

Senate Bill 469

Sponsored by Senator BOQUIST (at the request of Mary Staats) (Pre-session filed.)

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**.

Removes assault in the second degree from list of crimes requiring mandatory minimum prison sentence for person 15 years of age or older at time of commission of crime.

Requires proof of additional element of previous acts of reckless behavior that manifested extreme indifference to the value of human life for certain charges of assault in the second degree.

A BILL FOR AN ACT

Relating to assault in the second degree; creating new provisions; amending ORS 137.700, 137.707, 137.712 and 163.175; and providing for criminal sentence reduction that requires approval by a two-thirds majority.

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

SECTION 1. 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. 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:

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- (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

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 (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) (G) 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) (H) Kidnapping in the second
- 20 degree, as defined in
- 21 ORS 163.225.70 months
- 22 [(J) (I) Rape in the first degree,
- 23 as defined in ORS 163.375
- 24 (1)(a), (c) or (d).100 months
- 25 [(K) (J) Rape in the second degree,
- 26 as defined in ORS 163.365.75 months
- 27 [(L) (K) Sodomy in the first degree,
- 28 as defined in ORS 163.405
- 29 (1)(a), (c) or (d).100 months
- 30 [(M) (L) Sodomy in the second
- 31 degree, as defined in
- 32 ORS 163.395.75 months
- 33 [(N) (M) Unlawful sexual penetration
- 34 in the first degree, as
- 35 defined in ORS 163.411
- 36 (1)(a) or (c).100 months
- 37 [(O) (N) Unlawful sexual penetration
- 38 in the second degree, as
- 39 defined in ORS 163.408.75 months
- 40 [(P) (O) Sexual abuse in the first
- 41 degree, as defined in
- 42 ORS 163.427.75 months
- 43 [(Q) (P) Robbery in the first degree,
- 44 as defined in ORS 164.415.90 months
- 45 [(R) (Q) Robbery in the second

- 1 degree, as defined in
- 2 ORS 164.405.70 months
- 3 (b)(A) Arson in the first degree,
- 4 as defined in ORS 164.325,
- 5 when the offense represented
- 6 a threat of serious
- 7 physical injury.....90 months
- 8 (B) Using a child in a display
- 9 of sexually explicit
- 10 conduct, as defined in
- 11 ORS 163.670.70 months
- 12 (C) Compelling prostitution,
- 13 as defined in ORS 167.017.70 months
- 14 (D) Rape in the first degree,
- 15 as defined in
- 16 ORS 163.375 (1)(b).....300 months
- 17 (E) Sodomy in the first degree,
- 18 as defined in
- 19 ORS 163.405 (1)(b).....300 months
- 20 (F) Unlawful sexual penetration
- 21 in the first degree, as
- 22 defined in
- 23 ORS 163.411 (1)(b).....300 months
- 24 (G) Kidnapping in the first
- 25 degree, as defined in
- 26 ORS 163.235, when the
- 27 offense is committed in
- 28 furtherance of the commission
- 29 or attempted commission of an
- 30 offense listed in subparagraph
- 31 (D), (E) or (F) of
- 32 this paragraph.300 months
- 33 (c) Aggravated vehicular
- 34 homicide, as defined in
- 35 ORS 163.149.240 months

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SECTION 2. ORS 137.707 is amended to read:

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39 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
40 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
41 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
42 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
43 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
44 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)
45 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is

1 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

2 (b) A district attorney, the Attorney General or a juvenile department counselor may not file in
 3 juvenile court a petition alleging that a person has committed an act that, if committed by an adult,
 4 would constitute aggravated murder or an offense listed in subsection (4) of this section if the person
 5 was 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 listed in subsection (4)
 7 of this section, the court shall impose at least the presumptive term of imprisonment provided for
 8 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
 9 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
 10 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
 11 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-
 12 tence for any reason under ORS 421.121 or any other provision of law. ORS 138.052, 163.105 and
 13 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated
 14 murder under ORS 163.095 except that a person who was under 18 years of age at the time the of-
 15 fense was committed is not subject to a sentence of death.

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

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



- 21 (a)(A) Murder, as defined in
- 22 ORS 163.115.300 months
- 23 (B) Attempt or conspiracy
- 24 to commit aggravated
- 25 murder, as defined
- 26 in ORS 163.095.120 months
- 27 (C) Attempt or conspiracy
- 28 to commit murder, as
- 29 defined in ORS 163.115.90 months
- 30 (D) Manslaughter in the
- 31 first degree, as defined
- 32 in ORS 163.118.120 months
- 33 (E) Manslaughter in the
- 34 second degree, as defined
- 35 in ORS 163.125.75 months
- 36 (F) Assault in the first
- 37 degree, as defined
- 38 in ORS 163.185.90 months
- 39 [(G) Assault in the second]
- 40 [degree, as defined]
- 41 [in ORS 163.175.70 months]
- 42 [(H)] (G) Kidnapping in the first
- 43 degree, as defined in
- 44 ORS 163.235.90 months
- 45 [(I)] (H) Kidnapping in the second

1 degree, as defined in
 2 ORS 163.225.70 months
 3 [(J)] (I) Rape in the first degree,
 4 as defined in ORS 163.375.100 months
 5 [(K)] (J) Rape in the second
 6 degree, as defined in
 7 ORS 163.365.75 months
 8 [(L)] (K) Sodomy in the first
 9 degree, as defined in
 10 ORS 163.405.100 months
 11 [(M)] (L) Sodomy in the second
 12 degree, as defined in
 13 ORS 163.395.75 months
 14 [(N)] (M) Unlawful sexual
 15 penetration in the first
 16 degree, as defined
 17 in ORS 163.411.100 months
 18 [(O)] (N) Unlawful sexual
 19 penetration in the
 20 second degree, as
 21 defined in ORS 163.408.75 months
 22 [(P)] (O) Sexual abuse in the first
 23 degree, as defined in
 24 ORS 163.427.75 months
 25 [(Q)] (P) Robbery in the first
 26 degree, as defined in
 27 ORS 164.415.90 months
 28 [(R)] (Q) Robbery in the second
 29 degree, as defined in
 30 ORS 164.405.70 months
 31 (b)(A) Arson in the first degree,
 32 as defined in
 33 ORS 164.325, when
 34 the offense represented
 35 a threat of serious
 36 physical injury.90 months
 37 (B) Using a child in a display
 38 of sexually explicit
 39 conduct, as defined in
 40 ORS 163.670.70 months
 41 (C) Compelling prostitution,
 42 as defined in ORS 167.017
 43 (1)(a), (b) or (d).70 months
 44 (c) Aggravated vehicular
 45 homicide, as defined in

1 ORS 163.149.240 months
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4 (5) If a person charged with an offense under this section is found guilty of a lesser included
5 offense and the lesser included offense is:

6 (a) An offense listed in subsection (4) of this section, the court shall sentence the person as
7 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 419C.349, the court,
10 upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction
11 or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdic-
12 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdic-
13 tion, the court shall sentence the person as an adult under sentencing guidelines. If the court does
14 not retain jurisdiction, the court shall:

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

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

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

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

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

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

25 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
26 419C.067 and 419C.411.

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

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

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

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

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

4 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
5 419C.067 and 419C.411.

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

7 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
8 manslaughter in the second degree as defined in ORS 163.125, [*assault in the second degree as defined*
9 *in ORS 163.175 (1)(b),*] kidnapping in the second degree as defined in ORS 163.225, rape in the second
10 degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395, unlawful
11 sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first degree
12 as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS 164.405, the
13 court may impose a sentence according to the rules of the Oregon Criminal Justice Commission that
14 is less than the minimum sentence that otherwise may be required by ORS 137.700 or 137.707 if the
15 court, on the record at sentencing, makes the findings set forth in subsection (2) of this section and
16 finds that a substantial and compelling reason under the rules of the Oregon Criminal Justice
17 Commission justifies the lesser sentence. When the court imposes a sentence under this subsection,
18 the person is eligible for a reduction in the sentence as provided in ORS 421.121 and any other
19 statute.

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

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

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

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

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

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

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

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

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

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

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

41 (F) That the defendant does not have a previous conviction for a crime listed in subsection (4)
42 of this section or for criminal mistreatment in the second degree.

43 [*(b) If the conviction is for assault in the second degree:*]

44 [*(A) That the victim was not physically injured by means of a deadly weapon;*]

45 [*(B) That the victim did not suffer a significant physical injury; and*]

1 [(C) That the defendant does not have a previous conviction for a crime listed in subsection (4) of
2 this section.]

3 [(c)] (b) If the conviction is for kidnapping in the second degree:

4 (A) That the victim was at least 12 years of age at the time the crime was committed; and

5 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)
6 of this section.

7 [(d)] (c) If the conviction is for robbery in the second degree:

8 (A) That the victim did not suffer a significant physical injury;

9 (B) That, if the defendant represented by words or conduct that the defendant was armed with
10 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-
11 nificant physical injury;

12 (C) That, if the defendant represented by words or conduct that the defendant was armed with
13 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical
14 injury; and

15 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)
16 of this section.

17 [(e)] (d) If the conviction is for rape in the second degree, sodomy in the second degree or sexual
18 abuse in the first degree:

19 (A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the
20 offense;

21 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
22 this section;

23 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
24 court for an act that would have been a felony sexual offense if the act had been committed by an
25 adult;

26 (D) That the defendant was no more than five years older than the victim at the time of the
27 offense;

28 (E) That the offense did not involve sexual contact with any minor other than the victim; and

29 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
30 under 18 years of age at the time of the offense.

31 [(f)] (e) If the conviction is for unlawful sexual penetration in the second degree:

32 (A) That the victim was 12 years of age or older at the time of the offense;

33 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
34 this section;

35 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
36 court for an act that would have been a felony sexual offense if the act had been committed by an
37 adult;

38 (D) That the defendant was no more than five years older than the victim at the time of the
39 offense;

40 (E) That the offense did not involve sexual contact with any minor other than the victim;

41 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
42 under 18 years of age at the time of the offense; and

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

45 (3) In making the findings required by subsections (1) and (2) of this section, the court may

1 consider any evidence presented at trial and may receive and consider any additional relevant in-
 2 formation offered by either party at sentencing.

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

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

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

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

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

9 (e) Assault in the third degree, as defined in ORS 163.165, **or assault in the second degree,**
 10 **as defined in ORS 163.175;**

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

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

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

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

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

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

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

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

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

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

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

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

28 (6) As used in this section:

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

30 (A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS
 31 419C.005, if the person was at least 15 years of age at the time the person committed the offense
 32 that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include
 33 a juvenile court adjudication described in this subparagraph if the person successfully asserted the
 34 defense set forth in ORS 419C.522.

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

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

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

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

45 (B) Causes a serious and temporary disfigurement;

1 (C) Causes a protracted disfigurement; or

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

3 **SECTION 4.** ORS 163.175 is amended to read:

4 163.175. (1) A person commits the crime of assault in the second degree if the person:

5 (a) Intentionally or knowingly causes serious physical injury to another;

6 (b) Intentionally or knowingly causes physical injury to another by means of a deadly or dan-
7 gerous weapon; or

8 (c)(A) Recklessly causes serious physical injury to another by means of a deadly or dangerous
9 weapon under circumstances manifesting extreme indifference to the value of human life; **and**

10 **(B) Has engaged in a pattern of previous acts of reckless behavior that manifested ex-**
11 **treme indifference to the value of human life.**

12 (2) Assault in the second degree is a Class B felony.

13 **SECTION 5. The amendments to ORS 137.700, 137.707, 137.712 and 163.175 by sections 1**
14 **to 4 of this 2019 Act apply to crimes alleged to have been committed on or after the effective**
15 **date of this 2019 Act.**

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