

Enrolled
Senate Bill 902

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to temporary assignment to youth correction facility; creating new provisions; amending ORS 137.124; and declaring an emergency.

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

SECTION 1. ORS 137.124 is amended to read:

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

(a) The court shall not designate the correctional facility in which the defendant is to be confined but shall commit the defendant to the legal and physical custody of the Department of Corrections; and

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

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

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

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

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

(5)(a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the Department of Corrections under ORS 137.707 or due to the fact that criminal proceedings were initiated after the person attained 18 years

of age, the Department of Corrections shall transfer the physical custody of the person to the Oregon Youth Authority as provided in ORS 420.011 if:

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

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

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

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

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

(6)(a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the legal and physical custody of the Department of Corrections or the supervisory authority of a county following waiver under ORS 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the person to the physical custody of the Oregon Youth Authority for placement as provided in ORS 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Corrections or the supervisory authority of a county transfer the person described in this subsection directly to a youth correction facility for physical custody without first delivering the person to the Department of Corrections or supervisory authority of the county. As part of the agreement with the Department of Corrections or supervisory authority of the county, the sheriff may designate the county juvenile department or the Oregon Youth Authority to conduct the direct transfer described in this paragraph if the sheriff has entered into a written agreement with the county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

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

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

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

(9) If a defendant is transferred under subsection (5) **or** (6) of this section, the defendant shall also be transferred after a resentencing on the same charges resulting from an appellate decision or a post-conviction relief proceeding or for any other reason, even if the defendant is 20 years of age or older at the time of the resentencing.

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

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

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

SECTION 2. (1) Notwithstanding section 32, chapter 634, Oregon Laws 2019, as amended by section 3c, chapter 635, Oregon Laws 2019, and section 4, chapter 685, Oregon Laws 2019, the amendments to ORS 137.124 by section 2, chapter 634, Oregon Laws 2019, and section 1 of this 2023 Act apply to persons who were originally sentenced before, on or after January 1, 2020, and who are subsequently resentenced on or after the effective date of this 2023 Act, for any reason.

(2) Notwithstanding section 32, chapter 634, Oregon Laws 2019, as amended by section 3c, chapter 635, Oregon Laws 2019, and section 4, chapter 685, Oregon Laws 2019, the amendments to ORS 137.124 by section 2, chapter 634, Oregon Laws 2019, and section 1 of this 2023 Act apply to persons who were originally sentenced before, on or after January 1, 2020, and who were subsequently resentenced on or after January 1, 2020, but before the effective date of this 2023 Act, for any reason, if the Department of Corrections and the Oregon Youth Authority determine that, because of the person's age, immaturity, mental or emotional condition or risk of physical harm to the person, the person should not be incarcerated in a Department of Corrections institution.

SECTION 3. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate March 21, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 9, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State