

# House Bill 3183

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**.

Requires that minors who are sentenced to more than one year's imprisonment begin service of sentence in physical custody of Oregon Youth Authority.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the legal and physical custody of juvenile offenders; creating new provisions; amending  
3 ORS 137.124, 137.320 and 420.011; and declaring an emergency.

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

5 **SECTION 1.** ORS 137.320 is amended to read:

6 137.320. (1)(a) When a judgment includes commitment to the legal and physical custody of the  
7 Department of Corrections, the sheriff shall deliver the defendant, together with a copy of the entry  
8 of judgment and a statement signed by the sheriff of the number of days the defendant was  
9 imprisoned prior to delivery, to:

10 (A) The superintendent of the Department of Corrections institution to which the defendant is  
11 initially assigned pursuant to ORS 137.124, **if the defendant is 18 years of age or older.**

12 (B) **The superintendent of the Oregon Youth Authority institution to which the defendant**  
13 **is initially assigned, if the defendant is under 18 years of age.**

14 (b) If at the time of entry of a judgment, the defendant was serving a term of incarceration at  
15 the direction of the supervisory authority of a county upon conviction of a prior felony, the sheriff  
16 shall also deliver to the [*Department of Corrections*] **superintendent** a copy of the prior entry of  
17 judgment committing the defendant to the supervisory authority of the county of conviction and a  
18 statement of the number of days the defendant has remaining to be served on the term or  
19 incarceration imposed in the prior judgment.

20 (2) If the defendant is surrendered to another legal authority prior to delivery to an institution  
21 [*of the Department of Corrections*] **described in subsection (1)(a) of this section**, the sheriff shall  
22 forward to the Department of Corrections copies of the entry of all pertinent judgments, a statement  
23 of the number of days the defendant was imprisoned prior to surrender, a statement of the number  
24 of days the defendant has remaining to be served on any term of incarceration the defendant was  
25 serving at the direction of the supervisory authority of a county upon conviction of a prior felony  
26 and an identification of the authority to whom the prisoner was surrendered.

27 (3) Upon receipt of the information described in subsection (1) or (2) of this section, the De-  
28 partment of Corrections shall establish a case file and compute the defendant's sentence in accord-  
29 ance with the provisions of ORS 137.370.

30 (4) When the judgment is imprisonment in the county jail or a fine and that the defendant be  
31 imprisoned until it is paid, the judgment shall be executed by the sheriff of the county. The sheriff

**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 shall compute the time the defendant was imprisoned after arrest and prior to the commencement  
 2 of the term specified in the judgment. Such time shall be credited toward the term of the sentence.

3 **SECTION 2.** ORS 137.124 is amended to read:

4 137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of  
 5 incarceration that exceeds 12 months:

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

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

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

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

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

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

30 (5)(a) When a person under 18 years of age at the time of committing the offense and under 20  
 31 years of age at the time of sentencing is committed to the Department of Corrections under ORS  
 32 137.707, the Department of Corrections shall transfer the physical custody of the person to the  
 33 Oregon Youth Authority as provided in ORS 420.011 if:

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

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

39 (b) A person placed in the custody of the Oregon Youth Authority under this subsection shall  
 40 be returned to the physical custody of the Department of Corrections whenever the Director of the  
 41 Oregon Youth Authority, after consultation with the Department of Corrections, determines that the  
 42 conditions or circumstances that warranted the transfer of custody under this subsection are no  
 43 longer present.

44 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20  
 45 years of age at the time of sentencing is committed to the legal and physical custody of the De-

1 partment of Corrections or the supervisory authority of a county following waiver under ORS  
 2 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or  
 3 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the  
 4 person to the physical custody of the Oregon Youth Authority for placement as provided in ORS  
 5 420.011 (3). The terms and conditions of the person’s incarceration and custody are governed by ORS  
 6 420A.200 to 420A.206.

7 (b) When a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or  
 8 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall  
 9 transfer the person to a youth correction facility for physical custody as provided in ORS 420.011  
 10 (3).

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

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

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

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

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

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

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

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

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

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

37 **(9) When a person committed to the legal and physical custody of the Department of**  
 38 **Corrections under subsection (1) or (2) of this section is under 18 years of age at the time**  
 39 **of commitment, the court shall order that the person be temporarily placed in the physical**  
 40 **custody of the Oregon Youth Authority as provided in ORS 420.011 (3). A person placed in**  
 41 **the custody of the Oregon Youth Authority under this subsection may be transferred to the**  
 42 **physical custody of the Department of Corrections at any time after the person attains 18**  
 43 **years of age, if the Director of the Oregon Youth Authority determines that the transfer is**  
 44 **appropriate.**

45 **SECTION 3.** ORS 420.011 is amended to read:

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

7 (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS  
8 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority  
9 or the director's designee, persons who are committed to the Department of Corrections under ORS  
10 137.124 and meet the requirements of ORS 137.124 (5) or (7) may be temporarily assigned to a youth  
11 correction facility as provided by ORS 137.124 (5) or (7). A person assigned on such a temporary  
12 basis remains within the legal custody of the Department of Corrections and such reassignment is  
13 subject to termination by the Director of the Oregon Youth Authority by referring the person back  
14 to the Department of Corrections as provided in paragraph (b) of this subsection.

15 (b) After a person is transferred to the physical custody of the youth authority under ORS  
16 137.124 (5) or (7), the Director of the Oregon Youth Authority may refer the person back to the  
17 Department of Corrections for physical custody and placement if the director, after consulting with  
18 the Department of Corrections, determines that the person:

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

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

24 (3) Any person under 18 years of age at the time of committing the crime and under 20 years  
25 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349, 419C.352,  
26 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to  
27 a term of imprisonment in the custody of the Department of Corrections, and any person under 16  
28 years of age who after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing  
29 under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of imprisonment in the county  
30 jail, shall be temporarily assigned to a youth correction facility by the Department of Corrections,  
31 or by the sheriff to whose custody the person has been committed, pursuant to ORS 137.124 (6). **A**  
32 **person under 18 years of age at the time of commitment shall be temporarily assigned to a**  
33 **youth correction facility by the court, pursuant to ORS 137.124 (9).** The director shall designate  
34 the appropriate youth correction facility or schools for such assignment. A person assigned to a  
35 youth correction facility under ORS 137.124 (6) **or (9)** and this subsection remains within the legal  
36 custody of the Department of Corrections or sheriff to whose custody the person was committed.  
37 The assignment of such a person to the youth correction facility is subject, when the person is  
38 [16] **18** years of age or older, to termination by the director by referring the person back to the  
39 Department of Corrections or the sheriff to serve the balance of the person's sentence. Assignment  
40 to a youth correction facility pursuant to ORS 137.124 (6) **or (9)** and this subsection, if not termi-  
41 nated earlier by the director, shall terminate upon the person's attaining the age specified in ORS  
42 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and  
43 physical custody of the person, and the person shall be referred to the Department of Corrections  
44 or the sheriff having legal custody of the person to serve the balance of the person's sentence.

45 (4) Whenever a person committed to the custody of the Department of Corrections is temporarily

1 assigned to a youth correction facility pursuant to this section, the youth authority may provide  
2 programs and treatment for the person, and may adopt rules relating to conditions of confinement  
3 at the youth correction facility, as the youth authority determines are appropriate. However, the  
4 person remains subject to laws and rules of the State Board of Parole and Post-Prison Supervision  
5 relating to parole.

6 **SECTION 4. The amendments to ORS 137.124, 137.320 and 420.011 by sections 1 to 3 of this**  
7 **2013 Act apply to persons sentenced for a crime on or after the effective date of this 2013**  
8 **Act.**

9 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**  
10 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
11 **on its passage.**

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