

Senate Bill 1007

Sponsored by COMMITTEE ON JUDICIARY

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 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 provisions; amending ORS
3 137.635, 137.700 and 137.707; and providing for criminal sentence reduction that requires ap-
4 proval by a two-thirds majority.

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

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

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

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

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

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

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

17 137.635. (1) When, in the case of a felony described in subsection (2) of this section, a court
18 sentences a convicted defendant who has previously been convicted of any felony designated in
19 subsection (2) of this section, the sentence [*shall*] **may** not be an indeterminate sentence to which
20 the defendant otherwise would be subject under ORS 137.120, but, unless [*it*] **the court** imposes a
21 death penalty under ORS 163.105, the court shall impose a determinate sentence, the length of which
22 the court shall determine, to the custody of the Department of Corrections. Any mandatory minimum
23 sentence otherwise provided by law [*shall apply*] **applies**. The sentence [*shall*] **may** not exceed the
24 maximum sentence otherwise provided by law in such cases. The convicted defendant who is subject
25 to this section [*shall*] **is** not [*be*] eligible for probation. The convicted defendant shall serve the en-
26 tire sentence imposed by the court and [*shall*] **is** not, during the service of such a sentence, [*be*] el-
27 ible for parole or any form of temporary leave from custody. The person [*shall*] **is** not [*be*] eligible
28 for any reduction in sentence pursuant to ORS 421.120. [*or*] **Except as provided in section 2 of this**
29 **2019 Act, the person is not eligible** for any reduction in term of incarceration [*pursuant to ORS*
30 *421.121*].

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

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 (a) Murder, as defined in ORS 163.115, and any aggravated form thereof.
- 2 (b) Manslaughter in the first degree, as defined in ORS 163.118.
- 3 (c) Assault in the first degree, as defined in ORS 163.185.
- 4 (d) Kidnapping in the first degree, as defined in ORS 163.235.
- 5 (e) Rape in the first degree, as defined in ORS 163.375.
- 6 (f) Sodomy in the first degree, as defined in ORS 163.405.
- 7 (g) Unlawful sexual penetration in the first degree, as defined in ORS 163.411.
- 8 (h) Burglary in the first degree, as defined in ORS 164.225.
- 9 (i) Arson in the first degree, as defined in ORS 164.325.
- 10 (j) Robbery in the first degree, as defined in ORS 164.415.

11 (3) When the court imposes a sentence under this section, the court shall indicate in the judg-
 12 ment that the defendant is subject to this section.

13 **SECTION 4.** ORS 137.700 is amended to read:

14 137.700. (1) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses
 15 listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995,
 16 or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on
 17 or after October 4, 1997, or of the offense described in subsection (2)(c) of this section and the of-
 18 fense was committed on or after January 1, 2008, the court shall impose[, *and the person shall*
 19 *serve,*] at least the entire term of imprisonment listed in subsection (2) of this section. The person
 20 is not, during the service of the term of imprisonment, eligible for release on post-prison supervision
 21 or any form of temporary leave from custody. **Except as provided in section 2 of this 2019 Act,**
 22 the person is not eligible for any reduction in[, *or based on,*] the minimum sentence [*for any reason*
 23 *whatsoever under ORS 421.121 or any other statute*]. The court may impose a greater sentence if
 24 otherwise permitted by law, but may not impose a lower sentence than the sentence specified in
 25 subsection (2) of this section.

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

28

29

30	(a)(A) Murder, as defined in	
31	ORS 163.115	300 months
32	(B) Attempt or conspiracy	
33	to commit aggravated	
34	murder, as defined	
35	in ORS 163.095	120 months
36	(C) Attempt or conspiracy	
37	to commit murder, as	
38	defined in ORS 163.115	90 months
39	(D) Manslaughter in the	
40	first degree, as defined	
41	in ORS 163.118	120 months
42	(E) Manslaughter in the	
43	second degree, as defined	
44	in ORS 163.125	75 months
45	(F) Assault in the first	

1 degree, as defined in
 2 ORS 163.18590 months
 3 (G) Assault in the second
 4 degree, as defined in
 5 ORS 163.17570 months
 6 (H) Except as provided in
 7 paragraph (b)(G) of
 8 this subsection,
 9 kidnapping in the first
 10 degree, as defined
 11 in ORS 163.23590 months
 12 (I) Kidnapping in the second
 13 degree, as defined in
 14 ORS 163.22570 months
 15 (J) Rape in the first degree,
 16 as defined in ORS 163.375
 17 (1)(a), (c) or (d).....100 months
 18 (K) Rape in the second degree,
 19 as defined in ORS 163.36575 months
 20 (L) Sodomy in the first degree,
 21 as defined in ORS 163.405
 22 (1)(a), (c) or (d).....100 months
 23 (M) Sodomy in the second
 24 degree, as defined in
 25 ORS 163.39575 months
 26 (N) Unlawful sexual penetration
 27 in the first degree, as
 28 defined in ORS 163.411
 29 (1)(a) or (c).100 months
 30 (O) Unlawful sexual penetration
 31 in the second degree, as
 32 defined in ORS 163.408.75 months
 33 (P) Sexual abuse in the first
 34 degree, as defined in
 35 ORS 163.42775 months
 36 (Q) Robbery in the first degree,
 37 as defined in ORS 164.41590 months
 38 (R) Robbery in the second
 39 degree, as defined in
 40 ORS 164.40570 months
 41 (b)(A) Arson in the first degree,
 42 as defined in ORS 164.325,
 43 when the offense represented
 44 a threat of serious
 45 physical injury.90 months

- 1 (B) Using a child in a display
- 2 of sexually explicit
- 3 conduct, as defined in
- 4 ORS 163.670.70 months
- 5 (C) Compelling prostitution,
- 6 as defined in ORS 167.017.70 months
- 7 (D) Rape in the first degree,
- 8 as defined in
- 9 ORS 163.375 (1)(b).300 months
- 10 (E) Sodomy in the first degree,
- 11 as defined in
- 12 ORS 163.405 (1)(b).300 months
- 13 (F) Unlawful sexual penetration
- 14 in the first degree, as
- 15 defined in
- 16 ORS 163.411 (1)(b).300 months
- 17 (G) Kidnapping in the first
- 18 degree, as defined in
- 19 ORS 163.235, when the
- 20 offense is committed in
- 21 furtherance of the commission
- 22 or attempted commission of an
- 23 offense listed in subparagraph
- 24 (D), (E) or (F) of
- 25 this paragraph.300 months
- 26 (c) Aggravated vehicular
- 27 homicide, as defined in
- 28 ORS 163.149.240 months

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SECTION 5. ORS 137.707 is amended to read:

32 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
33 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
34 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
35 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
36 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
37 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)
38 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is
39 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

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

44 (2) When a person charged under this section is convicted of an offense listed in subsection (4)
45 of this section, the court shall impose at least the presumptive term of imprisonment provided for

1 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
2 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
3 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
4 leave from custody. **Except as provided in section 2 of this 2019 Act,** the person is not eligible
5 for any reduction in[, or based on,] the minimum sentence [for any reason under ORS 421.121 or any
6 other provision of law]. ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted
7 under this section and convicted of aggravated murder under ORS 163.095 except that a person who
8 was under 18 years of age at the time the offense was committed is not subject to a sentence of
9 death.

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

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

- 14
- 15 (a)(A) Murder, as defined in
- 16 ORS 163.115.....300 months
- 17 (B) Attempt or conspiracy
- 18 to commit aggravated
- 19 murder, as defined
- 20 in ORS 163.095.....120 months
- 21 (C) Attempt or conspiracy
- 22 to commit murder, as
- 23 defined in ORS 163.115.90 months
- 24 (D) Manslaughter in the
- 25 first degree, as defined
- 26 in ORS 163.118.....120 months
- 27 (E) Manslaughter in the
- 28 second degree, as defined
- 29 in ORS 163.125.....75 months
- 30 (F) Assault in the first
- 31 degree, as defined
- 32 in ORS 163.185.....90 months
- 33 (G) Assault in the second
- 34 degree, as defined
- 35 in ORS 163.175.....70 months
- 36 (H) Kidnapping in the first
- 37 degree, as defined in
- 38 ORS 163.235.....90 months
- 39 (I) Kidnapping in the second
- 40 degree, as defined in
- 41 ORS 163.225.....70 months
- 42 (J) Rape in the first degree,
- 43 as defined in ORS 163.375....100 months
- 44 (K) Rape in the second
- 45 degree, as defined in

1 ORS 163.36575 months
 2 (L) Sodomy in the first
 3 degree, as defined in
 4 ORS 163.405100 months
 5 (M) Sodomy in the second
 6 degree, as defined in
 7 ORS 163.39575 months
 8 (N) Unlawful sexual
 9 penetration in the first
 10 degree, as defined
 11 in ORS 163.411100 months
 12 (O) Unlawful sexual
 13 penetration in the
 14 second degree, as
 15 defined in ORS 163.408.75 months
 16 (P) Sexual abuse in the first
 17 degree, as defined in
 18 ORS 163.42775 months
 19 (Q) Robbery in the first
 20 degree, as defined in
 21 ORS 164.41590 months
 22 (R) Robbery in the second
 23 degree, as defined in
 24 ORS 164.40570 months
 25 (b)(A) Arson in the first degree,
 26 as defined in
 27 ORS 164.325, when
 28 the offense represented
 29 a threat of serious
 30 physical injury.90 months
 31 (B) Using a child in a display
 32 of sexually explicit
 33 conduct, as defined in
 34 ORS 163.67070 months
 35 (C) Compelling prostitution,
 36 as defined in ORS 167.017
 37 (1)(a), (b) or (d).....70 months
 38 (c) Aggravated vehicular
 39 homicide, as defined in
 40 ORS 163.149240 months

42
 43 (5) If a person charged with an offense under this section is found guilty of a lesser included
 44 offense and the lesser included offense is:

45 (a) An offense listed in subsection (4) of this section, the court shall sentence the person as

1 provided in subsection (2) of this section.

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

3 (A) But constitutes an offense for which waiver is authorized under ORS 419C.349, the court,
4 upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction
5 or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdic-
6 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdic-
7 tion, the court shall sentence the person as an adult under sentencing guidelines. If the court does
8 not retain jurisdiction, the court shall:

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

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

12 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
13 419C.067 and 419C.411.

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

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

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

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

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

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

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

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

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

43 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
44 419C.067 and 419C.411.

45 **SECTION 6. Section 2 of this 2019 Act and the amendments to ORS 137.635, 137.700 and**

1 **137.707 by sections 3 to 5 of this 2019 Act apply to sentences imposed on or after the effective**
2 **date of this 2019 Act.**

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