349 (1)(a)**, the court may not grant the
12 petition notwithstanding the fact that the person has met the burden of proof
13 established in subsection (4) of this section unless the court determines that
14 to do so is in the interest of public safety.

15 (7) This section does not apply to a person who is required to register as
16 a sex offender for life in the jurisdiction in which the offense occurred.

17 (8) In a hearing under this section, the court may receive testimony, re-
18 ports and other evidence without regard to whether the evidence is admissi-
19 ble under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant
20 to the determination and findings required under this section. As used in this
21 subsection, “relevant evidence” has the meaning given that term in ORS
22 40.150.

23 (9) If the court is satisfied by clear and convincing evidence that the
24 person is rehabilitated and that the person does not pose a threat to the
25 safety of the public, the court shall enter an order relieving the person of
26 the duty to report. When the court enters an order under this subsection, the
27 person shall send a certified copy of the court order to the Department of
28 State Police.

29 **SECTION 9.** ORS 339.317 is amended to read:

30 339.317. (1)(a) No later than five days after a person under 18 years of age
31 is [*charged with a crime under ORS 137.707 or is*] waived under ORS

1 419C.349, 419C.352 or 419C.364, the district attorney or city attorney, if the
2 person is waived to municipal court or, in the case of a juvenile department
3 that has agreed to be responsible for providing the notice required under this
4 section, the juvenile department shall give notice of the charge to the school
5 administrator of the school attended by the person or to the school admin-
6 istrator of the school district in which the person resides. For purposes of
7 this section, “school administrator” has the meaning given that term in ORS
8 419A.305.

9 (b) The district attorney, city attorney or juvenile department shall in-
10 clude in the notice the following:

11 (A) The crime with which the person is charged;

12 (B) The name and date of birth of the person;

13 (C) The names and addresses of the person’s parents or guardians;

14 (D) The name and contact information of the attorney for the person, if
15 known;

16 (E) The name and contact information of the individual to contact for
17 further information about the notice;

18 (F) Any conditions of release or terms of probation; and

19 (G) Any other conditions required by the court.

20 (2) A person who sends records under this section is not civilly or
21 criminally liable for failing to disclose the information under this section.

22 **SECTION 10.** ORS 339.319 is amended to read:

23 339.319. (1)(a) When a person under 18 years of age is convicted of a crime
24 [*under ORS 137.707 or*] following waiver under ORS 419C.349, 419C.352,
25 419C.364 or 419C.370 (1)(b), the agency supervising the person or, in the case
26 of a juvenile department that has agreed to be responsible for providing the
27 notice required under this section, the juvenile department shall give notice
28 of the conviction within five days following sentencing to the school ad-
29 istrator of the school attended by the person or to the school adminis-
30 istrator of the school district in which the person resides. For purposes of this
31 section, “school administrator” has the meaning given that term in ORS

1 419A.305.

2 (b) The agency supervising the person or the juvenile department shall
3 include in the notice:

4 (A) The name and date of birth of the person;

5 (B) The names and addresses of the person's parents or guardians;

6 (C) The crime of conviction;

7 (D) The sentence imposed;

8 (E) The name and contact information of the attorney for the person, if
9 known;

10 (F) The name and contact information of the individual to contact for
11 further information about the notice;

12 (G) Any conditions of release or terms of probation including, but not
13 limited to, whether school attendance is a condition of the release; and

14 (H) Any other conditions required by the court.

15 (2) An agency supervising a person or anyone employed by or acting on
16 behalf of an agency supervising a person who sends records under this sec-
17 tion is not civilly or criminally liable for failing to disclose the information
18 under this section.

19 **SECTION 11.** ORS 339.321 is amended to read:

20 339.321. (1) No later than 15 days before the release or discharge of a
21 person committed to the legal custody of the Department of Corrections or
22 the supervisory authority of a county [*under ORS 137.707 or*] following
23 waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370, the department
24 or supervisory authority or, in the case of a juvenile department that has
25 agreed to be responsible for providing the notice required under this section,
26 the juvenile department shall notify the following of the release or discharge
27 if the person is under 21 years of age at the time of the release:

28 (a) Law enforcement agencies in the community in which the person is
29 going to reside; and

30 (b) The school administrator of the school the person will attend or the
31 school administrator of the school district in which the person will reside.

1 (2) The department, supervisory authority or the juvenile department
2 shall include in the notification:

3 (a) The name and date of birth of the person;

4 (b) The date of release or discharge;

5 (c) The person's address;

6 (d) The names and addresses of the person's parents or guardians;

7 (e) The name and contact information of the attorney for the person, if
8 known;

9 (f) The name and contact information of the individual to contact for
10 further information about the notice;

11 (g) Any conditions of release or terms of probation including, but not
12 limited to, the type of supervision under which the person is released and
13 whether school attendance is a condition of release; and

14 (h) Any other conditions required by the court.

15 (3) The department, supervisory authority or anyone employed by or act-
16 ing on behalf of the department or supervisory authority who sends records
17 under this section is not civilly or criminally liable for failing to disclose
18 the information under this section.

19 (4) As used in this section, "school administrator" has the meaning given
20 that term in ORS 419A.305.

21 **SECTION 12.** ORS 419C.005 is amended to read:

22 419C.005. (1) [*Except as otherwise provided in ORS 137.707,*] The juvenile
23 court has exclusive original jurisdiction in any case involving a person who
24 is under 18 years of age and who has committed an act that is a violation,
25 or that if done by an adult would constitute a violation, of a law or ordi-
26 nance of the United States or a state, county or city.

27 (2) The provisions of subsection (1) of this section do not prevent a court
28 of competent jurisdiction from entertaining a civil action or suit involving
29 a youth.

30 (3) The court does not have jurisdiction as provided in subsection (1) of
31 this section after a minor has been emancipated pursuant to ORS 419B.550

1 to 419B.558.

2 (4) The court's jurisdiction over a person under this section or ORS
3 419C.067 continues until one of the following occurs:

4 (a) The court dismisses a petition filed under this chapter or waives the
5 case under ORS 419C.340. If jurisdiction is based on a previous adjudication,
6 then dismissal or waiver of a later case does not terminate jurisdiction under
7 the previous case unless the court so orders.

8 (b) The court transfers jurisdiction of the case as provided in ORS
9 419C.053, 419C.056 and 419C.059.

10 (c) The court enters an order terminating jurisdiction.

11 (d) The person becomes 25 years of age.

12 (e) The court places the person under the jurisdiction of the Psychiatric
13 Security Review Board as provided in ORS 419C.529. If the court also has
14 jurisdiction over the person based on a previous adjudication under this
15 chapter or ORS chapter 419B, placing a person under the jurisdiction of the
16 board in a later case does not terminate wardship under the previous case
17 unless the court so orders.

18 **SECTION 13.** ORS 419C.050 is amended to read:

19 419C.050. [*Except as otherwise provided in ORS 137.707,*] If during the
20 pendency of a proceeding involving an allegation of a crime in any court
21 other than a juvenile court it is ascertained that the age of the person who
22 is the subject of the proceeding is such that the matter is within the exclu-
23 sive jurisdiction of the juvenile court, it is the duty of the court in which
24 the proceeding is pending to transfer the proceeding to the juvenile court
25 of the county in which the proceeding is pending. The clerk of the court
26 transferring the proceeding shall notify the clerk of the juvenile court of the
27 transfer.

28 **SECTION 14.** ORS 419C.346 is amended to read:

29 419C.346. If the juvenile court waives a youth to another court under ORS
30 419C.349 (1)(b) or[, 419C.355 and] 419C.370 for disposition as an adult, the
31 juvenile court nevertheless may retain jurisdiction over the youth's parents

1 or guardians under ORS 419C.570. However, if the court enters an order of
2 waiver under ORS **419C.349 (1)(a)** or 419C.364, jurisdiction over the parents
3 or guardians under ORS 419C.570 shall terminate.

4 **SECTION 15.** ORS 419C.352 is amended to read:

5 419C.352. The juvenile court, after a hearing, except as provided in ORS
6 419C.364 or 419C.370, may waive a youth under 15 years of age at the time
7 the act was committed to circuit court for prosecution as an adult if:

- 8 (1) The youth is represented by counsel during the waiver proceedings;
9 (2) The juvenile court makes the findings required under ORS 419C.349
10 [(3) and (4)] **(2)**; and
11 (3) The youth is alleged to have committed an act or acts that if com-
12 mitted by an adult would constitute one or more of the following crimes:
13 (a) Murder or any aggravated form thereof under ORS 163.095 or 163.115;
14 (b) Rape in the first degree under ORS 163.375 (1)(a);
15 (c) Sodomy in the first degree under ORS 163.405 (1)(a); or
16 (d) Unlawful sexual penetration in the first degree under ORS 163.411
17 (1)(a).

18 **SECTION 16.** ORS 419C.355 is amended to read:

19 419C.355. The juvenile court shall make a specific, detailed, written find-
20 ing of fact to support [*any determination*] **the findings made** under ORS
21 419C.349 [(3) and (4)] **(2)**.

22 **SECTION 17.** ORS 419C.358 is amended to read:

23 419C.358. **(1) Except as otherwise provided in subsection (2) of this**
24 **section and ORS 137.707 (6)**, when a person is waived for prosecution as
25 an adult, the person shall be waived only on the actual charges justifying
26 the waiver under ORS 419C.349 [(2)] or 419C.352, as the case may be.

27 **(2)** Any nonwaivable charges arising out of the same act or transaction
28 as the waivable charge shall be consolidated with the waivable charge [*for*
29 *purposes of conducting the adjudicatory hearing on the nonwaivable charges*].

30 **SECTION 18.** ORS 419C.361 is amended to read:

31 419C.361. **(1)(a)** Notwithstanding that the juvenile court has waived the

1 case under ORS 419C.349, 419C.352, [419C.355, 419C.358,] 419C.364[, 419C.367
2 and] or 419C.370, the court of waiver shall return the case to the juvenile
3 court unless an accusatory instrument is filed in the court of waiver alleg-
4 ing, in the case of a person under [16] 15 years of age, a crime listed in ORS
5 419C.352 or, in the case of any other person, a crime [listed in ORS 419C.349
6 (2). Also in the case of a waived person,] **described in ORS 419C.349 (1).**

7 (b) When a trial has been held in the court of waiver upon an accusatory
8 instrument alleging a crime listed in ORS 419C.349 [(2)] (1)(b) or 419C.352,
9 as the case may be, and the person is found guilty of any lesser included
10 offense that is not itself a waivable offense, the trial court shall not sentence
11 the defendant therein, but the trial court shall order a presentence report to
12 be made in the case, shall set forth in a memorandum such observations as
13 the court may make regarding the case and shall then return the case to the
14 juvenile court in order that the juvenile court make disposition in the case
15 based upon the guilty finding in the court of waiver. Disposition shall be as
16 if the juvenile court itself had found the youth to be in its jurisdiction pur-
17 suant to ORS 419C.005. The records and consequences of the case shall, in
18 all respects, be as if the juvenile court itself had found the youth to be in
19 its jurisdiction pursuant to ORS 419C.005. When the person is found guilty
20 of a nonwaivable charge that was consolidated with a waivable charge under
21 ORS 419C.358, the case shall be returned to the juvenile court for disposition
22 as provided in this subsection for lesser included offenses.

23 (2) Nothing in this section or ORS 419C.358 applies to a waiver under
24 ORS 419C.364 or 419C.370.

25 **SECTION 19.** ORS 420.011 is amended to read:

26 420.011. (1) Except as provided in subsections (2) and (3) of this section,
27 admissions to the youth correction facilities are limited to youth offenders
28 who are at least 12 but less than 19 years of age, found by the juvenile court
29 to have committed an act that if committed by an adult would constitute
30 aggravated murder, murder, a felony or a Class A misdemeanor and placed
31 in the legal custody of the Oregon Youth Authority. A youth offender ad-

1 mitted to a youth correction facility may not be transferred by administra-
2 tive process to any penal or correctional institution.

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

14 (b) After a person is transferred to the physical custody of the youth au-
15 thority under ORS 137.124 (5) or (7), the Director of the Oregon Youth Au-
16 thority may refer the person back to the Department of Corrections for
17 physical custody and placement if the director, after consulting with the
18 Department of Corrections, determines that the person is at least 18 years
19 of age and:

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

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

25 (3) Any person under 18 years of age at the time of committing the crime
26 and under 20 years of age at the time of sentencing and commitment who,
27 after waiver under ORS 419C.349 **(1)(b)**, 419C.352, 419C.364 or 419C.370 or
28 sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to
29 a term of imprisonment in the custody of the Department of Corrections, and
30 any person under 16 years of age who after waiver under ORS 419C.349
31 **(1)(b)**, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707

1 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of imprisonment in the
2 county jail, shall be temporarily assigned to a youth correction facility by
3 the Department of Corrections, or by the sheriff to whose custody the person
4 has been committed, pursuant to ORS 137.124 (6). The director shall desig-
5 nate the appropriate youth correction facility or schools for such assignment.
6 A person assigned to a youth correction facility under ORS 137.124 (6) and
7 this subsection remains within the legal custody of the Department of Cor-
8 rections or sheriff to whose custody the person was committed. The assign-
9 ment of such a person to the youth correction facility is subject, when the
10 person is 18 years of age or older, to termination by the director by referring
11 the person back to the Department of Corrections or the sheriff to serve the
12 balance of the person's sentence. Assignment to a youth correction facility
13 pursuant to ORS 137.124 (6) and this subsection, if not terminated earlier by
14 the director, shall terminate upon the person's attaining the age specified in
15 ORS 420A.010 (5) setting the age limits for which the Oregon Youth Au-
16 thority may retain legal and physical custody of the person, and the person
17 shall be referred to the Department of Corrections or the sheriff having legal
18 custody of the person to serve the balance of the person's sentence.

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

26 **SECTION 20.** ORS 420.081 is amended to read:

27 420.081. (1) The total population of youth offenders confined in the youth
28 correction facilities may not exceed the design capacity of the facilities
29 designated for close custody purposes by the Director of the Oregon Youth
30 Authority. The total population limit shall include offenders in the youth
31 correction facility who were waived by the juvenile court to be prosecuted

1 as adults [*or who were prosecuted as adults under ORS 137.707*].

2 (2) The director by rule shall determine reasonable standards for care and
3 treatment of youth offenders housed in youth correction facilities. Within the
4 total limit established under subsection (1) of this section, the Director of
5 the Oregon Youth Authority shall establish and impose a maximum allow-
6 able population level for each youth correction facility. The maximum al-
7 lowable population shall not exceed the design capacity for the facility and
8 shall be further limited by the ability of the facility to meet the standard
9 of care and treatment established by rule under this subsection, protect
10 communities, hold youth offenders accountable for their behavior and im-
11 prove the competency of youth offenders to become responsible and produc-
12 tive members of their communities.

13 (3) The director by rule shall establish criteria upon which the decision
14 to place a youth in a youth correction facility must be based, and which, in
15 turn, shall be based upon behaviors and characteristics of youths otherwise
16 eligible for commitment to a youth correction facility.

17 (4) After conferring with the juvenile court judges, the director shall de-
18 velop and implement by rule, a method of controlling admissions to the youth
19 correction facilities so as not to exceed maximum levels determined under
20 subsections (1) and (2) of this section.

21 **SECTION 21.** ORS 420A.203 is amended to read:

22 420A.203. (1)(a) This section and ORS 420A.206 apply only to persons who
23 were under 18 years of age at the time of the commission of the offense for
24 which the persons were sentenced to a term of imprisonment, who committed
25 the offense on or after June 30, 1995, and who were:

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

28 (B) Sentenced to a term of imprisonment of at least 24 months under ORS
29 137.707 (5)(b)(A) or (7)(b).

30 (b) When a person described in paragraph (a) of this subsection has served
31 one-half of the sentence imposed, the sentencing court shall determine what

1 further commitment or disposition is appropriate as provided in this section.
2 As used in this subsection and subsection (2) of this section, “sentence im-
3 posed” means the total period of mandatory incarceration imposed for all
4 convictions resulting from a single prosecution or criminal proceeding not
5 including any reduction in the sentence under ORS 421.121 or any other
6 statute.

7 (2)(a) No more than 120 days and not less than 60 days before the date
8 on which a person has served one-half of the sentence imposed, the Oregon
9 Youth Authority or the Department of Corrections, whichever has physical
10 custody of the person, shall file in the sentencing court a notice and request
11 that the court set a time and place for the hearing required under this sec-
12 tion. The youth authority or department shall serve the person with a copy
13 of the notice and request for hearing on or before the date of filing.

14 (b) Upon receiving the notice and request for a hearing under paragraph
15 (a) of this subsection, the sentencing court shall schedule a hearing for a
16 date not more than 30 days after the date on which the person will have
17 served one-half of the sentence imposed or such later date as is agreed upon
18 by the parties.

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

21 (A) The person and the person’s parents;

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

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

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

27 (A) The victim and the victim’s parents or legal guardian; and

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

31 (3) In a hearing under this section:

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

2 (b) The person has the right to appear with counsel. If the person requests
3 that the court appoint counsel and the court determines that the person is
4 financially eligible for appointed counsel at state expense, the court shall
5 order that counsel be appointed.

6 (c) The district attorney represents the state.

7 (d) The court shall determine admissibility of evidence as if the hearing
8 were a sentencing proceeding.

9 (e) The court may consider, when relevant, written reports of the Oregon
10 Youth Authority, the Department of Corrections and qualified experts, in
11 addition to the testimony of witnesses. Within a reasonable time before the
12 hearing, as determined by the court, the person must be given the opportu-
13 nity to examine all reports and other documents concerning the person that
14 the state, the Oregon Youth Authority or the Department of Corrections in-
15 tends to submit for consideration by the court at the hearing.

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

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

24 (h) The hearing must be recorded.

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

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

28 (k) The person has the burden of proving by clear and convincing evi-
29 dence that the person has been rehabilitated and reformed, and if condi-
30 tionally released, the person would not be a threat to the safety of the
31 victim, the victim's family or the community and that the person would

1 comply with the release conditions.

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

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

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

11 (i) Has been rehabilitated and reformed;

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

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

15 (b) In making the determination under this section, the court shall con-
16 sider:

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

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

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

21 (D) The gravity of the loss, damage or injury caused or attempted, during
22 or as part of the criminal act for which the person was convicted and sen-
23 tenced;

24 (E) The manner in which the person committed the criminal act for which
25 the person was convicted and sentenced;

26 (F) The person's efforts, participation and progress in rehabilitation pro-
27 grams since the person's conviction;

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

29 (H) Whether the person demonstrates accountability and responsibility for
30 past and future conduct;

31 (I) Whether the person has made and will continue to make restitution

1 to the victim and the community;

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

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

5 (L) The recommendations of the district attorney, the Oregon Youth Au-
6 thority and the Department of Corrections; and

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

9 (5) The court shall provide copies of its disposition order under subsection
10 (4) of this section to the parties, to the records supervisor of the correctional
11 institution in which the person is incarcerated and to the manager of the
12 institution-based records office of the Department of Corrections.

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

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

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

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

20 **SECTION 22. (1) The amendments to ORS 137.124, 137.705, 137.707,**
21 **161.610, 161.620, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005,**
22 **419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361,**
23 **420.011, 420.081 and 420A.203 by sections 1 to 21 of this 2019 Act become**
24 **operative on January 1, 2020.**

25 **(2) The Judicial Department may take any action before the opera-**
26 **tive date specified in subsection (1) of this section that is necessary**
27 **to enable the department to exercise, on and after the operative date**
28 **specified in subsection (1) of this section, all of the duties, functions**
29 **and powers conferred on the department by the amendments to ORS**
30 **137.124, 137.705, 137.707, 161.610, 161.620, 163A.130, 163A.135, 339.317,**
31 **339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355,**

1 419C.358, 419C.361, 420.011, 420.081 and 420A.203 by sections 1 to 21 of
2 this 2019 Act.

3 SECTION 23. The amendments to ORS 137.124, 137.705, 137.707,
4 161.610, 161.620, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005,
5 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361,
6 420.011, 420.081 and 420A.203 by sections 1 to 21 of this 2019 Act apply
7 to acts committed on or after January 1, 2020.

8 SECTION 24. This 2019 Act takes effect on the 91st day after the
9 date on which the 2019 regular session of the Eightieth Legislative
10 Assembly adjourns sine die.

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