

# House Bill 3497

Sponsored by Representative CHAICHI

## 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**.

Converts mandatory minimum sentences for specified felonies other than murder to presumptive sentences. Authorizes court to impose greater or lesser sentence according to sentencing guidelines of Oregon Criminal Justice Commission. Authorizes person receiving presumptive sentence to be eligible for certain programs and sentence reductions.

## A BILL FOR AN ACT

1  
2 Relating to sentencing; creating new provisions; amending ORS 137.124, 137.700, 137.707, 137.751,  
3 138.045, 138.105, 138.115, 144.101, 144.397, 161.620, 165.072, 420.011, 420.240, 420A.203, 421.121  
4 and 421.168; repealing ORS 137.712; and providing for criminal sentence reduction that requires  
5 approval by a two-thirds majority.

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

7 **SECTION 1.** ORS 137.700 is amended to read:

8 137.700. (1)(a) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses  
9 listed in subsection (2)(a)(A) or (B) of this section and the offense was committed on or after April  
10 1, 1995, [*or of one of the offenses listed in subsection (2)(b) of this section and the offense was com-*  
11 *mitted on or after October 4, 1997, or of the offense described in subsection (2)(c) of this section and*  
12 *the offense was committed on or after January 1, 2008,*] the court shall impose, and the person shall  
13 serve, at least the entire term of imprisonment listed in subsection (2)(a)(A) or (B) of this section.  
14 The person is not, during the service of the term of imprisonment, eligible for release on post-prison  
15 supervision or any form of temporary leave from custody. The person is not eligible for any re-  
16 duction in[, *or based on,*] the minimum sentence for any reason whatsoever under ORS 421.121 or  
17 any other statute. The court may impose a greater sentence if otherwise permitted by law, but may  
18 not impose a lower sentence than the sentence specified in subsection (2)(a)(A) or (B) of this sec-  
19 tion.

20 **(b) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses listed**  
21 **in subsection (2)(a)(C) to (S), (b) or (c) of this section, the presumptive sentence is the cor-**  
22 **responding term of imprisonment listed with each offense. The court may impose a greater**  
23 **or lesser sentence as permitted under the sentencing guidelines of the Oregon Criminal**  
24 **Justice Commission. The person may request that the court, pursuant to ORS 137.751, de-**  
25 **termine the person's eligibility for release on post-prison supervision under ORS 421.508.**  
26 **Unless the court orders otherwise under ORS 137.750, and provided that the person is oth-**  
27 **erwise eligible, during the service of the term of imprisonment the person may be considered**  
28 **for any form of temporary leave from custody, work release, conditional or supervised re-**  
29 **lease program or reduction in sentence under ORS 421.121 or any other statute.**

30 (2) The offenses to which subsection (1) of this section applies and the applicable [*mandatory*

**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 *minimum*] sentences are:  
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- 4 (a)(A) Murder in the second  
5 degree, as defined in  
6 ORS 163.115.....300 months
- 7 (B) Murder in the first  
8 degree, as defined  
9 in ORS 163.107.....360 months
- 10 (C) Attempt or conspiracy  
11 to commit aggravated  
12 murder, as defined  
13 in ORS 163.095.....120 months
- 14 (D) Attempt or conspiracy  
15 to commit murder  
16 in any degree.....90 months
- 17 (E) Manslaughter in the  
18 first degree, as defined  
19 in ORS 163.118.....120 months
- 20 (F) Manslaughter in the  
21 second degree, as defined  
22 in ORS 163.125.....75 months
- 23 (G) Assault in the first  
24 degree, as defined in  
25 ORS 163.185.....90 months
- 26 (H) Assault in the second  
27 degree, as defined in  
28 ORS 163.175.....70 months
- 29 (I) Except as provided in  
30 paragraph (b)(G) of  
31 this subsection,  
32 kidnapping in the first  
33 degree, as defined  
34 in ORS 163.235.....90 months
- 35 (J) Kidnapping in the second  
36 degree, as defined in  
37 ORS 163.225.....70 months
- 38 (K) Rape in the first degree,  
39 as defined in ORS 163.375  
40 (1)(a), (c) or (d).....100 months
- 41 (L) Rape in the second degree,  
42 as defined in  
43 ORS 163.365.....75 months
- 44 (M) Sodomy in the first degree,  
45 as defined in ORS 163.405

- 1 (1)(a), (c) or (d).....100 months
- 2 (N) Sodomy in the second
- 3 degree, as defined in
- 4 ORS 163.395.....75 months
- 5 (O) Unlawful sexual penetration
- 6 in the first degree, as
- 7 defined in ORS 163.411
- 8 (1)(a) or (c).....100 months
- 9 (P) Unlawful sexual penetration
- 10 in the second degree, as
- 11 defined in ORS 163.408.....75 months
- 12 (Q) Sexual abuse in the first
- 13 degree, as defined in
- 14 ORS 163.427.....75 months
- 15 (R) Robbery in the first degree,
- 16 as defined in
- 17 ORS 164.415.....90 months
- 18 (S) Robbery in the second
- 19 degree, as defined in
- 20 ORS 164.405.....70 months
- 21 (b)(A) Arson in the first degree,
- 22 as defined in ORS 164.325,
- 23 when the offense represented
- 24 a threat of serious
- 25 physical injury.....90 months
- 26 (B) Using a child in a display
- 27 of sexually explicit
- 28 conduct, as defined in
- 29 ORS 163.670.....70 months
- 30 (C) Compelling prostitution,
- 31 as defined in
- 32 ORS 167.017.....70 months
- 33 (D) Rape in the first degree,
- 34 as defined in
- 35 ORS 163.375 (1)(b).....300 months
- 36 (E) Sodomy in the first degree,
- 37 as defined in
- 38 ORS 163.405 (1)(b).....300 months
- 39 (F) Unlawful sexual penetration
- 40 in the first degree, as
- 41 defined in
- 42 ORS 163.411 (1)(b).....300 months
- 43 (G) Kidnapping in the first
- 44 degree, as defined in
- 45 ORS 163.235, when the

1 offense is committed in  
 2 furtherance of the commission  
 3 or attempted commission of an  
 4 offense listed in subparagraph  
 5 (D), (E) or (F) of  
 6 this paragraph.....300 months  
 7 (c) Aggravated vehicular  
 8 homicide, as defined in  
 9 ORS 163.149.....240 months

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11  
 12 **SECTION 2.** ORS 137.707 is amended to read:

13 137.707. (1)(a) When a person waived under ORS 419C.349 (1)(a) is convicted of an offense listed  
 14 in subsection (4)(a)(A) or (B) of this section, the court shall impose at least the presumptive term  
 15 of imprisonment provided for the offense in subsection (4)(a)(A) or (B) of this section. The court  
 16 may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser  
 17 term. The person is not, during the service of the term of imprisonment, eligible for release on  
 18 post-prison supervision or any form of temporary leave from custody. The person is not eligible for  
 19 any reduction in the minimum sentence for any reason under ORS 421.121 or any other provision  
 20 of law. The person is eligible for a hearing and conditional release under ORS 420A.203 and  
 21 420A.206.

22 (b) When a person waived under ORS 419C.349 (1)(a) is convicted of an offense listed in  
 23 subsection (4)(a)(C) to (S), (b) or (c) of this section, the presumptive sentence is the corre-  
 24 sponding term of imprisonment listed with each offense. The court may impose a greater or  
 25 lesser sentence as permitted under the sentencing guidelines of the Oregon Criminal Justice  
 26 Commission. The person may request that the court, pursuant to ORS 137.751, determine the  
 27 person’s eligibility for release on post-prison supervision under ORS 421.508. Unless the court  
 28 orders otherwise under ORS 137.750, and provided that the person is otherwise eligible, dur-  
 29 ing the service of the term of imprisonment the person may be considered for any form of  
 30 temporary leave from custody, work release, conditional or supervised release program or  
 31 reduction in sentence under ORS 421.121 or any other statute. The person is eligible for a  
 32 hearing and conditional release under ORS 420A.203 and 420A.206.

33 (2) ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this section  
 34 and convicted of aggravated murder under ORS 163.095 except that a person who was under 18  
 35 years of age at the time the offense was committed is not subject to a sentence of death or life  
 36 imprisonment without the possibility of release or parole.

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

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

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- 41  
 42 (a)(A) Murder in the second  
 43 degree, as defined in  
 44 ORS 163.115.....300 months  
 45 (B) Murder in the first

1 degree, as defined  
 2 in ORS 163.107.....360 months  
 3 (C) Attempt or conspiracy  
 4 to commit aggravated  
 5 murder, as defined  
 6 in ORS 163.095.....120 months  
 7 (D) Attempt or conspiracy  
 8 to commit murder  
 9 in any degree.....90 months  
 10 (E) Manslaughter in the  
 11 first degree, as defined  
 12 in ORS 163.118.....120 months  
 13 (F) Manslaughter in the  
 14 second degree, as defined  
 15 in ORS 163.125.....75 months  
 16 (G) Assault in the first  
 17 degree, as defined  
 18 in ORS 163.185.....90 months  
 19 (H) Assault in the second  
 20 degree, as defined  
 21 in ORS 163.175.....70 months  
 22 (I) Kidnapping in the first  
 23 degree, as defined in  
 24 ORS 163.235.....90 months  
 25 (J) Kidnapping in the second  
 26 degree, as defined in  
 27 ORS 163.225.....70 months  
 28 (K) Rape in the first degree,  
 29 as defined in ORS 163.375....100 months  
 30 (L) Rape in the second  
 31 degree, as defined in  
 32 ORS 163.365.....75 months  
 33 (M) Sodomy in the first  
 34 degree, as defined in  
 35 ORS 163.405.....100 months  
 36 (N) Sodomy in the second  
 37 degree, as defined in  
 38 ORS 163.395.....75 months  
 39 (O) Unlawful sexual  
 40 penetration in the first  
 41 degree, as defined  
 42 in ORS 163.411.....100 months  
 43 (P) Unlawful sexual  
 44 penetration in the  
 45 second degree, as

- 1 defined in ORS 163.408. ....75 months
- 2 (Q) Sexual abuse in the first
- 3 degree, as defined in
- 4 ORS 163.427. ....75 months
- 5 (R) Robbery in the first
- 6 degree, as defined in
- 7 ORS 164.415. ....90 months
- 8 (S) Robbery in the second
- 9 degree, as defined in
- 10 ORS 164.405. ....70 months
- 11 (b)(A) Arson in the first degree,
- 12 as defined in ORS 164.325,
- 13 when the offense represented
- 14 a threat of serious
- 15 physical injury. ....90 months
- 16 (B) Using a child in a display
- 17 of sexually explicit
- 18 conduct, as defined in
- 19 ORS 163.670. ....70 months
- 20 (C) Compelling prostitution,
- 21 as defined in ORS 167.017
- 22 (1)(a), (b) or (d). ....70 months
- 23 (c) Aggravated vehicular
- 24 homicide, as defined in
- 25 ORS 163.149. ....240 months

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27

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

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

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

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

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

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

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

44 (iv) Enter an order providing that all court records of the case are subject to the same limita-  
45 tions on inspection, copying and disclosure of records, reports and materials as those set forth under

1 ORS 419A.255.

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

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

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

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

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

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

18 (7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty  
19 of aggravated murder or an offense listed in subsection (4) of this section and one or more other  
20 offenses, the court shall impose the sentence for aggravated murder or the offense listed in sub-  
21 section (4) of this section as provided in subsections (1) and (2) of this section and shall impose  
22 sentences for the other offenses as otherwise provided by law.

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

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

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

34 (C) Enter an order transferring the case to the juvenile court for disposition under ORS  
35 419C.067 and 419C.411; and

36 (D) Enter an order providing that all court records of the case are subject to the same limita-  
37 tions on inspection, copying and disclosure of records, reports and materials as those set forth under  
38 ORS 419A.255.

39 **SECTION 3.** ORS 137.124 is amended to read:

40 137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of  
41 incarceration that exceeds 12 months:

42 (a) The court shall not designate the correctional facility in which the defendant is to be con-  
43 fined but shall commit the defendant to the legal and physical custody of the Department of Cor-  
44 rections; and

45 (b) If the judgment provides that the term of incarceration be served consecutively to a term

1 of incarceration of 12 months or less that was imposed in a previous proceeding by a court of this  
2 state upon conviction of a felony, the defendant shall serve any remaining part of the previously  
3 imposed term of incarceration in the legal and physical custody of the Department of Corrections.

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

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

14 (3) After assuming custody of the convicted person the Department of Corrections may transfer  
15 adults in custody from one correctional facility to another such facility for the purposes of diagnosis  
16 and study, rehabilitation and treatment, as best seems to fit the needs of the adult in custody and  
17 for the protection and welfare of the community and the adult in custody.

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

21 (5)(a) When a person under 18 years of age at the time of committing the offense and under 20  
22 years of age at the time of sentencing is committed to the Department of Corrections under ORS  
23 137.707 or due to the fact that criminal proceedings were initiated after the person attained 18 years  
24 of age, the Department of Corrections shall transfer the physical custody of the person to the  
25 Oregon Youth Authority as provided in ORS 420.011 if:

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

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

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

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

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

43 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20  
44 years of age at the time of sentencing is committed to the legal and physical custody of the De-  
45 partment of Corrections or the supervisory authority of a county following waiver under ORS



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

13 (b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS  
 14 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of  
 15 imprisonment in the county jail, the sheriff shall transfer the person to a youth correction facility  
 16 for physical custody as provided in ORS 420.011 (3).

17 (7) Notwithstanding the provisions of subsection (5)(a)(A) of this section, the department or the  
 18 supervisory authority of a county may not transfer the physical custody of the person under sub-  
 19 section (5)(a)(A) of this section if the Director of the Oregon Youth Authority, after consultation  
 20 with the Department of Corrections or the supervisory authority of a county, determines that, be-  
 21 cause of the person’s age, mental or emotional condition or risk of physical harm to other persons,  
 22 the person should not be incarcerated in a youth correction facility.

23 (8) Notwithstanding any other provision of this section, under no circumstances may a person  
 24 under 18 years of age be incarcerated in a Department of Corrections institution.

25 (9) If a defendant is transferred under subsection (5) of this section, the defendant shall also be  
 26 transferred after a resentencing on the same charges resulting from an appellate decision or a  
 27 post-conviction relief proceeding or for any other reason, even if the defendant is 20 years of age  
 28 or older at the time of the resentencing.

29 (10) For the purposes of determining the person’s age at the time of committing an offense under  
 30 this section:

31 (a) If the person is convicted of two or more offenses occurring on different days, the person’s  
 32 age shall be calculated using the earliest date.

33 (b) If the person is convicted of an offense occurring within a range of dates, the person’s age  
 34 shall be calculated using the date at the beginning of the range.

35 **SECTION 4.** ORS 137.751 is amended to read:

36 137.751. (1) When a court sentences a defendant to a term of incarceration that exceeds one  
 37 year, the defendant may request a determination of the defendant’s eligibility for release on post-  
 38 prison supervision under ORS 421.508 (4). The court shall order in the judgment that the Department  
 39 of Corrections may release the defendant on post-prison supervision under ORS 421.508 (4) only if,  
 40 after a hearing, the court finds that:

41 (a) The defendant meets the eligibility requirements of subsections (2) and (3) of this section;

42 (b) The defendant was not on probation, parole or post-prison supervision for [*an offense listed*  
 43 *in*] **the offense described in ORS [137.712 (4) or] 811.705 (3)(b) or one of the following offenses**  
 44 at the time of the commission of the current crime of conviction[;]:

45 **(A) A crime listed in ORS 137.700 (2) or 137.707 (4);**

- 1       **(B) Escape in the first degree, as defined in ORS 162.165;**
- 2       **(C) Aggravated murder, as defined in ORS 163.095;**
- 3       **(D) Criminally negligent homicide, as defined in ORS 163.145;**
- 4       **(E) Assault in the third degree, as defined in ORS 163.165;**
- 5       **(F) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);**
- 6       **(G) Rape in the third degree, as defined in ORS 163.355;**
- 7       **(H) Sodomy in the third degree, as defined in ORS 163.385;**
- 8       **(I) Sexual abuse in the second degree, as defined in ORS 163.425;**
- 9       **(J) Stalking, as defined in ORS 163.732;**
- 10       **(K) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a**  
 11 **person felony under the rules of the Oregon Criminal Justice Commission;**
- 12       **(L) Arson in the first degree, as defined in ORS 164.325;**
- 13       **(M) Robbery in the third degree, as defined in ORS 164.395;**
- 14       **(N) A bias crime in the first degree, as defined in ORS 166.165;**
- 15       **(O) Promoting prostitution, as defined in ORS 167.012; and**
- 16       **(P) An attempt or solicitation to commit any Class A or B felony listed in subparagraphs**  
 17 **(A) to (L) of this paragraph;**

18       (c) The defendant has not previously been released on post-prison supervision under ORS 421.508  
 19 (4);

20       (d) The harm or loss caused by the crime is not greater than usual for that type of crime;

21       (e) The crime was not part of an organized criminal operation; and

22       (f) After considering the nature of the offense and the harm to the victim, the defendant's suc-  
 23 cessful completion of the program would:

24       (A) Increase public safety;

25       (B) Enhance the likelihood that the defendant would be rehabilitated; and

26       (C) Not unduly reduce the appropriate punishment.

27       (2) Except as provided in subsection (4) of this section, a defendant may not be released on  
 28 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime under  
 29 ORS 163.145, 163.165 (1)(a) or (b), 163.525 or 811.705 (3)(b).

30       (3) A defendant may not be released on post-prison supervision under ORS 421.508 (4) if the de-  
 31 fendant is being sentenced for a crime listed in ORS 137.700 **(2)(a)(A) or (B)**, 137.707 **(4)(a)(A) or**  
 32 **(B)** or 163.095 or a sex crime as defined in ORS 163A.005.

33       (4) Notwithstanding subsection (1) of this section, the parties may stipulate to a defendant's el-  
 34 igibility for release on post-prison supervision under ORS 421.508 (4). If the court accepts the stip-  
 35 ulation, the court does not need to make explicit findings regarding the factors described in  
 36 subsection (1)(b) to (f) of this section. The parties may not stipulate to the defendant's release on  
 37 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime de-  
 38 scribed in subsection (3) of this section.

39       (5) If the court makes the findings described in subsection (1) of this section or accepts the  
 40 stipulation of the parties under subsection (4) of this section, the court shall:

41       (a) Order on the record in open court as part of the sentence imposed that the defendant may  
 42 be considered by the department for release on post-prison supervision under ORS 421.508 (4); and

43       (b) Include the order described in paragraph (a) of this subsection in the judgment.

44       (6) Subject to the requirements of this section, the court may order that the defendant serve a  
 45 minimum period of incarceration before the defendant is released on post-prison supervision under

1 ORS 421.508 (4). Nothing in this section authorizes the release of the defendant on post-prison  
 2 supervision before the defendant has served the period of time described in ORS 421.508 (4)(b).

3 **SECTION 5.** ORS 138.045 is amended to read:

4 138.045. (1) The state may take an appeal from the circuit court, or from a municipal court or  
 5 a justice court that has become a court of record under ORS 51.025 or 221.342, to the Court of Ap-  
 6 peals from:

7 (a) An order made prior to trial dismissing or setting aside one or more counts in the accusatory  
 8 instrument;

9 (b) An order allowing a demurrer;

10 (c) An order arresting the judgment;

11 (d) An order made prior to trial suppressing evidence;

12 (e) An order made prior to trial for the return or restoration of things seized;

13 (f) For a felony committed on or after November 1, 1989, a judgment, amended judgment or  
 14 corrected judgment of conviction;

15 (g) For any felony, a judgment, amended judgment, supplemental judgment, corrected judgment  
 16 or post-judgment order, that denied restitution or awarded less than the amount of restitution re-  
 17 quested by the state;

18 *[(h) An order or judgment in a probation revocation hearing finding that a defendant who was*  
 19 *sentenced to probation under ORS 137.712 has not violated a condition of probation by committing a*  
 20 *new crime;]*

21 *[(i) (h) An order made after a guilty finding dismissing or setting aside one or more counts in*  
 22 *the accusatory instrument; or*

23 *[(j) (i) An order granting a new trial.*

24 (2) Notwithstanding subsection (1) of this section, when the state chooses to appeal an order  
 25 described in subsection (1)(a), (b) or (d) of this section, the state shall take the appeal to the Su-  
 26 preme Court if the defendant is charged with murder or aggravated murder.

27 **SECTION 6.** ORS 138.105 is amended to read:

28 138.105. (1) On appeal by a defendant, the appellate court has authority to review the judgment  
 29 or order being appealed, subject to the provisions of this section.

30 (2) The appellate court has authority to review only questions of law appearing on the record.

31 (3) Except as otherwise provided in this section, the appellate court has authority to review any  
 32 intermediate decision of the trial court.

33 (4) On appeal from a judgment of conviction and sentence, the appellate court has authority to  
 34 review:

35 (a) The denial of a motion for new trial based on juror misconduct or newly discovered evidence;  
 36 and

37 (b) The denial of a motion in arrest of judgment.

38 (5) The appellate court has no authority to review the validity of the defendant's plea of guilty  
 39 or no contest, or a conviction based on the defendant's plea of guilty or no contest, except that:

40 (a) The appellate court has authority to review the trial court's adverse determination of a  
 41 pretrial motion reserved in a conditional plea of guilty or no contest under ORS 135.335.

42 (b) The appellate court has authority to review whether the trial court erred by not merging  
 43 determinations of guilt of two or more offenses, unless the entry of separate convictions results from  
 44 an agreement between the state and the defendant.

45 (6) On appeal from a judgment ordering payment of restitution but not specifying the amount

1 of restitution, the appellate court has no authority to review the decision to award restitution.

2 (7) Except as otherwise provided in subsections (8) and (9) of this section, the appellate court  
 3 has authority to review any sentence to determine whether the trial court failed to comply with  
 4 requirements of law in imposing or failing to impose a sentence.

5 (8) Except as otherwise provided in subsection (9) of this section, for a sentence imposed on  
 6 conviction of a felony committed on or after November 1, 1989:

7 (a) The appellate court has no authority to review:

8 (A) A sentence that is within the presumptive sentence prescribed by the rules of the Oregon  
 9 Criminal Justice Commission.

10 (B) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe  
 11 a presumptive sentence of imprisonment but allow a sentence of probation without departure.

12 (C) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission  
 13 prescribe a presumptive sentence of imprisonment but allow a sentence of probation without depart-  
 14 ture.

15 (b) If the trial court imposed a sentence that departs from the presumptive sentence prescribed  
 16 by the rules of the Oregon Criminal Justice Commission, the appellate court's authority to review  
 17 is limited to whether the trial court's findings of fact and reasons justifying a departure from the  
 18 sentence prescribed by the rules of the Oregon Criminal Justice Commission:

19 (A) Are supported by the evidence in the record; and

20 (B) Constitute substantial and compelling reasons for departure.

21 (c) Notwithstanding paragraph (a) of this subsection, the appellate court has authority to review  
 22 whether the sentencing court erred:

23 (A) In ranking the crime seriousness classification of the current crime or in determining the  
 24 appropriate classification of a prior conviction or juvenile adjudication for criminal history pur-  
 25 poses.

26 (B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 (1)(a) or  
 27 137.707 (1)(a).

28 (9) The appellate court has no authority to review any part of a sentence resulting from a  
 29 stipulated sentencing agreement between the state and the defendant.

30 (10)(a) On appeal from a corrected or amended judgment that is entered before expiration of the  
 31 applicable period under ORS 138.071 (1) or (2) during which the original judgment can be appealed,  
 32 the appellate court has authority to review the judgment, including the corrections or amendments,  
 33 as provided in this section.

34 (b) On appeal from a corrected or amended judgment that is entered after expiration of the ap-  
 35 plicable period under ORS 138.071 (1) or (2) during which the original judgment was or could have  
 36 been appealed, the appellate court has authority to review, as provided in this section, only the  
 37 corrected or amended part of the judgment, any part of the judgment affected by the correction or  
 38 amendment, or the trial court's decision under ORS 137.172 not to correct or amend the judgment.

39 (c) As used in this subsection, "judgment" means any appealable judgment or order.

40 (11)(a) On a defendant's cross-appeal under ORS 138.035 (5), the appellate court may, in its dis-  
 41 cretion, limit review to any decision by the trial court that is inextricably linked, either factually  
 42 or legally, to the state's appeal.

43 (b) The failure to file a cross-appeal under ORS 138.035 (5) does not waive a defendant's right  
 44 to assign error to a particular ruling of the trial court on appeal from a judgment.

45 **SECTION 7.** ORS 138.115 is amended to read:

1 138.115. (1) On appeal by the state, the appellate court has authority to review the judgment or  
 2 order being appealed, subject to the provisions of this section.

3 (2) The appellate court has authority to review only questions of law appearing on the record.

4 (3) Except as otherwise provided in this section, the appellate court has authority to review any  
 5 intermediate decision involving the merits of, or necessarily affecting, the judgment or order from  
 6 which the appeal is taken.

7 (4)(a) Except as provided in paragraph (b) of this subsection, on appeal from a judgment of  
 8 conviction of any felony, the appellate court has authority to review only the sentence as provided  
 9 by subsections (5) and (6) of this section.

10 (b) The appellate court has authority to review whether the trial court erred in merging deter-  
 11 minations of guilt of two or more offenses, unless the merger of determinations of guilt resulted from  
 12 an agreement between the state and the defendant.

13 (5) Except as otherwise provided in subsections (6) and (7) of this section, the appellate court  
 14 has authority to review the sentence imposed on conviction of any felony to determine whether the  
 15 trial court failed to comply with requirements of law in imposing or failing to impose a sentence.

16 (6) Except as otherwise provided in subsection (7) of this section, for a sentence imposed on  
 17 conviction of a felony committed on or after November 1, 1989:

18 (a) The appellate court has no authority to review:

19 (A) A sentence that is within the presumptive sentence prescribed by the rules of the Oregon  
 20 Criminal Justice Commission.

21 (B) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe  
 22 a presumptive sentence of imprisonment but allow a sentence of probation without departure.

23 (C) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission  
 24 prescribe a presumptive sentence of imprisonment but allow a sentence of probation without depar-  
 25 ture.

26 (b) If the trial court imposed a sentence that departs from the presumptive sentence prescribed  
 27 by the rules of the Oregon Criminal Justice Commission, the appellate court's authority to review  
 28 is limited to whether the trial court's findings of fact and reasons justifying a departure from the  
 29 sentence prescribed by the rules of the Oregon Criminal Justice Commission:

30 (A) Are supported by the evidence in the record; and

31 (B) Constitute substantial and compelling reasons for departure.

32 (c) Notwithstanding paragraph (a) of this subsection, the appellate court has authority to review  
 33 whether the sentencing court erred:

34 (A) In ranking the crime seriousness classification of the current crime or in determining the  
 35 appropriate classification of a prior conviction or juvenile adjudication for criminal history pur-  
 36 poses.

37 (B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 (1)(a) or  
 38 137.707 (1)(a).

39 (7) The appellate court has no authority to review any part of a sentence resulting from a  
 40 stipulated sentencing agreement between the state and the defendant.

41 (8)(a) On appeal from a corrected or amended judgment that is entered before expiration of the  
 42 applicable period under ORS 138.071 (1) or (2) during which the original judgment can be appealed,  
 43 the appellate court has authority to review the judgment, including the corrections or amendments,  
 44 as provided in this section.

45 (b) On appeal from a corrected or amended judgment that is entered after expiration of the ap-

1 plicable period under ORS 138.071 (1) or (2) during which the original judgment was or could have  
 2 been appealed, the appellate court has authority to review, as provided in this section, only the  
 3 corrected or amended part of the judgment, any part of the judgment affected by the correction or  
 4 amendment, or the trial court's decision under ORS 137.172 not to correct or amend the judgment.

5 (c) As used in this subsection, "judgment" means any appealable judgment or order.

6 **SECTION 8.** ORS 144.101 is amended to read:

7 144.101. (1) The State Board of Parole and Post-Prison Supervision has jurisdiction over the  
 8 imposition of conditions of post-prison supervision and sanctions for violations of those conditions  
 9 for a person convicted of a felony if:

10 (a) The term of imprisonment imposed on the person is more than 12 months;

11 (b) The felony is classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid of  
 12 the Oregon Criminal Justice Commission;

13 (c) The person is [*subject to a sentence under*] **sentenced for an offense described in ORS**  
 14 **137.700 or 137.707;**

15 (d) The person is sentenced as a dangerous offender under ORS 161.725 and 161.737;

16 (e) The person is subject to a term of post-prison supervision under ORS 144.103;

17 (f) The person is committed to the custody of the Department of Corrections under ORS 137.124;

18 (g) The responsibility for correctional services for the person has reverted to the department  
 19 under ORS 423.483; or

20 (h) No local supervisory authority is responsible for correctional services for the person under  
 21 the laws of this state.

22 (2) Except as provided in subsection (1) of this section, a local supervisory authority has juris-  
 23 diction over the imposition of conditions of post-prison supervision and sanctions for violations of  
 24 those conditions for a person sentenced to a term of imprisonment of 12 months or less.

25 (3) If a local supervisory authority imposes conditions of post-prison supervision or sanctions for  
 26 violations of those conditions, the person may request the board to review the conditions or sanc-  
 27 tions. The board shall review the request and may, at its discretion, review the conditions and  
 28 sanctions, under rules adopted by the board.

29 (4) If a circuit court in a participating county, as defined in section 29, chapter 649, Oregon  
 30 Laws 2013, enters an order admitting a person into a reentry court under section 29 (3), chapter 649,  
 31 Oregon Laws 2013, the reentry court has concurrent jurisdiction over the imposition of sanctions  
 32 for violations of the conditions of post-prison supervision.

33 (5) Nothing in this section affects the jurisdiction of the board over the imposition of conditions  
 34 of parole and sanctions for violations of those conditions.

35 **SECTION 9.** ORS 144.101, as amended by section 34, chapter 649, Oregon Laws 2013, is  
 36 amended to read:

37 144.101. (1) The State Board of Parole and Post-Prison Supervision has jurisdiction over the  
 38 imposition of conditions of post-prison supervision and sanctions for violations of those conditions  
 39 for a person convicted of a felony if:

40 (a) The term of imprisonment imposed on the person is more than 12 months;

41 (b) The felony is classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid of  
 42 the Oregon Criminal Justice Commission;

43 (c) The person is [*subject to a sentence under*] **sentenced for an offense described in ORS**  
 44 **137.700 or 137.707;**

45 (d) The person is sentenced as a dangerous offender under ORS 161.725 and 161.737;

1 (e) The person is subject to a term of post-prison supervision under ORS 144.103;

2 (f) The person is committed to the custody of the Department of Corrections under ORS 137.124;

3 (g) The responsibility for correctional services for the person has reverted to the department  
4 under ORS 423.483; or

5 (h) No local supervisory authority is responsible for correctional services for the person under  
6 the laws of this state.

7 (2) Except as provided in subsection (1) of this section, a local supervisory authority has juris-  
8 diction over the imposition of conditions of post-prison supervision and sanctions for violations of  
9 those conditions for a person sentenced to a term of imprisonment of 12 months or less.

10 (3) If a local supervisory authority imposes conditions of post-prison supervision or sanctions for  
11 violations of those conditions, the person may request the board to review the conditions or sanc-  
12 tions. The board shall review the request and may, at its discretion, review the conditions and  
13 sanctions, under rules adopted by the board.

14 (4) Nothing in this section affects the jurisdiction of the board over the imposition of conditions  
15 of parole and sanctions for violations of those conditions.

16 **SECTION 10.** ORS 144.397 is amended to read:

17 144.397. (1)(a) A person convicted of an offense or offenses committed when the person was un-  
18 der 18 years of age, who is serving a sentence of imprisonment for the offense or offenses, is eligible  
19 for release on parole or post-prison supervision as provided in this section after the person has  
20 served 15 years of imprisonment.

21 (b) Nothing in this section is intended to prevent a person from being released prior to serving  
22 15 years of imprisonment under any other provision of law.

23 (c) As used in this subsection, “served 15 years of imprisonment” means that 15 years have  
24 passed since the person began serving the sentence, including pretrial incarceration but not in-  
25 cluding any reduction in sentence under ORS 421.121 or any other statute.

26 (2) This section applies notwithstanding ORS 144.110 or the fact that the person was:

27 (a) Sentenced to a minimum sentence under ORS 163.105, 163.107, 163.115 or 163.155.

28 (b) Sentenced to a mandatory minimum sentence under ORS 137.700 (1)(a), 137.707 (1)(a) or  
29 137.717, a determinate sentence under ORS 137.635 or a sentence required by any other provision  
30 of law.

31 (c) Sentenced to two or more consecutive sentences under ORS 137.123.

32 (3) When a person eligible for release on parole or post-prison supervision as described in sub-  
33 section (1) of this section has served 15 years of imprisonment, the State Board of Parole and Post-  
34 Prison Supervision shall hold a hearing. The hearing must provide the person a meaningful  
35 opportunity to be released on parole or post-prison supervision.

36 (4) The board may require the person, before holding a hearing described in this section, to be  
37 examined by a psychiatrist or psychologist with expertise in adolescent development. Within 60 days  
38 of the evaluation, the examining psychiatrist or psychologist shall file a written report of the  
39 findings and conclusions of the examination with the board. A certified copy of the report shall be  
40 provided to the person and the person’s attorney.

41 (5) During a hearing under this section, the board shall consider and give substantial weight to  
42 the fact that a person under 18 years of age is incapable of the same reasoning and impulse control  
43 as an adult and the diminished culpability of minors as compared to that of adults. The board shall  
44 also consider the following circumstances, if relevant to the specific person and offense:

45 (a) The age and immaturity of the person at the time of the offense.

1 (b) Whether and to what extent an adult was involved in the offense.

2 (c) The person's family and community circumstances at the time of the offense, including any  
3 history of abuse, trauma and involvement in the juvenile dependency system.

4 (d) The person's subsequent emotional growth and increased maturity during the person's  
5 imprisonment.

6 (e) The person's participation in rehabilitative and educational programs while in custody if  
7 such programs have been made available to the person and use of self-study for self-improvement.

8 (f) A mental health diagnosis.

9 (g) Any other mitigating factors or circumstances presented by the person.

10 (6) Under no circumstances may the board consider the age of the person as an aggravating  
11 factor.

12 (7) If the board finds that, based on the consideration of the age and immaturity of the person  
13 at the time of the offense and the person's behavior thereafter, the person has demonstrated matu-  
14 rity and rehabilitation, the board shall release the person as follows:

15 (a) For a person sentenced under ORS 163.105, 163.107, 163.115 or 163.155, the board shall set  
16 a release date that is not more than 60 days from the date of the hearing and, notwithstanding  
17 section 28, chapter 790, Oregon Laws 1989, the person shall be released on parole in accordance  
18 with ORS 144.125, 144.260 and 144.270.

19 (b) A person sentenced to a term of imprisonment under a provision of law other than ORS  
20 163.105, 163.107, 163.115 or 163.155 shall be released on post-prison supervision in accordance with  
21 ORS 144.096 and 144.098 within 60 days of the date of the hearing.

22 (8) Unless the context requires otherwise, the provisions of ORS 144.260 to 144.380 apply to a  
23 person released on parole under subsection (7)(a) of this section.

24 (9) If the board determines that the person has not demonstrated maturity and rehabilitation  
25 under subsection (7) of this section, the board may postpone a subsequent hearing to a date that is  
26 at least two years but no more than 10 years from the date of the hearing.

27 (10) The person may waive a hearing under this section. Notwithstanding waiver of the hearing,  
28 the board shall hold a hearing under this section upon the person's written request.

29 (11) The board shall provide notice of the hearing to:

30 (a) The district attorney of the county in which the person was convicted; and

31 (b) The victim of any offense for which the person is serving a sentence, if the victim requests  
32 to be notified and furnishes the board with a current address.

33 (12) A person has the right to counsel, including counsel appointed at board expense, at a  
34 hearing under this section.

35 (13) The board may adopt rules to carry out the provisions of this section.

36 **SECTION 11.** ORS 161.620 is amended to read:

37 161.620. Notwithstanding any other provision of law, a sentence imposed upon any person  
38 waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not include any sentence of death  
39 or life imprisonment without the possibility of release or parole nor imposition of any mandatory  
40 minimum sentence except that a mandatory minimum sentence under:

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

42 (2) ORS 163.105 (1)(c) shall be imposed; and

43 (3) ORS 161.610 may be imposed.

44 **SECTION 12.** ORS 165.072 is amended to read:

45 165.072. As used in this section and ORS 165.074, unless the context requires otherwise:



1 (1) "Cardholder" means a person to whom a payment card is issued or a person who is author-  
2 ized to use the payment card.

3 (2) "Credit card" means a card, plate, booklet, credit card number, credit card account number  
4 or other identifying symbol, instrument or device that can be used to pay for, or to obtain on credit,  
5 goods or services.

6 (3) "Financial institution" means a financial institution as that term is defined in ORS 706.008.

7 (4) "Merchant" means:

8 (a) An owner or operator of a retail mercantile establishment;

9 (b) An agent, employee, lessee, consignee, franchisee, officer, director or independent contractor  
10 of an owner or operator of a retail mercantile establishment; and

11 (c) A person who receives what the person believes to be a payment card or information from  
12 a payment card from a cardholder as the instrument for obtaining something of value from the per-  
13 son.

14 (5) "Payment card" means a credit card, charge card, debit card, stored value card or any card  
15 that is issued to a person and allows the user to obtain something of value from a merchant.

16 (6) "Payment card transaction" means a sale or other transaction or act in which a payment  
17 card is used to pay for, or to obtain on credit, goods or services.

18 (7) "Payment card transaction record" means any record or evidence of a payment card trans-  
19 action, including, without limitation, any paper, sales draft, instrument or other writing and any  
20 electronic or magnetic transmission or record.

21 (8) "Person" does not include a financial institution or its authorized employee, representative  
22 or agent.

23 [(9) "Previous conviction" has the meaning given that term in ORS 137.712.]

24 (9)(a) **"Previous conviction" means a conviction that was entered prior to imposing sen-**  
25 **tence on the current crime provided that the prior conviction is based on a crime committed**  
26 **in a separate criminal episode.**

27 (b) **"Previous conviction" does not include a conviction for a Class C felony, including an**  
28 **attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction**  
29 **was entered within the 10-year period immediately preceding the date on which the current**  
30 **crime was committed.**

31 (10) "Reencoder" means an electronic device that places encoded information from one payment  
32 card onto another payment card.

33 (11) "Scanning device" means an electronic device that is used to access, read, scan, obtain,  
34 memorize or store, temporarily or permanently, information encoded on a payment card.

35 **SECTION 13.** ORS 420.011 is amended to read:

36 420.011. (1) Except as provided in subsections (2), (3) and (4) of this section, admissions to the  
37 youth correction facilities are limited to adjudicated youths who are at least 12 but less than 20  
38 years of age, found by the juvenile court to have committed an act that if committed by an adult  
39 would constitute aggravated murder, murder, a felony or a Class A misdemeanor and placed in the  
40 legal custody of the Oregon Youth Authority. An adjudicated youth admitted to a youth correction  
41 facility may not be transferred by administrative process to any penal or correctional institution.

42 (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS  
43 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority  
44 or the director's designee, persons who are committed to the Department of Corrections under ORS  
45 137.124 and meet the requirements of ORS 137.124 (5) may be temporarily assigned to a youth cor-

1 rection facility as provided by ORS 137.124 (5). A person assigned on such a temporary basis remains  
2 within the legal custody of the Department of Corrections and such reassignment is subject to ter-  
3 mination by the Director of the Oregon Youth Authority by referring the person back to the De-  
4 partment of Corrections as provided in paragraph (b) of this subsection.

5 (b) After a person is transferred to the physical custody of the youth authority under ORS  
6 137.124 (5), the Director of the Oregon Youth Authority may refer the person back to the Depart-  
7 ment of Corrections for physical custody and placement if the director, after consulting with the  
8 Department of Corrections, determines that the person is at least 18 years of age and:

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

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

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

34 (4)(a) Admission to youth correction facilities for adjudicated youths who have been previously  
35 adjudicated, but who have not been previously placed in custody of a youth correction facility as a  
36 result of the adjudication, is limited to adjudicated youths under 19 years of age.

37 (b) Notwithstanding paragraph (a) of this subsection, admission to youth correction facilities for  
38 adjudicated youths who have been previously adjudicated for an act that, if committed by an adult,  
39 would constitute a crime listed in ORS 137.707 (4), but who have not been previously placed in  
40 custody of a youth correction facility as a result of the adjudication, is limited to adjudicated youths  
41 under 20 years of age.

42 (5)(a) Whenever a person committed to the custody of the Department of Corrections is tempo-  
43 rarily assigned to a youth correction facility pursuant to this section, the youth authority may pro-  
44 vide programs and treatment for the person, and may adopt rules relating to conditions of  
45 confinement at the youth correction facility, as the youth authority determines are appropriate.

1 However, the person remains subject to laws and rules of the State Board of Parole and Post-Prison  
 2 Supervision relating to parole.

3 (b) Information or records prepared or maintained by the youth authority relating to a person  
 4 committed to the custody of the Department of Corrections and temporarily assigned to a youth  
 5 correction facility pursuant to this section are confidential and exempt from disclosure if the public  
 6 interest in confidentiality clearly outweighs the public interest in disclosure and:

7 (A) The disclosure would interfere with the rehabilitation or treatment of the person, of another  
 8 person committed to the custody of the Department of Corrections and temporarily assigned to a  
 9 youth correction facility under this section or of an adjudicated youth; or

10 (B) The disclosure would substantially prejudice or prevent the carrying out of the functions of  
 11 the youth authority.

12 (c) Nothing in this section prohibits the youth authority from disclosing information or records  
 13 relating to a person committed to the custody of the Department of Corrections and temporarily  
 14 assigned to a youth correction facility pursuant to this section to counsel representing the person  
 15 or to the district attorney or assistant district attorney general representing the state, for use in  
 16 connection with the person's criminal, juvenile dependency or juvenile delinquency proceeding.

17 (6) For the purposes of determining the person's age at the time of committing an offense under  
 18 this section:

19 (a) If the person is convicted of two or more offenses occurring on different days, the person's  
 20 age shall be calculated using the earliest date.

21 (b) If the person is convicted of an offense occurring within a range of dates, the person's age  
 22 shall be calculated using the date at the beginning of the range.

23 **SECTION 14.** ORS 420.240 is amended to read:

24 420.240. (1) The Oregon Youth Authority may establish and administer a work release program  
 25 in which persons who are committed to the custody of the Department of Corrections and placed in  
 26 the physical custody of the youth authority under ORS 137.124 or other statute may be authorized  
 27 to leave assigned quarters for the purpose of:

28 (a) Participating in private, gainful employment;

29 (b) Participating in a work program approved by the youth authority, including work with public  
 30 or private agencies or persons, with or without compensation;

31 (c) Obtaining in this state additional education, including but not limited to vocational, technical  
 32 and general education;

33 (d) Participating in alcohol or drug treatment programs;

34 (e) Participating in mental health programs;

35 (f) Specific treatment to develop independent living skills; or

36 (g) Other purposes established by the youth authority by rule.

37 (2) After consulting with the Department of Corrections, the youth authority shall adopt rules  
 38 to carry out the provisions of ORS 420.240 to 420.265.

39 (3) The provisions of this section do not apply to persons sentenced under ORS 137.635, 137.700  
 40 (1)(a) or 137.707 (1)(a) or any other provision of law that prohibits eligibility for any form of tem-  
 41 porary leave from custody.

42 **SECTION 15.** ORS 420A.203 is amended to read:

43 420A.203. (1)(a) This section and ORS 420A.206 apply only to a person who:

44 (A) Was under 18 years of age at the time of the commission of the offense for which the person  
 45 was sentenced to a term of imprisonment, who committed the offense on or after June 30, 1995, and

1 who was:

2 (i) Sentenced to a term of imprisonment of at least 24 months following waiver under ORS  
3 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370; or

4 (ii) Sentenced to a term of imprisonment of at least 24 months under ORS 137.707 [or 137.712];  
5 or

6 (B)(i) Was under 18 years of age at the time of the commission of all offenses for which the  
7 person was sentenced to a term of imprisonment;

8 (ii) Is in the physical custody of the Oregon Youth Authority; and

9 (iii) Has a projected release date, as determined by the Department of Corrections, that falls on  
10 or after the person's 25th birthday and before the person's 27th birthday.

11 (b) When a person described in paragraph (a)(A) of this subsection has served one-half of the  
12 sentence imposed or when a person described in paragraph (a)(B) of this subsection attains 24 years  
13 and six months of age, the sentencing court shall determine what further commitment or disposition  
14 is appropriate as provided in this section. As used in this subsection and subsection (2) of this sec-  
15 tion, "sentence imposed" means the total period of mandatory incarceration imposed for all con-  
16 victions resulting from a single prosecution or criminal proceeding not including any reduction in  
17 the sentence under ORS 421.121 or any other statute.

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

24 (b) Upon receiving the notice and request for a hearing under paragraph (a) of this subsection,  
25 the sentencing court shall schedule a hearing for a date not more than 30 days after the date on  
26 which the person will have served one-half of the sentence imposed or attains 24 years and six  
27 months of age, or such later date as is agreed upon by the parties.

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

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

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

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

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

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

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

39 (e) Notwithstanding paragraph (b) of this subsection, the court may delay the hearing for good  
40 cause.

41 (3) In a hearing under this section:

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

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

1 (c) The district attorney represents the state.

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

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

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

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

16 (h) The hearing must be recorded.

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

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

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

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

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

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

32 (i) Has been rehabilitated and reformed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 or

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

23 (7) A person described in subsection (1)(a)(B) of this section may waive a hearing under this  
24 section.

25 **SECTION 16.** ORS 421.121 is amended to read:

26 421.121. (1) Except as provided in ORS 137.635, 137.700 (1)(a), 137.707 (1)(a), 163.105, 163.107 and  
27 163.115, each adult in custody sentenced to the custody of the Department of Corrections for felonies  
28 committed on or after November 1, 1989, is eligible for a reduction in the term of incarceration for:

29 (a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and

30 (b) Participation in the adult basic skills development program described in ORS 421.084.

31 (2) The maximum amount of time credits earned for appropriate institutional behavior or for  
32 participation in the adult basic skills development program described in ORS 421.084 may not exceed  
33 20 percent of the total term of incarceration in a Department of Corrections institution.

34 (3) The time credits may not be used to shorten the term of actual prison confinement to less  
35 than six months.

36 (4) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183  
37 to establish a process for granting, retracting and restoring the time credits earned by the offender  
38 as allowed in subsections (1) to (3) of this section.

39 **SECTION 17.** ORS 421.168 is amended to read:

40 421.168. (1) The Department of Corrections shall establish a short-term transitional leave pro-  
41 gram. The program shall provide adults in custody with an opportunity to secure appropriate tran-  
42 sitional support when necessary for successful reintegration into the community prior to the adult's  
43 discharge to post-prison supervision.

44 (2) The Department of Corrections shall identify each adult in custody who is eligible for the  
45 short-term transitional leave program and shall, in conjunction with the supervisory authority for

1 the county to which the adult in custody will be released, assist each eligible adult in custody in  
 2 preparing a transition plan and in identifying and applying for an employment, educational or other  
 3 transitional opportunity in the community.

4 (3) If the transition plan for the adult in custody is approved by the department and is an es-  
 5 sential part of successful reintegration into the community, the department may grant a transitional  
 6 leave no more than 120 days before the discharge date of the adult in custody.

7 (4) An adult in custody is not eligible for transitional leave before having served six months of  
 8 prison incarceration.

9 (5) The department shall adopt rules to carry out the provisions of this section. The rules must  
 10 include a set of release conditions for [*adults in custody*] **persons** released on transitional leave  
 11 status. [*An adult in custody*] **A person** on transitional leave status is subject to immediate return  
 12 to prison for any violation of the conditions of release.

13 (6) The provisions of this section do not apply to adults in custody whose sentences were im-  
 14 posed under ORS 137.635, 137.690, 137.700 (1)(a), 137.707 (1)(a), 164.061, 475.907, 475.925, 475.930 or  
 15 813.011 or under a provision of law that prohibits release on any form of temporary leave from  
 16 custody.

17 **SECTION 18. ORS 137.712 is repealed.**

18 **SECTION 19. The amendments to ORS 137.124, 137.700, 137.707, 137.751, 138.045, 138.105,**  
 19 **138.115, 144.101, 144.397, 161.620, 165.072, 420.011, 420.240, 420A.203, 421.121 and 421.168 by**  
 20 **sections 1 to 17 of this 2023 Act and the repeal of ORS 137.712 by section 18 of this 2023 Act**  
 21 **apply to crimes committed on or after the effective date of this 2023 Act.**

22