

D R A F T

SUMMARY

Provides that person convicted of offense requiring mandatory minimum sentence is entitled to reduction in term of imprisonment for good conduct if person had no prior convictions at time of sentencing.

A BILL FOR AN ACT

1
2 Relating to prison sentence reductions for good conduct; creating new pro-
3 visions; amending ORS 137.635, 137.700 and 137.707; and providing for
4 criminal sentence reduction that requires approval by a two-thirds ma-
5 jority.

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

7 **SECTION 1. Section 2 of this 2019 Act is added to and made a part**
8 **of ORS chapter 421.**

9 **SECTION 2. (1) A person convicted of an offense listed in ORS**
10 **137.700 (2) or 137.707 (4), other than murder, shall receive a reduction**
11 **in the term of imprisonment of six days for each 30-day period of the**
12 **sentence, commencing on the first day of the arrival of the person at**
13 **the facility to serve the sentence, if:**

14 **(a) The person at the time of sentencing had no prior convictions;**
15 **and**

16 **(b) The person's record of conduct shows that the person has**
17 **faithfully observed all the rules of the facility.**

18 **(2) The Department of Corrections shall adopt rules to establish a**
19 **process for granting, retracting and restoring the time credits earned**
20 **by a person under this section.**

1 **SECTION 3.** ORS 137.635 is amended to read:

2 137.635. (1) When, in the case of a felony described in subsection (2) of
3 this section, a court sentences a convicted defendant who has previously
4 been convicted of any felony designated in subsection (2) of this section, the
5 sentence [*shall*] **may** not be an indeterminate sentence to which the defend-
6 ant otherwise would be subject under ORS 137.120, but, unless [*it*] **the court**
7 imposes a death penalty under ORS 163.105, the court shall impose a deter-
8 minate sentence, the length of which the court shall determine, to the cus-
9 tody of the Department of Corrections. Any mandatory minimum sentence
10 otherwise provided by law [*shall apply*] **applies**. The sentence [*shall*] **may**
11 not exceed the maximum sentence otherwise provided by law in such cases.
12 The convicted defendant who is subject to this section [*shall*] **is** not [*be*] el-
13 igible for probation. The convicted defendant shall serve the entire sentence
14 imposed by the court and [*shall*] **is** not, during the service of such a sentence,
15 [*be*] eligible for parole or any form of temporary leave from custody. The
16 person [*shall*] **is** not [*be*] eligible for any reduction in sentence pursuant to
17 ORS 421.120. [*or*] **Except as provided in section 2 of this 2019 Act, the**
18 **person is not eligible** for any reduction in term of incarceration [*pursuant*
19 *to ORS 421.121*].

20 (2) Felonies to which subsection (1) of this section applies include and
21 are limited to:

- 22 (a) Murder, as defined in ORS 163.115, and any aggravated form thereof.
23 (b) Manslaughter in the first degree, as defined in ORS 163.118.
24 (c) Assault in the first degree, as defined in ORS 163.185.
25 (d) Kidnapping in the first degree, as defined in ORS 163.235.
26 (e) Rape in the first degree, as defined in ORS 163.375.
27 (f) Sodomy in the first degree, as defined in ORS 163.405.
28 (g) Unlawful sexual penetration in the first degree, as defined in ORS
29 163.411.
30 (h) Burglary in the first degree, as defined in ORS 164.225.
31 (i) Arson in the first degree, as defined in ORS 164.325.

(j) Robbery in the first degree, as defined in ORS 164.415.

(3) When the court imposes a sentence under this section, the court shall indicate in the judgment that the defendant is subject to this section.

SECTION 4. ORS 137.700 is amended to read:

137.700. (1) 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. **Except as provided in section 2 of this 2019 Act,** 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.

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

-
- (a)(A) Murder, as defined in
ORS 163.115.....300 months
 - (B) Attempt or conspiracy
to commit aggravated
murder, as defined
in ORS 163.095.....120 months
 - (C) Attempt or conspiracy
to commit murder, as
defined in ORS 163.115.90 months

- 1 (D) Manslaughter in the
- 2 first degree, as defined
- 3 in ORS 163.118.....120 months
- 4 (E) Manslaughter in the
- 5 second degree, as defined
- 6 in ORS 163.125.....75 months
- 7 (F) Assault in the first
- 8 degree, as defined in
- 9 ORS 163.185.....90 months
- 10 (G) Assault in the second
- 11 degree, as defined in
- 12 ORS 163.175.....70 months
- 13 (H) Except as provided in
- 14 paragraph (b)(G) of
- 15 this subsection,
- 16 kidnapping in the first
- 17 degree, as defined
- 18 in ORS 163.235.....90 months
- 19 (I) Kidnapping in the second
- 20 degree, as defined in
- 21 ORS 163.225.....70 months
- 22 (J) Rape in the first degree,
- 23 as defined in ORS 163.375
- 24 (1)(a), (c) or (d).....100 months
- 25 (K) Rape in the second degree,
- 26 as defined in ORS 163.365.....75 months
- 27 (L) Sodomy in the first degree,
- 28 as defined in ORS 163.405
- 29 (1)(a), (c) or (d).....100 months
- 30 (M) Sodomy in the second
- 31 degree, as defined in

- 1 ORS 163.395.....75 months
- 2 (N) Unlawful sexual penetration
- 3 in the first degree, as
- 4 defined in ORS 163.411
- 5 (1)(a) or (c).....100 months
- 6 (O) Unlawful sexual penetration
- 7 in the second degree, as
- 8 defined in ORS 163.408.75 months
- 9 (P) Sexual abuse in the first
- 10 degree, as defined in
- 11 ORS 163.427.....75 months
- 12 (Q) Robbery in the first degree,
- 13 as defined in ORS 164.415.....90 months
- 14 (R) Robbery in the second
- 15 degree, as defined in
- 16 ORS 164.405.....70 months
- 17 (b)(A) Arson in the first degree,
- 18 as defined in ORS 164.325,
- 19 when the offense represented
- 20 a threat of serious
- 21 physical injury.90 months
- 22 (B) Using a child in a display
- 23 of sexually explicit
- 24 conduct, as defined in
- 25 ORS 163.670.....70 months
- 26 (C) Compelling prostitution,
- 27 as defined in ORS 167.017.....70 months
- 28 (D) Rape in the first degree,
- 29 as defined in
- 30 ORS 163.375 (1)(b).300 months
- 31 (E) Sodomy in the first degree,

- 1 as defined in
- 2 ORS 163.405 (1)(b).300 months
- 3 (F) Unlawful sexual penetration
- 4 in the first degree, as
- 5 defined in
- 6 ORS 163.411 (1)(b).300 months
- 7 (G) Kidnapping in the first
- 8 degree, as defined in
- 9 ORS 163.235, when the
- 10 offense is committed in
- 11 furtherance of the commission
- 12 or attempted commission of an
- 13 offense listed in subparagraph
- 14 (D), (E) or (F) of
- 15 this paragraph.300 months
- 16 (c) Aggravated vehicular
- 17 homicide, as defined in
- 18 ORS 163.149.240 months

20 **SECTION 5.** ORS 137.707 is amended to read:

21 137.707. (1)(a) Notwithstanding any other provision of law, when a person
22 charged with aggravated murder, as defined in ORS 163.095, or an offense
23 listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the
24 time the offense is committed, and the offense is committed on or after April
25 1, 1995, or when a person charged with an offense listed in subsection (4)(b)
26 of this section is 15, 16 or 17 years of age at the time the offense is com-
27 mitted, and the offense is committed on or after October 4, 1997, or when a
28 person charged with the offense described in subsection (4)(c) of this section
29 is 15, 16 or 17 years of age at the time the offense is committed and the of-
30 fense is committed on or after January 1, 2008, the person shall be prosecuted
31 as an adult in criminal court.

1 (b) A district attorney, the Attorney General or a juvenile department
2 counselor may not file in juvenile court a petition alleging that a person has
3 committed an act that, if committed by an adult, would constitute aggravated
4 murder or an offense listed in subsection (4) of this section if the person was
5 15, 16 or 17 years of age at the time the act was committed.

6 (2) When a person charged under this section is convicted of an offense
7 listed in subsection (4) of this section, the court shall impose at least the
8 presumptive term of imprisonment provided for the offense in subsection (4)
9 of this section. The court may impose a greater presumptive term if other-
10 wise permitted by law, but may not impose a lesser term. The person is not,
11 during the service of the term of imprisonment, eligible for release on post-
12 prison supervision or any form of temporary leave from custody. **Except as**
13 **provided in section 2 of this 2019 Act,** the person is not eligible for any
14 reduction in[, or based on,] the minimum sentence [*for any reason under ORS*
15 *421.121 or any other provision of law*]. ORS 138.052, 163.105 and 163.150 apply
16 to sentencing a person prosecuted under this section and convicted of ag-
17 gravated murder under ORS 163.095 except that a person who was under 18
18 years of age at the time the offense was committed is not subject to a sen-
19 tence of death.

20 (3) The court shall commit the person to the legal and physical custody
21 of the Department of Corrections.

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

24 _____

- 25 (a)(A) Murder, as defined in
- 26 ORS 163.115.....300 months
- 27 (B) Attempt or conspiracy
- 28 to commit aggravated
- 29 murder, as defined
- 30 in ORS 163.095.....120 months
- 31 (C) Attempt or conspiracy

- 1 to commit murder, as
- 2 defined in ORS 163.115.90 months
- 3 (D) Manslaughter in the
- 4 first degree, as defined
- 5 in ORS 163.118.120 months
- 6 (E) Manslaughter in the
- 7 second degree, as defined
- 8 in ORS 163.125.75 months
- 9 (F) Assault in the first
- 10 degree, as defined
- 11 in ORS 163.185.90 months
- 12 (G) Assault in the second
- 13 degree, as defined
- 14 in ORS 163.175.70 months
- 15 (H) Kidnapping in the first
- 16 degree, as defined in
- 17 ORS 163.235.90 months
- 18 (I) Kidnapping in the second
- 19 degree, as defined in
- 20 ORS 163.225.70 months
- 21 (J) Rape in the first degree,
- 22 as defined in ORS 163.375.100 months
- 23 (K) Rape in the second
- 24 degree, as defined in
- 25 ORS 163.365.75 months
- 26 (L) Sodomy in the first
- 27 degree, as defined in
- 28 ORS 163.405.100 months
- 29 (M) Sodomy in the second
- 30 degree, as defined in
- 31 ORS 163.395.75 months

- 1 (N) Unlawful sexual
- 2 penetration in the first
- 3 degree, as defined
- 4 in ORS 163.411.....100 months
- 5 (O) Unlawful sexual
- 6 penetration in the
- 7 second degree, as
- 8 defined in ORS 163.408.75 months
- 9 (P) Sexual abuse in the first
- 10 degree, as defined in
- 11 ORS 163.427.75 months
- 12 (Q) Robbery in the first
- 13 degree, as defined in
- 14 ORS 164.415.90 months
- 15 (R) Robbery in the second
- 16 degree, as defined in
- 17 ORS 164.405.70 months
- 18 (b)(A) Arson in the first degree,
- 19 as defined in
- 20 ORS 164.325, when
- 21 the offense represented
- 22 a threat of serious
- 23 physical injury.90 months
- 24 (B) Using a child in a display
- 25 of sexually explicit
- 26 conduct, as defined in
- 27 ORS 163.670.70 months
- 28 (C) Compelling prostitution,
- 29 as defined in ORS 167.017
- 30 (1)(a), (b) or (d).....70 months
- 31 (c) Aggravated vehicular

1 homicide, as defined in
2 ORS 163.149.....240 months

3
4 (5) If a person charged with an offense under this section is found guilty
5 of a lesser included offense and the lesser included offense is:

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

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

9 (A) But constitutes an offense for which waiver is authorized under ORS
10 419C.349, the court, upon motion of the district attorney, shall hold a hearing
11 to determine whether to retain jurisdiction or to transfer the case to juvenile
12 court for disposition. In determining whether to retain jurisdiction, the court
13 shall consider the criteria for waiver in ORS 419C.349. If the court retains
14 jurisdiction, the court shall sentence the person as an adult under sentencing
15 guidelines. If the court does not retain jurisdiction, the court shall:

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

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

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

21 (B) And is not an offense for which waiver is authorized under ORS
22 419C.349, the court may not sentence the person. The court shall:

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

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

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

28 (6) When a person is charged under this section, other offenses based on
29 the same act or transaction shall be charged as separate counts in the same
30 accusatory instrument and consolidated for trial, whether or not the other
31 offenses are aggravated murder or offenses listed in subsection (4) of this

1 section. If it appears, upon motion, that the state or the person charged is
2 prejudiced by the joinder and consolidation of offenses, the court may order
3 an election or separate trials of counts or provide whatever other relief jus-
4 tice requires.

5 (7)(a) If a person charged and tried as provided in subsection (6) of this
6 section is found guilty of aggravated murder or an offense listed in sub-
7 section (4) of this section and one or more other offenses, the court shall
8 impose the sentence for aggravated murder or the offense listed in subsection
9 (4) of this section as provided in subsection (2) of this section and shall im-
10 pose sentences for the other offenses as otherwise provided by law.

11 (b) If a person charged and tried as provided in subsection (6) of this
12 section is not found guilty of aggravated murder or an offense listed in
13 subsection (4) of this section, but is found guilty of one of the other charges
14 that constitutes an offense for which waiver is authorized under ORS
15 419C.349, the court, upon motion of the district attorney, shall hold a hearing
16 to determine whether to retain jurisdiction or to transfer the case to juvenile
17 court for disposition. In determining whether to retain jurisdiction, the court
18 shall consider the criteria for waiver in ORS 419C.349. If the court retains
19 jurisdiction, the court shall sentence the person as an adult under sentencing
20 guidelines. If the court does not retain jurisdiction, the court shall:

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

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

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

26 **SECTION 6. Section 2 of this 2019 Act and the amendments to ORS**
27 **137.635, 137.700 and 137.707 by sections 3 to 5 of this 2019 Act apply to**
28 **sentences imposed on or after the effective date of this 2019 Act.**

29