

Senate Bill 1008

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**.

Authorizes juvenile offender charged with offense subject to mandatory minimum sentence, who receives mandatory minimum sentence or other sentence of imprisonment, to be eligible for conditional release after serving at least one-half of sentence imposed.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to juvenile offender sentencing; creating new provisions; amending ORS 137.707, 137.712
3 and 420A.203; prescribing an effective date; and providing for criminal sentence reduction that
4 requires approval by a two-thirds majority.

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

6 **SECTION 1.** ORS 420A.203 is amended to read:

7 420A.203. (1)(a) This section and ORS 420A.206 apply only to persons who were under 18 years
8 of age at the time of the commission of the offense for which the persons were sentenced to a term
9 of imprisonment, who committed the offense on or after June 30, 1995, and who were:

10 (A) Sentenced to a term of imprisonment of at least 24 months following waiver under ORS
11 419C.349, 419C.352, 419C.364 or 419C.370; or

12 (B) Sentenced to a term of imprisonment of at least 24 months under ORS 137.707 [(5)(b)(A) or
13 (7)(b)] **or 137.712**.

14 (b) When a person described in paragraph (a) of this subsection has served one-half of the sen-
15 tence imposed, the sentencing court shall determine what further commitment or disposition is ap-
16 propriate as provided in this section. As used in this subsection and subsection (2) of this section,
17 "sentence imposed" means the total period of mandatory incarceration imposed for all convictions
18 resulting from a single prosecution or criminal proceeding not including any reduction in the sen-
19 tence under ORS 421.121 or any other statute.

20 (2)(a) No more than 120 days and not less than 60 days before the date on which a person has
21 served one-half of the sentence imposed, the Oregon Youth Authority or the Department of Cor-
22 rections, whichever has physical custody of the person, shall file in the sentencing court a notice
23 and request that the court set a time and place for the hearing required under this section. The
24 youth authority or department shall serve the person with a copy of the notice and request for
25 hearing on or before the date of filing.

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

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

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) The person and, **if the person is under 18 years of age**, the person's parents;

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

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

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

7 (A) The victim and, **if the victim is under 18 years of age**, the victim's parents or legal
8 guardian; and

9 (B) Any other person who has filed a written request with the court to be notified of any hear-
10 ing concerning the transfer, discharge or release of the person.

11 **(e) Notwithstanding paragraph (b) of this subsection, the court may delay the hearing for**
12 **good cause.**

13 (3) In a hearing under this section:

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

15 (b) The person has the right to appear with counsel. If the person requests that the court ap-
16 point counsel and the court determines that the person is financially eligible for appointed counsel
17 at state expense, the court shall order that counsel be appointed.

18 (c) The district attorney represents the state.

19 (d) The court shall determine admissibility of evidence as if the hearing were a sentencing pro-
20 ceeding.

21 (e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the
22 Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within
23 a reasonable time before the hearing, as determined by the court, the person must be given the op-
24 portunity to examine all reports and other documents concerning the person that the state, the
25 Oregon Youth Authority or the Department of Corrections intends to submit for consideration by
26 the court at the hearing.

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

30 (g) The person may examine all of the witnesses called by the state, may subpoena and call
31 witnesses to testify on the person's behalf and may present evidence and argument. The court may
32 permit witnesses to appear by telephone or other two-way electronic communication device.

33 (h) The hearing must be recorded.

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

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

37 (k) The person has the burden of proving by clear and convincing evidence that the person has
38 been rehabilitated and reformed, and if conditionally released, the person would not be a threat to
39 the safety of the victim, the victim's family or the community and that the person would comply with
40 the release conditions.

41 (4)(a) At the conclusion of the hearing and after considering and making findings regarding each
42 of the factors in paragraph (b) of this subsection, the court shall order one of the following dispo-
43 sitions:

44 (A) Order that the person serve the entire remainder of the sentence of imprisonment imposed,
45 taking into account any reduction in the sentence under ORS 421.121 or any other statute, with the

1 person's physical custody determined under ORS 137.124, 420.011 and 420A.200.

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

4 (i) Has been rehabilitated and reformed;

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

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

7 (b) In making the determination under this section, the court shall consider:

8 (A) The experiences and character of the person before and after commitment to the Oregon
9 Youth Authority or the Department of Corrections;

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

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

12 (D) The gravity of the loss, damage or injury caused or attempted, during or as part of the
13 criminal act for which the person was convicted and sentenced;

14 (E) The manner in which the person committed the criminal act for which the person was con-
15 victed and sentenced;

16 (F) The person's efforts, participation and progress in rehabilitation programs since the person's
17 conviction;

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

19 (H) Whether the person demonstrates accountability and responsibility for past and future con-
20 duct;

21 (I) Whether the person has made and will continue to make restitution to the victim and the
22 community;

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

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

26 (L) The recommendations of the district attorney, the Oregon Youth Authority and the Depart-
27 ment of Corrections; and

28 (M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Au-
29 thority, the Department of Corrections or the person.

30 (5) The court shall provide copies of its disposition order under subsection (4) of this section to
31 the parties, to the records supervisor of the correctional institution in which the person is
32 incarcerated and to the manager of the institution-based records office of the Department of Cor-
33 rections.

34 (6) The person or the state may appeal an order entered under this section. On appeal, the ap-
35 pellate court's review is limited to claims that:

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

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

38 or

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

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

41 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
42 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
43 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
44 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
45 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed

1 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)
2 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is
3 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

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

8 (2) When a person charged under this section is convicted of an offense listed in subsection (4)
9 of this section, the court shall impose at least the presumptive term of imprisonment provided for
10 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
11 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
12 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
13 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-
14 tence for any reason under ORS 421.121 or any other provision of law. **The person is eligible for**
15 **a hearing and conditional release under ORS 420A.203 and 420A.206.** ORS 138.052, 163.105 and
16 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated
17 murder under ORS 163.095 except that a person who was under 18 years of age at the time the of-
18 fense was committed is not subject to a sentence of death.

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

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

-
- 22
 - 23
 - 24 (a)(A) Murder, as defined in
 - 25 ORS 163.115300 months
 - 26 (B) Attempt or conspiracy
 - 27 to commit aggravated
 - 28 murder, as defined
 - 29 in ORS 163.095120 months
 - 30 (C) Attempt or conspiracy
 - 31 to commit murder, as
 - 32 defined in ORS 163.115.90 months
 - 33 (D) Manslaughter in the
 - 34 first degree, as defined
 - 35 in ORS 163.118120 months
 - 36 (E) Manslaughter in the
 - 37 second degree, as defined
 - 38 in ORS 163.12575 months
 - 39 (F) Assault in the first
 - 40 degree, as defined
 - 41 in ORS 163.18590 months
 - 42 (G) Assault in the second
 - 43 degree, as defined
 - 44 in ORS 163.17570 months
 - 45 (H) Kidnapping in the first

1 degree, as defined in
 2 ORS 163.23590 months
 3 (I) Kidnapping in the second
 4 degree, as defined in
 5 ORS 163.22570 months
 6 (J) Rape in the first degree,
 7 as defined in ORS 163.375100 months
 8 (K) Rape in the second
 9 degree, as defined in
 10 ORS 163.36575 months
 11 (L) Sodomy in the first
 12 degree, as defined in
 13 ORS 163.405100 months
 14 (M) Sodomy in the second
 15 degree, as defined in
 16 ORS 163.39575 months
 17 (N) Unlawful sexual
 18 penetration in the first
 19 degree, as defined
 20 in ORS 163.411100 months
 21 (O) Unlawful sexual
 22 penetration in the
 23 second degree, as
 24 defined in ORS 163.408.75 months
 25 (P) Sexual abuse in the first
 26 degree, as defined in
 27 ORS 163.42775 months
 28 (Q) Robbery in the first
 29 degree, as defined in
 30 ORS 164.41590 months
 31 (R) Robbery in the second
 32 degree, as defined in
 33 ORS 164.40570 months
 34 (b)(A) Arson in the first degree,
 35 as defined in
 36 ORS 164.325, when
 37 the offense represented
 38 a threat of serious
 39 physical injury.90 months
 40 (B) Using a child in a display
 41 of sexually explicit
 42 conduct, as defined in
 43 ORS 163.67070 months
 44 (C) Compelling prostitution,
 45 as defined in ORS 167.017

- 1 (1)(a), (b) or (d).....70 months
- 2 (c) Aggravated vehicular
- 3 homicide, as defined in
- 4 ORS 163.149.....240 months

6
7 (5) If a person charged with an offense under this section is found guilty of a lesser included
8 offense and the lesser included offense is:

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

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

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

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

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

21 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
22 419C.067 and 419C.411.

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

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

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

28 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
29 419C.067 and 419C.411.

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

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

41 (b) If a person charged and tried as provided in subsection (6) of this section is not found guilty
42 of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one
43 of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349,
44 the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain
45 jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain

1 jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains
2 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court
3 does not retain jurisdiction, the court shall:

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

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

7 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
8 419C.067 and 419C.411.

9 **SECTION 3.** ORS 137.712 is amended to read:

10 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
11 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
12 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
13 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
14 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
15 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
16 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
17 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
18 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
19 of this section and finds that a substantial and compelling reason under the rules of the Oregon
20 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
21 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and
22 any other statute **and is eligible for a hearing and conditional release under ORS 420A.203 and**
23 **420A.206.**

24 (b) In order to make a dispositional departure under this section, the court must make the fol-
25 lowing additional findings on the record:

26 (A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this
27 subsection;

28 (B) A sentence of probation will be more effective than a prison term in reducing the risk of
29 offender recidivism; and

30 (C) A sentence of probation will better serve to protect society.

31 (2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on
32 the record by a preponderance of the evidence:

33 (a) If the conviction is for manslaughter in the second degree:

34 (A) That the victim was a dependent person as defined in ORS 163.205 who was at least 18 years
35 of age;

36 (B) That the defendant is the mother or father of the victim;

37 (C) That the death of the victim was the result of an injury or illness that was not caused by
38 the defendant;

39 (D) That the defendant treated the injury or illness solely by spiritual treatment in accordance
40 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual
41 treatment would bring about the victim's recovery from the injury or illness;

42 (E) That no other person previously under the defendant's care has died or sustained significant
43 physical injury as a result of or despite the use of spiritual treatment, regardless of whether the
44 spiritual treatment was used alone or in conjunction with medical care; and

45 (F) That the defendant does not have a previous conviction for a crime listed in subsection (4)

- 1 of this section or for criminal mistreatment in the second degree.
- 2 (b) If the conviction is for assault in the second degree:
- 3 (A) That the victim was not physically injured by means of a deadly weapon;
- 4 (B) That the victim did not suffer a significant physical injury; and
- 5 (C) That the defendant does not have a previous conviction for a crime listed in subsection (4)
- 6 of this section.
- 7 (c) If the conviction is for kidnapping in the second degree:
- 8 (A) That the victim was at least 12 years of age at the time the crime was committed; and
- 9 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)
- 10 of this section.
- 11 (d) If the conviction is for robbery in the second degree:
- 12 (A) That the victim did not suffer a significant physical injury;
- 13 (B) That, if the defendant represented by words or conduct that the defendant was armed with
- 14 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-
- 15 nificant physical injury;
- 16 (C) That, if the defendant represented by words or conduct that the defendant was armed with
- 17 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical
- 18 injury; and
- 19 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)
- 20 of this section.
- 21 (e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual
- 22 abuse in the first degree:
- 23 (A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the
- 24 offense;
- 25 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
- 26 this section;
- 27 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
- 28 court for an act that would have been a felony sexual offense if the act had been committed by an
- 29 adult;
- 30 (D) That the defendant was no more than five years older than the victim at the time of the
- 31 offense;
- 32 (E) That the offense did not involve sexual contact with any minor other than the victim; and
- 33 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
- 34 under 18 years of age at the time of the offense.
- 35 (f) If the conviction is for unlawful sexual penetration in the second degree:
- 36 (A) That the victim was 12 years of age or older at the time of the offense;
- 37 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
- 38 this section;
- 39 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
- 40 court for an act that would have been a felony sexual offense if the act had been committed by an
- 41 adult;
- 42 (D) That the defendant was no more than five years older than the victim at the time of the
- 43 offense;
- 44 (E) That the offense did not involve sexual contact with any minor other than the victim;
- 45 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being

1 under 18 years of age at the time of the offense; and

2 (G) That the object used to commit the unlawful sexual penetration was the hand or any part
3 thereof of the defendant.

4 (3) In making the findings required by subsections (1) and (2) of this section, the court may
5 consider any evidence presented at trial and may receive and consider any additional relevant in-
6 formation offered by either party at sentencing.

7 (4) The crimes to which subsection (2)(a)(F), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section
8 refer are:

9 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);

10 (b) Escape in the first degree, as defined in ORS 162.165;

11 (c) Aggravated murder, as defined in ORS 163.095;

12 (d) Criminally negligent homicide, as defined in ORS 163.145;

13 (e) Assault in the third degree, as defined in ORS 163.165;

14 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

15 (g) Rape in the third degree, as defined in ORS 163.355;

16 (h) Sodomy in the third degree, as defined in ORS 163.385;

17 (i) Sexual abuse in the second degree, as defined in ORS 163.425;

18 (j) Stalking, as defined in ORS 163.732;

19 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
20 felony under the rules of the Oregon Criminal Justice Commission;

21 (L) Arson in the first degree, as defined in ORS 164.325;

22 (m) Robbery in the third degree, as defined in ORS 164.395;

23 (n) Intimidation in the first degree, as defined in ORS 166.165;

24 (o) Promoting prostitution, as defined in ORS 167.012; and

25 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
26 of this subsection.

27 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section
28 violates a condition of probation by committing a new crime, the court shall revoke the probation
29 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-
30 tice Commission.

31 (6) As used in this section:

32 (a) "Conviction" includes, but is not limited to:

33 (A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS
34 419C.005, if the person was at least 15 years of age at the time the person committed the offense
35 that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include
36 a juvenile court adjudication described in this subparagraph if the person successfully asserted the
37 defense set forth in ORS 419C.522.

38 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-
39 stitute a crime listed in subsection (4) of this section.

40 (b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the
41 current crime provided that the prior conviction is based on a crime committed in a separate crim-
42 inal episode. "Previous conviction" does not include a conviction for a Class C felony, including an
43 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
44 entered within the 10-year period immediately preceding the date on which the current crime was
45 committed.

1 (c) "Significant physical injury" means a physical injury that:

2 (A) Creates a risk of death that is not a remote risk;

3 (B) Causes a serious and temporary disfigurement;

4 (C) Causes a protracted disfigurement; or

5 (D) Causes a prolonged impairment of health or the function of any bodily organ.

6 **SECTION 4. (1) The amendments to ORS 137.707, 137.712 and 420A.203 by sections 1 to 3**
7 **of this 2019 Act become operative on January 1, 2020.**

8 **(2) The Oregon Youth Authority may take any action before the operative date specified**
9 **in subsection (1) of this section that is necessary to enable the authority to exercise, on and**
10 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
11 **and powers conferred on the authority by the amendments to ORS 137.707, 137.712 and**
12 **420A.203 by sections 1 to 3 of this 2019 Act.**

13 **SECTION 5. The amendments to ORS 137.707, 137.712 and 420A.203 by sections 1 to 3 of**
14 **this 2019 Act apply to sentences imposed on or after January 1, 2020.**

15 **SECTION 6. This 2019 Act takes effect on the 91st day after the date on which the 2019**
16 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

17