

# Senate Bill 969

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**.

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; amending ORS 137.124,  
3 137.705, 137.707, 161.610, 161.620, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005,  
4 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and  
5 420A.203; prescribing an effective date; and providing for criminal sentence reduction that re-  
6 quires approval by a two-thirds majority.

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

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

9 137.705. (1)(a) As used in this section and ORS 137.707:

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

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

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

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

17 *[(2)(a) Notwithstanding ORS 419B.100 and 419C.005, a person 15, 16 or 17 years of age at the time*  
18 *of committing the offense may be charged with the commission of an offense listed in ORS 137.707 and*  
19 *may be prosecuted as an adult.]*

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

22 *[(c) The filing of an accusatory instrument in a criminal court under ORS 137.707 divests the ju-*  
23 *venile court of jurisdiction in the matter if juvenile court jurisdiction is based on the conduct alleged*  
24 *in the accusatory instrument or any conduct arising out of the same act or transaction. Upon receiving*  
25 *notice from the district attorney under paragraph (b) of this subsection, the juvenile court shall dismiss,*  
26 *without prejudice, the juvenile court proceeding and enter any order necessary to transfer the matter*  
27 *or transport the person to the criminal court for further proceedings. Nothing in this paragraph affects*  
28 *the authority or jurisdiction of the juvenile court with respect to other matters or conduct.]*

29 *[(3)(a)]* **(2)(a)** *[A person charged with a crime under ORS 137.707 who is 16 or 17 years of age*  
30 *shall] If the juvenile court enters an order of waiver under ORS 419C.349 (1)(a), the person*

**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 **waived may be charged with the commission of an offense listed in ORS 137.707 and may be**  
2 **prosecuted as an adult. The person may** be detained in custody **only** in a detention facility, un-  
3 less the **person is 16 or 17 years of age and the** director of the county juvenile department and  
4 the sheriff agree to detain the person in a jail or other place where adults are detained. A person  
5 detained in accordance with this paragraph is subject to release on the same terms and conditions  
6 as for adults.

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

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

11 137.707. [(1)(a) *Notwithstanding any other provision of law, when a person charged with aggra-*  
12 *vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is 15,*  
13 *16 or 17 years of age at the time the offense is committed, and the offense is committed on or after April*  
14 *1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this section is 15, 16*  
15 *or 17 years of age at the time the offense is committed, and the offense is committed on or after October*  
16 *4, 1997, or when a person charged with the offense described in subsection (4)(c) of this section is 15,*  
17 *16 or 17 years of age at the time the offense is committed and the offense is committed on or after*  
18 *January 1, 2008, the person shall be prosecuted as an adult in criminal court.*]

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

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

31 (2) ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this section  
32 and convicted of aggravated murder under ORS 163.095 except that a person who was under 18  
33 years of age at the time the offense was committed is not subject to a sentence of death.

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

36 (4) The offenses to which this section applies and the presumptive sentences are:  
37

- 
- 38  
39 (a)(A) Murder, as defined in  
40 ORS 163.115. ....300 months  
41 (B) Attempt or conspiracy  
42 to commit aggravated  
43 murder, as defined  
44 in ORS 163.095. ....120 months  
45 (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  
 32 (N) Unlawful sexual  
 33 penetration in the first  
 34 degree, as defined  
 35 in ORS 163.411. ....100 months  
 36 (O) Unlawful sexual  
 37 penetration in the  
 38 second degree, as  
 39 defined in ORS 163.408. ....75 months  
 40 (P) Sexual abuse in the first  
 41 degree, as defined in  
 42 ORS 163.427. ....75 months  
 43 (Q) Robbery in the first  
 44 degree, as defined in  
 45 ORS 164.415. ....90 months

- 1 (R) Robbery in the second
- 2 degree, as defined in
- 3 ORS 164.405 .....70 months
- 4 (b)(A) Arson in the first degree,
- 5 as defined in
- 6 ORS 164.325, when
- 7 the offense represented
- 8 a threat of serious
- 9 physical injury. ....90 months
- 10 (B) Using a child in a display
- 11 of sexually explicit
- 12 conduct, as defined in
- 13 ORS 163.670 .....70 months
- 14 (C) Compelling prostitution,
- 15 as defined in ORS 167.017
- 16 (1)(a), (b) or (d).....70 months
- 17 (c) Aggravated vehicular
- 18 homicide, as defined in
- 19 ORS 163.149 .....240 months

20

21

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

24

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

26

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

27

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

33

(i) Order that a presentence report be prepared;

34

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

36

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

38

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

41

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

43

(i) Order that a presentence report be prepared;

44

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

45

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

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

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

12 (7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty  
 13 of aggravated murder or an offense listed in subsection (4) of this section and one or more other  
 14 offenses, the court shall impose the sentence for aggravated murder or the offense listed in sub-  
 15 section (4) of this section as provided in [subsection (2)] **subsections (1) and (2)** of this section and  
 16 shall impose sentences for the other offenses as otherwise provided by law.

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

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

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

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

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

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

34 419C.349. (1) [The juvenile court, after a hearing] Except as otherwise provided in ORS 419C.364  
 35 or 419C.370, [may waive a youth to a circuit, justice or municipal court of competent jurisdiction for  
 36 prosecution as an adult if] **the juvenile court shall conduct a waiver hearing when:**

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

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

40 (a) **The state files a motion requesting a waiver hearing in a case in which a petition has**  
 41 **been filed alleging that a youth has committed an act when the youth was 15, 16 or 17 years**  
 42 **of age that, if committed by an adult, would constitute aggravated murder or an offense**  
 43 **listed in ORS 137.707; or**

44 (b) **The state files a motion requesting a waiver hearing in a case in which a petition has**  
 45 **been filed alleging that a youth has committed an act when the youth was 15, 16 or 17 years**

1 **of age that, if committed by an adult, would constitute:**

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

3 [(b)] (A) A Class A or Class B felony;

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

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

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

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

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

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

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

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

13 **(2) Following the hearing, the juvenile court shall enter an order waiving the youth to a**  
14 **circuit, justice or municipal court of competent jurisdiction if the court finds, by a prepon-**  
15 **derance of the evidence, that:**

16 [(3)] (a) The youth at the time of the alleged offense was of sufficient sophistication and matu-  
17 rity to appreciate the nature and quality of the conduct involved; and

18 [(4)] (b) [*The juvenile court, after considering the following criteria, determines by a preponderance*  
19 *of the evidence that*] Retaining jurisdiction will not serve the best interests of the youth and of so-  
20 ciety and therefore is not justified[.]. **For the purposes of this paragraph, the juvenile court**  
21 **shall consider:**

22 [(a)] (A) The amenability of the youth to treatment and rehabilitation given the techniques, fa-  
23 cilities and personnel for rehabilitation available to the juvenile court and to the criminal court  
24 [*which*] **that** would have jurisdiction after transfer;

25 [(b)] (B) The protection required by the community, given the seriousness of the offense  
26 alleged, **and whether the youth can be safely rehabilitated under the jurisdiction of the ju-**  
27 **venile court;**

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

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

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

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

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

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

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

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

37 **(3) The victim of the alleged offense has the right to appear at a hearing under this**  
38 **section and to provide the court with any information reasonably related to the court's de-**  
39 **termination.**

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

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

43 137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of  
44 incarceration that exceeds 12 months:

45 (a) The court shall not designate the correctional facility in which the defendant is to be con-

1 fined but shall commit the defendant to the legal and physical custody of the Department of Cor-  
2 rections; and

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

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

11 (b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon  
12 conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall  
13 commit the defendant to the legal and physical custody of the Department of Corrections if the court  
14 orders that the term of incarceration be served consecutively to a term of incarceration that ex-  
15 ceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court  
16 of this state upon conviction of a felony.

17 (3) After assuming custody of the convicted person the Department of Corrections may transfer  
18 inmates from one correctional facility to another such facility for the purposes of diagnosis and  
19 study, rehabilitation and treatment, as best seems to fit the needs of the inmate and for the pro-  
20 tection and welfare of the community and the inmate.

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

24 (5)(a) When a person under 18 years of age at the time of committing the offense and under 20  
25 years of age at the time of sentencing is committed to the Department of Corrections under ORS  
26 137.707, the Department of Corrections shall transfer the physical custody of the person to the  
27 Oregon Youth Authority as provided in ORS 420.011 if:

28 (A) The person will complete the sentence imposed before the person attains 25 years of age;

29 (B) The Department of Corrections and the Oregon Youth Authority determine that, because of  
30 the person's age, immaturity, mental or emotional condition or risk of physical harm to the person,  
31 the person should not be incarcerated initially in a Department of Corrections institution; or

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

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

38 (c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Cor-  
39 rections transfer the person described in this subsection directly to a youth correction facility for  
40 physical custody without first delivering the person to the Department of Corrections. As part of the  
41 agreement with the Department of Corrections, the sheriff may designate the county juvenile de-  
42 partment or the Oregon Youth Authority to conduct the direct transfer described in this paragraph  
43 if the sheriff has entered into a written agreement with the county juvenile department, the Oregon  
44 Youth Authority, or both, to provide the direct transfer.

45 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20

1 years of age at the time of sentencing is committed to the legal and physical custody of the De-  
2 partment of Corrections or the supervisory authority of a county following waiver under ORS  
3 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b)  
4 or 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the  
5 person to the physical custody of the Oregon Youth Authority for placement as provided in ORS  
6 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS  
7 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Depart-  
8 ment of Corrections or the supervisory authority of a county transfer the person described in this  
9 subsection directly to a youth correction facility for physical custody without first delivering the  
10 person to the Department of Corrections or supervisory authority of the county. As part of the  
11 agreement with the Department of Corrections or supervisory authority of the county, the sheriff  
12 may designate the county juvenile department or the Oregon Youth Authority to conduct the direct  
13 transfer described in this paragraph if the sheriff has entered into a written agreement with the  
14 county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

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

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

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

25 (b) The person is under 20 years of age at the time of commitment to the Department of Cor-  
26 rections or the supervisory authority of the county;

27 (c) The person has not been committed previously to the legal and physical custody of the De-  
28 partment of Corrections or the supervisory authority of a county;

29 (d) The person has not been convicted and sentenced to a term of incarceration for the com-  
30 mission of a felony in any other state;

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

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

35 (g) The person does not pose a substantial danger to Oregon Youth Authority staff or persons  
36 in the custody of the Oregon Youth Authority; and

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

39 (8) Notwithstanding the provisions of subsections (5)(a)(A) or (7) of this section, the department  
40 or the supervisory authority of a county may not transfer the physical custody of the person under  
41 subsection (5)(a)(A) or (7) of this section if the Director of the Oregon Youth Authority, after con-  
42 sultation with the Department of Corrections or the supervisory authority of a county, determines  
43 that, because of the person's age, mental or emotional condition or risk of physical harm to other  
44 persons, the person should not be incarcerated in a youth correction facility.

45 (9) Notwithstanding any other provision of this section, under no circumstances may a person

1 under 18 years of age be incarcerated in a Department of Corrections institution.

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

3 161.610. (1) As used in this section, “firearm” has the meaning given that term in ORS 166.210.

4 (2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant  
5 during the commission of a felony may be pleaded in the accusatory instrument and proved at trial  
6 as an element in aggravation of the crime as provided in this section. When a crime is so pleaded,  
7 the aggravated nature of the crime may be indicated by adding the words “with a firearm” to the  
8 title of the offense. The unaggravated crime shall be considered a lesser included offense.

9 (3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise pro-  
10 vided in subsection (6) of this section, if a defendant is convicted of a felony having as an element  
11 the defendant’s use or threatened use of a firearm during the commission of the crime, the court  
12 shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section.  
13 Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall  
14 any person punishable under this section become eligible for work release, parole, temporary leave  
15 or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent  
16 to any reduction of imprisonment granted for good time served or time credits earned under ORS  
17 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the  
18 court.

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

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

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

28 (c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of  
29 this subsection, 30 years.

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

32 (a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or  
33 impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances jus-  
34 tifying such lesser sentence and sets forth those circumstances in its statement on sentencing; or

35 (b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance  
36 with the rules of the Oregon Criminal Justice Commission.

37 (6) When a defendant who is convicted of a felony having as an element the defendant’s use or  
38 threatened use of a firearm during the commission of the crime is a person who was waived [*from*  
39 *juvenile court*] under ORS 137.707 (5)(b)(A), 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370, the court  
40 is not required to impose a minimum term of imprisonment under this section.

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

42 161.620. Notwithstanding any other provision of law, a sentence imposed upon any person  
43 waived [*from the juvenile court*] under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not in-  
44 clude any sentence of death or life imprisonment without the possibility of release or parole nor  
45 imposition of any mandatory minimum sentence except that a mandatory minimum sentence under:

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

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

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

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

5 163A.130. (1) A person required to report as a sex offender under ORS 163A.025 (1)(a), (b) or (c),  
6 or required to report as a sex offender under the laws of another state as a result of an adjudication  
7 in an Oregon juvenile court, may file a petition for an order relieving the person of the obligation  
8 to report. The person must pay the filing fee established under ORS 21.135. If the person resides:

9 (a) In this state and is required to report under ORS 163A.025 (2) or (3), the petition must be  
10 filed in the juvenile court in which the person was adjudicated for the act that requires reporting.

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

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

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

16 (a) A Class A or Class B felony sex crime if committed by an adult, the petition may be filed  
17 no sooner than two years after the termination of juvenile court jurisdiction over the person or, if  
18 the person is placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than  
19 two years after the person is discharged from the jurisdiction of the board.

20 (b) A Class C felony sex crime if committed by an adult, the petition may be filed no sooner than  
21 30 days before the termination of juvenile court jurisdiction over the person or, if the person is  
22 placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than 30 days be-  
23 fore the person is discharged from the jurisdiction of the board.

24 (3)(a) The juvenile court in which a petition under this section is filed may transfer the matter  
25 to the juvenile court of the county that last supervised the person if the court determines that the  
26 convenience of the parties, the victim and witnesses require the transfer.

27 (b) The juvenile court has exclusive original jurisdiction in any proceeding under this section.

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

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

34 (a) The extent and impact of any physical or emotional injury to the victim;

35 (b) The nature of the act that subjected the person to the obligation of reporting as a sex  
36 offender;

37 (c) Whether the person used or threatened to use force in committing the act;

38 (d) Whether the act was premeditated;

39 (e) Whether the person took advantage of a position of authority or trust in committing the act;

40 (f) The age of any victim at the time of the act, the age difference between any victim and the  
41 person and the number of victims;

42 (g) The vulnerability of the victim;

43 (h) Other acts committed by the person that would be crimes if committed by an adult and  
44 criminal activities engaged in by the person before and after the adjudication;

45 (i) Statements, documents and recommendations by or on behalf of the victim or the parents of

1 the victim;

2 (j) The person's willingness to accept personal responsibility for the act and personal account-  
3 ability for the consequences of the act;

4 (k) The person's ability and efforts to pay the victim's expenses for counseling and other  
5 trauma-related expenses or other efforts to mitigate the effects of the act;

6 (L) Whether the person has participated in and satisfactorily completed a sex offender treatment  
7 program or any other intervention, and if so the juvenile court may also consider:

8 (A) The availability, duration and extent of the treatment activities;

9 (B) Reports and recommendations from the providers of the treatment;

10 (C) The person's compliance with court, board or supervision requirements regarding treatment;  
11 and

12 (D) The quality and thoroughness of the treatment program;

13 (m) The person's academic and employment history;

14 (n) The person's use of drugs or alcohol before and after the adjudication;

15 (o) The person's history of public or private indecency;

16 (p) The person's compliance with and success in completing the terms of supervision;

17 (q) The results of psychological examinations of the person;

18 (r) The protection afforded the public by the continued existence of the records; and

19 (s) Any other relevant factors.

20 (5) In a hearing under this section, the juvenile court may receive testimony, reports and other  
21 evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and  
22 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this  
23 section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS  
24 40.150.

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

29 (7) As soon as practicable after a petition has been filed under this section, the district attorney  
30 or juvenile department shall make a reasonable effort to notify the victim of the crime that the  
31 person has filed a petition seeking relief under this section and, if the victim has requested, to in-  
32 form the victim of the date, time and place of a hearing on the petition in advance of the hearing.

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

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

37 (B) Three years or more after the date the juvenile court or board jurisdiction is terminated, the  
38 court shall hold a hearing no sooner than 90 days and no later than 150 days after the date of filing.

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

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

43 (b) Notwithstanding paragraph (a) of this subsection, the court may not grant a petition filed  
44 under this section before the date the juvenile court or board jurisdiction over the person is termi-  
45 nated.

1 (10) When a juvenile court enters an order relieving a person of the requirement to report under  
 2 ORS 163A.025, the person shall send a certified copy of the juvenile court order to the Department  
 3 of State Police.

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

10 (12) When a petition is filed under subsection (2)(b) of this section before the termination of ju-  
 11 venile court or board jurisdiction, if the person, or the parent or guardian of the person if the person  
 12 is less than 18 years of age, requests counsel and is without sufficient financial means to employ  
 13 suitable counsel to represent the person, for purposes of the petition described in this section, the  
 14 court shall appoint suitable counsel to represent the person. Appointment of counsel under this  
 15 subsection is subject to ORS 419C.200, 419C.203, 419C.206 and 419C.209.

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

17 163A.135. (1) Except as provided in subsection (7) of this section, a person required to report  
 18 under ORS 163A.025 (1)(d) may file a petition in the juvenile court for an order relieving the person  
 19 of the duty to report. The person must pay the filing fee established under ORS 21.135. If the person  
 20 resides:

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

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

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

26 (a) A Class A or Class B felony sex crime if committed in this state by an adult, the petition  
 27 may be filed no sooner than two years after the termination of the other United States court's ju-  
 28 risdiction over the person.

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

32 (3) The person filing the petition must submit with the petition all releases and waivers neces-  
 33 sary to allow the district attorney for the county in which the petition is filed to obtain the fol-  
 34 lowing documents from the jurisdiction in which the person was adjudicated for the act for which  
 35 reporting is required:

36 (a) The juvenile court petition;

37 (b) The dispositional report to the court;

38 (c) The order of adjudication or jurisdiction;

39 (d) Any other relevant court documents;

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

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

42 (g) The evaluation and treatment records or reports of the person that are related to the act for  
 43 which reporting is required.

44 (4) A person filing a petition under this section has the burden of proving by clear and con-  
 45 vincing evidence that the person is rehabilitated and does not pose a threat to the safety of the

1 public.

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

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

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

12 (8) In a hearing under this section, the court may receive testimony, reports and other evidence  
 13 without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to  
 14 40.585 if the evidence is relevant to the determination and findings required under this section. As  
 15 used in this subsection, “relevant evidence” has the meaning given that term in ORS 40.150.

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

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

21 339.317. (1)(a) No later than five days after a person under 18 years of age is [*charged with a*  
 22 *crime under ORS 137.707 or is*] waived under ORS 419C.349, 419C.352 or 419C.364, the district at-  
 23 torney or city attorney, if the person is waived to municipal court or, in the case of a juvenile de-  
 24 partment that has agreed to be responsible for providing the notice required under this section, the  
 25 juvenile department shall give notice of the charge to the school administrator of the school at-  
 26 tended by the person or to the school administrator of the school district in which the person re-  
 27 sides. For purposes of this section, “school administrator” has the meaning given that term in ORS  
 28 419A.305.

29 (b) The district attorney, city attorney or juvenile department shall include in the notice the  
 30 following:

- 31 (A) The crime with which the person is charged;
- 32 (B) The name and date of birth of the person;
- 33 (C) The names and addresses of the person’s parents or guardians;
- 34 (D) The name and contact information of the attorney for the person, if known;
- 35 (E) The name and contact information of the individual to contact for further information about  
 36 the notice;
- 37 (F) Any conditions of release or terms of probation; and
- 38 (G) Any other conditions required by the court.

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

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

42 339.319. (1)(a) When a person under 18 years of age is convicted of a crime [*under ORS 137.707*  
 43 *or*] following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 (1)(b), the agency super-  
 44 vising the person or, in the case of a juvenile department that has agreed to be responsible for  
 45 providing the notice required under this section, the juvenile department shall give notice of the

1 conviction within five days following sentencing to the school administrator of the school attended  
 2 by the person or to the school administrator of the school district in which the person resides. For  
 3 purposes of this section, “school administrator” has the meaning given that term in ORS 419A.305.

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

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

6 (B) The names and addresses of the person’s parents or guardians;

7 (C) The crime of conviction;

8 (D) The sentence imposed;

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

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

12 (G) Any conditions of release or terms of probation including, but not limited to, whether school  
 13 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 behalf of an agency  
 16 supervising a person who sends records under this section is not civilly or criminally liable for  
 17 failing to disclose the information under this section.

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

19 339.321. (1) No later than 15 days before the release or discharge of a person committed to the  
 20 legal custody of the Department of Corrections or the supervisory authority of a county [*under ORS*  
 21 *137.707 or*] following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370, the department  
 22 or supervisory authority or, in the case of a juvenile department that has agreed to be responsible  
 23 for providing the notice required under this section, the juvenile department shall notify the fol-  
 24 lowing of the release or discharge if the person is under 21 years of age at the time of the release:

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

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

28 (2) The department, supervisory authority or the juvenile department shall include in the no-  
 29 tification:

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

31 (b) The date of release or discharge;

32 (c) The person’s address;

33 (d) The names and addresses of the person’s parents or guardians;

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

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

37 (g) Any conditions of release or terms of probation including, but not limited to, the type of  
 38 supervision under which the person is released and whether school attendance is a condition of re-  
 39 lease; and

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

41 (3) The department, supervisory authority or anyone employed by or acting on behalf of the  
 42 department or supervisory authority who sends records under this section is not civilly or criminally  
 43 liable for failing to disclose the information under this section.

44 (4) As used in this section, “school administrator” has the meaning given that term in ORS  
 45 419A.305.

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

2       419C.005. (1) [*Except as otherwise provided in ORS 137.707,*] The juvenile court has exclusive  
3 original jurisdiction in any case involving a person who is under 18 years of age and who has  
4 committed an act that is a violation, or that if done by an adult would constitute a violation, of a  
5 law or ordinance of the United States or a state, county or city.

6       (2) The provisions of subsection (1) of this section do not prevent a court of competent juris-  
7 diction from entertaining a civil action or suit involving a youth.

8       (3) The court does not have jurisdiction as provided in subsection (1) of this section after a mi-  
9 nor has been emancipated pursuant to ORS 419B.550 to 419B.558.

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

12       (a) The court dismisses a petition filed under this chapter or waives the case under ORS  
13 419C.340. If jurisdiction is based on a previous adjudication, then dismissal or waiver of a later case  
14 does not terminate jurisdiction under the previous case unless the court so orders.

15       (b) The court transfers jurisdiction of the case as provided in ORS 419C.053, 419C.056 and  
16 419C.059.

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

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

19       (e) The court places the person under the jurisdiction of the Psychiatric Security Review Board  
20 as provided in ORS 419C.529. If the court also has jurisdiction over the person based on a previous  
21 adjudication under this chapter or ORS chapter 419B, placing a person under the jurisdiction of the  
22 board in a later case does not terminate wardship under the previous case unless the court so or-  
23 ders.

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

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

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

33       419C.346. If the juvenile court waives a youth to another court under ORS 419C.349 **(1)(b) or**,  
34 *419C.355 and*] 419C.370 for disposition as an adult, the juvenile court nevertheless may retain ju-  
35 risdiction over the youth's parents or guardians under ORS 419C.570. However, if the court enters  
36 an order of waiver under ORS **419C.349 (1)(a) or** 419C.364, jurisdiction over the parents or guardi-  
37 ans under ORS 419C.570 shall terminate.

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

39       419C.352. The juvenile court, after a hearing, except as provided in ORS 419C.364 or 419C.370,  
40 may waive a youth under 15 years of age at the time the act was committed to circuit court for  
41 prosecution as an adult if:

42       (1) The youth is represented by counsel during the waiver proceedings;

43       (2) The juvenile court makes the findings required under ORS 419C.349 [(3) and (4)] **(2)**; and

44       (3) The youth is alleged to have committed an act or acts that if committed by an adult would  
45 constitute one or more of the following crimes:

- 1 (a) Murder or any aggravated form thereof under ORS 163.095 or 163.115;  
2 (b) Rape in the first degree under ORS 163.375 (1)(a);  
3 (c) Sodomy in the first degree under ORS 163.405 (1)(a); or  
4 (d) Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).

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

6 419C.355. The juvenile court shall make a specific, detailed, written finding of fact to support  
7 *[any determination]* **the findings made** under ORS 419C.349 [(3) and (4)] **(2)**.

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

9 419C.358. **(1) Except as otherwise provided in subsection (2) of this section and ORS**  
10 **137.707 (6)**, when a person is waived for prosecution as an adult, the person shall be waived only  
11 on the actual charges justifying the waiver under ORS 419C.349 [(2)] or 419C.352, as the case may  
12 be.

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

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

17 419C.361. **(1)(a)** Notwithstanding that the juvenile court has waived the case under ORS  
18 419C.349, 419C.352, *[419C.355, 419C.358,]* 419C.364, *419C.367 and]* **or** 419C.370, the court of waiver  
19 shall return the case to the juvenile court unless an accusatory instrument is filed in the court of  
20 waiver alleging, in the case of a person under *[16]* **15** years of age, a crime listed in ORS 419C.352  
21 or, in the case of any other person, a crime *[listed in ORS 419C.349 (2). Also in the case of a waived*  
22 *person,]* **described in ORS 419C.349 (1)**.

23 **(b)** When a trial has been held in the court of waiver upon an accusatory instrument alleging  
24 a crime listed in ORS 419C.349 [(2)] **(1)(b)** or 419C.352, as the case may be, and the person is found  
25 guilty of any lesser included offense that is not itself a waivable offense, the trial court shall not  
26 sentence the defendant therein, but the trial court shall order a presentence report to be made in  
27 the case, shall set forth in a memorandum such observations as the court may make regarding the  
28 case and shall then return the case to the juvenile court in order that the juvenile court make dis-  
29 position in the case based upon the guilty finding in the court of waiver. Disposition shall be as if  
30 the juvenile court itself had found the youth to be in its jurisdiction pursuant to ORS 419C.005. The  
31 records and consequences of the case shall, in all respects, be as if the juvenile court itself had  
32 found the youth to be in its jurisdiction pursuant to ORS 419C.005. When the person is found guilty  
33 of a nonwaivable charge that was consolidated with a waivable charge under ORS 419C.358, the case  
34 shall be returned to the juvenile court for disposition as provided in this subsection for lesser in-  
35 cluded offenses.

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

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

38 420.011. **(1)** Except as provided in subsections (2) and (3) of this section, admissions to the youth  
39 correction facilities are limited to youth offenders who are at least 12 but less than 19 years of age,  
40 found by the juvenile court to have committed an act that if committed by an adult would constitute  
41 aggravated murder, murder, a felony or a Class A misdemeanor and placed in the legal custody of  
42 the Oregon Youth Authority. A youth offender admitted to a youth correction facility may not be  
43 transferred by administrative process to any penal or correctional institution.

44 **(2)(a)** In addition to the persons placed in the legal custody of the youth authority under ORS  
45 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority

1 or the director's designee, persons who are committed to the Department of Corrections under ORS  
 2 137.124 and meet the requirements of ORS 137.124 (5) or (7) may be temporarily assigned to a youth  
 3 correction facility as provided by ORS 137.124 (5) or (7). A person assigned on such a temporary  
 4 basis remains within the legal custody of the Department of Corrections and such reassignment is  
 5 subject to termination by the Director of the Oregon Youth Authority by referring the person back  
 6 to the Department of Corrections as provided in paragraph (b) of this subsection.

7 (b) After a person is transferred to the physical custody of the youth authority under ORS  
 8 137.124 (5) or (7), the Director of the Oregon Youth Authority may refer the person back to the  
 9 Department of Corrections for physical custody and placement if the director, after consulting with  
 10 the Department of Corrections, determines that the person is at least 18 years of age and:

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

13 (B) Is not likely, in the foreseeable future, to benefit from the rehabilitation and treatment pro-  
 14 grams administered by the youth authority and is appropriate for placement in a Department of  
 15 Corrections institution.

16 (3) Any person under 18 years of age at the time of committing the crime and under 20 years  
 17 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349 (1)(b),  
 18 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is  
 19 sentenced to a term of imprisonment in the custody of the Department of Corrections, and any per-  
 20 son under 16 years of age who after waiver under ORS 419C.349 (1)(b), 419C.352, 419C.364 or  
 21 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of  
 22 imprisonment in the county jail, shall be temporarily assigned to a youth correction facility by the  
 23 Department of Corrections, or by the sheriff to whose custody the person has been committed, pur-  
 24 suant to ORS 137.124 (6). The director shall designate the appropriate youth correction facility or  
 25 schools for such assignment. A person assigned to a youth correction facility under ORS 137.124 (6)  
 26 and this subsection remains within the legal custody of the Department of Corrections or sheriff to  
 27 whose custody the person was committed. The assignment of such a person to the youth correction  
 28 facility is subject, when the person is 18 years of age or older, to termination by the director by  
 29 referring the person back to the Department of Corrections or the sheriff to serve the balance of  
 30 the person's sentence. Assignment to a youth correction facility pursuant to ORS 137.124 (6) and this  
 31 subsection, if not terminated earlier by the director, shall terminate upon the person's attaining the  
 32 age specified in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may  
 33 retain legal and physical custody of the person, and the person shall be referred to the Department  
 34 of Corrections or the sheriff having legal custody of the person to serve the balance of the person's  
 35 sentence.

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

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

43 420.081. (1) The total population of youth offenders confined in the youth correction facilities  
 44 may not exceed the design capacity of the facilities designated for close custody purposes by the  
 45 Director of the Oregon Youth Authority. The total population limit shall include offenders in the

1 youth correction facility who were waived by the juvenile court to be prosecuted as adults [*or who*  
2 *were prosecuted as adults under ORS 137.707*].

3 (2) The director by rule shall determine reasonable standards for care and treatment of youth  
4 offenders housed in youth correction facilities. Within the total limit established under subsection  
5 (1) of this section, the Director of the Oregon Youth Authority shall establish and impose a maxi-  
6 mum allowable population level for each youth correction facility. The maximum allowable popu-  
7 lation shall not exceed the design capacity for the facility and shall be further limited by the ability  
8 of the facility to meet the standard of care and treatment established by rule under this subsection,  
9 protect communities, hold youth offenders accountable for their behavior and improve the compe-  
10 tency of youth offenders to become responsible and productive members of their communities.

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

14 (4) After conferring with the juvenile court judges, the director shall develop and implement by  
15 rule, a method of controlling admissions to the youth correction facilities so as not to exceed max-  
16 imum levels determined under subsections (1) and (2) of this section.

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

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

21 (A) Sentenced to a term of imprisonment of at least 24 months following waiver under ORS  
22 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370; or

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

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

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

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

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

42 (A) The person and the person's parents;

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

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

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

3 (A) The victim and the victim's parents or legal guardian; and

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

6 (3) In a hearing under this section:

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

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

11 (c) The district attorney represents the state.

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

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

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

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

26 (h) The hearing must be recorded.

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

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

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

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

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

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

42 (i) Has been rehabilitated and reformed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 or

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

33 **SECTION 22. (1) The amendments to ORS 137.124, 137.705, 137.707, 161.610, 161.620,**  
34 **163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352,**  
35 **419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 by sections 1 to 21 of this 2019 Act**  
36 **become operative on January 1, 2020.**

37 **(2) The Judicial Department may take any action before the operative date specified in**  
38 **subsection (1) of this section that is necessary to enable the department to exercise, on and**  
39 **after the operative date specified in subsection (1) of this section, all of the duties, functions**  
40 **and powers conferred on the department by the amendments to ORS 137.124, 137.705, 137.707,**  
41 **161.610, 161.620, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346,**  
42 **419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 by sections 1 to**  
43 **21 of this 2019 Act.**

44 **SECTION 23. The amendments to ORS 137.124, 137.705, 137.707, 161.610, 161.620, 163A.130,**  
45 **163A.135, 339.317, 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 this 2019 Act apply to  
2 acts committed on or after January 1, 2020.

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

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