

Senate Bill 688

Sponsored by JOINT COMMITTEE ON PUBLIC SAFETY

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**.

Authorizes Oregon Youth Authority to establish and administer Community Transition for Youth Program for youth convicted of certain crimes committed to Department of Corrections and in physical custody of youth authority who will complete sentences within three years or less of attaining 26 years of age.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon Youth Authority; creating new provisions; amending ORS 137.124, 137.707,
3 420.011 and 420A.200; declaring an emergency; and providing for criminal sentence reduction
4 that requires approval by a two-thirds majority.

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

6 **SECTION 1. (1) As used in this section and section 2 of this 2013 Act, "eligible youth"**
7 **means a person committed to the Department of Corrections under ORS 137.707, physical**
8 **custody of whom has been transferred to the Oregon Youth Authority under ORS 420.011 or**
9 **other statute, who has three years or less remaining before completion of the sentence im-**
10 **posed on the person under ORS 137.707 and who will complete the sentence imposed on the**
11 **person before the person attains 26 years of age.**

12 **(2) The Oregon Youth Authority may establish the Community Transition for Youth**
13 **Program in which eligible youth who are accepted into the program are authorized to con-**
14 **tinue placement in a youth correction facility or to leave assigned quarters or to otherwise**
15 **participate in a form of temporary leave from physical custody for the purpose of:**

16 **(a) Participating in community, volunteer, employment and other programs approved by**
17 **the youth authority;**

18 **(b) Obtaining or continuing education, including but not limited to vocational, technical**
19 **and general education;**

20 **(c) Participating in alcohol or drug treatment programs;**

21 **(d) Participating in mental health programs;**

22 **(e) Participating in specific treatment to develop independent living skills;**

23 **(f) Continuing participation in other programs and treatment that the eligible youth**
24 **would have continued participation in had the eligible youth not attained the age of 25 years;**

25 **or**

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

27 **(3) The youth authority shall, in consultation with the Department of Corrections, adopt**
28 **rules to carry out the provisions of sections 1 and 2 of this 2013 Act, including but not limited**
29 **to establishing standards and criteria for acceptance of eligible youth into the Community**
30 **Transition for Youth Program and acceptable and appropriate conduct by eligible youth while**

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 **participating in the program.**

2 **(4) ORS 137.707 (2) does not apply to limit or restrict the participation of an otherwise**
 3 **eligible youth in the Community Transition for Youth Program under this section.**

4 **SECTION 2. The Oregon Youth Authority shall administer the Community Transition for**
 5 **Youth Program established under section 1 of this 2013 Act by means of such staff organ-**
 6 **ization and personnel as the Director of the Oregon Youth Authority considers necessary or**
 7 **advisable. In addition to other duties, the youth authority may:**

8 **(a) Locate community, volunteer, employment, treatment and educational programs and**
 9 **opportunities for eligible youth;**

10 **(b) Effect placement of eligible youth in community, volunteer, employment, treatment**
 11 **and educational programs and opportunities; and**

12 **(c) Prescribe any special conditions that are appropriate to ensure compliance by an eli-**
 13 **gible youth participating in the Community Transition for Youth Program with the general**
 14 **procedures and objectives of the program;**

15 **(2) The youth authority may enter into agreements with public or private agencies or**
 16 **persons for the participation of eligible youth in community, volunteer, employment, treat-**
 17 **ment and educational programs and opportunities available through the Community Transi-**
 18 **tion for Youth Program.**

19 **(3) The youth authority may contract with the governing bodies of political subdivisions**
 20 **in this state, with the federal government and with any private or public agencies approved**
 21 **by the youth authority for the housing in suitable local facilities, including youth correction**
 22 **facilities, of eligible youth accepted for participation in the Community Transition for Youth**
 23 **Program.**

24 **(4) The unauthorized absence of an eligible youth from any location where the eligible**
 25 **youth is required to be at any particular time, if the absence is contrary to the rules and**
 26 **conditions applicable to the eligible youth:**

27 **(a) Immediately terminates the participation of the eligible youth in the Community**
 28 **Transition for Youth Program;**

29 **(b) Constitutes escape in the second degree from a correctional facility under ORS**
 30 **162.155; and**

31 **(c) If applicable, constitutes escape or absence without authorization under ORS 420.910**
 32 **and subjects the eligible youth to the procedures described in ORS 420.915.**

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

34 **137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of**
 35 **incarceration that exceeds 12 months:**

36 **(a) The court shall not designate the correctional facility in which the defendant is to be con-**
 37 **finned but shall commit the defendant to the legal and physical custody of the Department of Cor-**
 38 **rections; and**

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

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

1 curred.

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

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

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

15 (5)(a) When a person under 18 years of age at the time of committing the offense and under 20
16 years of age at the time of sentencing is committed to the Department of Corrections under ORS
17 137.707, the Department of Corrections shall transfer the physical custody of the person to the
18 Oregon Youth Authority as provided in ORS 420.011 if:

19 (A) The person will complete the sentence imposed before the person attains 25 years of age;
20 [or]

21 **(B) The person will not complete the sentence before the person attains 25 years of age**
22 **and the Department of Corrections determines the person has a substantial likelihood of**
23 **being accepted to participate as an eligible youth, as defined in section 1 of this 2013 Act, in**
24 **the Community Transition for Youth Program under sections 1 and 2 of this 2013 Act; or**

25 [(B)] (C) The Department of Corrections and the Oregon Youth Authority determine that, be-
26 cause of the person's age, immaturity, mental or emotional condition or risk of physical harm to the
27 person, the person should not be incarcerated initially in a Department of Corrections institution.

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

33 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20
34 years of age at the time of sentencing is committed to the legal and physical custody of the De-
35 partment of Corrections or the supervisory authority of a county following waiver under ORS
36 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or
37 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the
38 person to the physical custody of the Oregon Youth Authority for placement as provided in ORS
39 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS
40 420A.200 to 420A.206.

41 (b) When a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or
42 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall
43 transfer the person to a youth correction facility for physical custody as provided in ORS 420.011
44 (3).

45 (7) If the Director of the Oregon Youth Authority concurs in the decision, the Department of

1 Corrections or the supervisory authority of a county shall transfer the physical custody of a person
 2 committed to the Department of Corrections or the supervisory authority of the county under sub-
 3 section (1) or (2) of this section to the Oregon Youth Authority as provided in ORS 420.011 (2) if:

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

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

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

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

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

14 **(f) The person will not complete the term of incarceration before the person attains 25**
 15 **years of age and the Department of Corrections determines the person has a substantial**
 16 **likelihood of being accepted to participate as an eligible youth, as defined in section 1 of this**
 17 **2013 Act, in the Community Transition for Youth Program under sections 1 and 2 of this 2013**
 18 **Act;**

19 [(f)] (g) The person is likely in the foreseeable future to benefit from the rehabilitative and
 20 treatment programs administered by the Oregon Youth Authority;

21 [(g)] (h) The person does not pose a substantial danger to Oregon Youth Authority staff or
 22 persons in the custody of the Oregon Youth Authority; and

23 [(h)] (i) At the time of the proposed transfer, no more than 50 persons are in the physical cus-
 24 tody of the Oregon Youth Authority under this subsection.

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

31 **SECTION 4.** ORS 420.011 is amended to read:

32 420.011. (1) Except as provided in subsections (2) and (3) of this section, admissions to the youth
 33 correction facilities are limited to youth offenders who are at least 12 but less than 19 years of age,
 34 found by the juvenile court to have committed an act that if committed by an adult would constitute
 35 aggravated murder, murder, a felony or a Class A misdemeanor and placed in the legal custody of
 36 the Oregon Youth Authority. A youth offender admitted to a youth correction facility may not be
 37 transferred by administrative process to any penal or correctional institution.

38 (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS
 39 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority
 40 or the director's designee, persons who are committed to the Department of Corrections under ORS
 41 137.124 and meet the requirements of ORS 137.124 (5) or (7) may be temporarily assigned to a youth
 42 correction facility as provided by ORS 137.124 (5) or (7). A person assigned on such a temporary
 43 basis remains within the legal custody of the Department of Corrections and such reassignment is
 44 subject to termination by the Director of the Oregon Youth Authority by referring the person back
 45 to the Department of Corrections as provided in paragraph (b) of this subsection.

1 (b) After a person is transferred to the physical custody of the youth authority under ORS
2 137.124 (5) or (7), the Director of the Oregon Youth Authority may refer the person back to the
3 Department of Corrections for physical custody and placement if the director, after consulting with
4 the Department of Corrections, determines that the person:

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

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

10 (3)(a) Any person under 18 years of age at the time of committing the crime and under 20 years
11 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349, 419C.352,
12 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to
13 a term of imprisonment in the custody of the Department of Corrections, and any person under 16
14 years of age who after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing
15 under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of imprisonment in the county
16 jail, shall be temporarily assigned to a youth correction facility by the Department of Corrections,
17 or by the sheriff to whose custody the person has been committed, pursuant to ORS 137.124 (6). The
18 director shall designate the appropriate youth correction facility or schools for such assignment.

19 (b) A person assigned to a youth correction facility under ORS 137.124 (6) and this subsection
20 remains within the legal custody of the Department of Corrections or sheriff to whose custody the
21 person was committed.

22 (c) The assignment of such a person to the youth correction facility is subject, when the person
23 is 16 years of age or older, to termination by the director by referring the person back to the De-
24 partment of Corrections or the sheriff to serve the balance of the person's sentence.

25 (d) Assignment to a youth correction facility pursuant to ORS 137.124 (6) and this subsection,
26 if not terminated earlier by the director, shall terminate upon the person's attaining the age speci-
27 fied in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain
28 legal and physical custody of the person, and the person shall be referred to the Department of
29 Corrections or the sheriff having legal custody of the person to serve the balance of the person's
30 sentence. **Termination of an assignment under this paragraph does not apply when the person**
31 **has been accepted to participate as an eligible youth, as defined in section 1 of this 2013 Act,**
32 **in the Community Transition for Youth Program under sections 1 and 2 of this 2013 Act.**

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

39 **SECTION 5.** ORS 420A.200 is amended to read:

40 420A.200. (1) A person may not continue in the legal or physical custody of the Oregon Youth
41 Authority after the person attains 25 years of age.

42 (2) Except as otherwise provided in ORS 137.124 and 420.011, when a person in the physical
43 custody of the Oregon Youth Authority under ORS 137.124 attains 24 years and 11 months of age
44 and if the person will not complete the term of imprisonment imposed before the person attains 25
45 years of age, the Oregon Youth Authority shall transfer the person to the physical custody of the

1 Department of Corrections. **This subsection does not apply to an eligible youth, as defined in**
2 **section 1 of this 2013 Act, who has been accepted into the Community Transition for Youth**
3 **Program under sections 1 and 2 of this 2013 Act.**

4 **SECTION 6.** ORS 137.707 is amended to read:

5 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
6 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
7 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
8 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
9 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
10 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)
11 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is
12 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

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

17 (2) When a person charged under this section is convicted of an offense listed in subsection (4)
18 of this section, the court shall impose at least the presumptive term of imprisonment provided for
19 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
20 otherwise permitted by law, but may not impose a lesser term. **Except as provided in sections 1**
21 **and 2 of this 2013 Act,** the person is not, during the service of the term of imprisonment, eligible
22 for release on post-prison supervision or any form of temporary leave from custody. The person is
23 not eligible for any reduction in, or based on, the minimum sentence for any reason under ORS
24 421.121 or any other provision of law. ORS 138.012, 163.105 and 163.150 apply to sentencing a person
25 prosecuted under this section and convicted of aggravated murder under ORS 163.095 except that
26 a person who was under 18 years of age at the time the offense was committed is not subject to a
27 sentence of death.

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

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

-
- 33 (a)(A) Murder, as defined in
 - 34 ORS 163.115.300 months
 - 35 (B) Attempt or conspiracy
 - 36 to commit aggravated
 - 37 murder, as defined
 - 38 in ORS 163.095.120 months
 - 39 (C) Attempt or conspiracy
 - 40 to commit murder, as
 - 41 defined in ORS 163.115.90 months
 - 42 (D) Manslaughter in the
 - 43 first degree, as defined
 - 44 in ORS 163.118.120 months
 - 45 (E) Manslaughter in the

1 second degree, as defined
2 in ORS 163.125.....75 months
3 (F) Assault in the first
4 degree, as defined
5 in ORS 163.185.....90 months
6 (G) Assault in the second
7 degree, as defined
8 in ORS 163.175.....70 months
9 (H) Kidnapping in the first
10 degree, as defined in
11 ORS 163.235.....90 months
12 (I) Kidnapping in the second
13 degree, as defined in
14 ORS 163.225.....70 months
15 (J) Rape in the first degree,
16 as defined in ORS 163.375....100 months
17 (K) Rape in the second
18 degree, as defined in
19 ORS 163.365.....75 months
20 (L) Sodomy in the first
21 degree, as defined in
22 ORS 163.405.....100 months
23 (M) Sodomy in the second
24 degree, as defined in
25 ORS 163.395.....75 months
26 (N) Unlawful sexual
27 penetration in the first
28 degree, as defined
29 in ORS 163.411.....100 months
30 (O) Unlawful sexual
31 penetration in the
32 second degree, as
33 defined in ORS 163.408.....75 months
34 (P) Sexual abuse in the first
35 degree, as defined in
36 ORS 163.427.....75 months
37 (Q) Robbery in the first
38 degree, as defined in
39 ORS 164.415.....90 months
40 (R) Robbery in the second
41 degree, as defined in
42 ORS 164.405.....70 months
43 (b)(A) Arson in the first degree,
44 as defined in
45 ORS 164.325, when

- 1 the offense represented
- 2 a threat of serious
- 3 physical injury.90 months
- 4 (B) Using a child in a display
- 5 of sexually explicit
- 6 conduct, as defined in
- 7 ORS 163.670.70 months
- 8 (C) Compelling prostitution,
- 9 as defined in ORS 167.017
- 10 (1)(a), (b) or (d).70 months
- 11 (c) Aggravated vehicular
- 12 homicide, as defined in
- 13 ORS 163.149.240 months

14
15

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

18 (a) An offense listed in subsection (4) of this section, the court shall sentence the person as
19 provided in subsection (2) of this section.

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

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

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

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

30 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
31 419C.067 and 419C.411.

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

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

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

37 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
38 419C.067 and 419C.411.

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

45 (7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty

1 of aggravated murder or an offense listed in subsection (4) of this section and one or more other
2 offenses, the court shall impose the sentence for aggravated murder or the offense listed in sub-
3 section (4) of this section as provided in subsection (2) of this section and shall impose sentences for
4 the other offenses as otherwise provided by law.

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

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

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

16 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
17 419C.067 and 419C.411.

18 **SECTION 7. This 2013 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
20 **on its passage.**

21 _____