

# Senate Bill 967

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 court to include in judgment document age of defendant at time of committing offense if defendant sentenced to term of incarceration and physical custody of defendant is related to age of defendant at time of committing crime.

Directs Department of Corrections to transfer person sentenced to term of incarceration for offense committed when person was under 18 years of age to physical custody of Oregon Youth Authority even if criminal proceedings were initiated after person attained 18 years of age.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the physical custody of a person sentenced to a term of incarceration; creating new  
3 provisions; amending ORS 137.071, 137.124 and 420.011; and prescribing an effective date.

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

5 **SECTION 1.** ORS 137.071 is amended to read:

6 137.071. (1) The judge in a criminal action shall ensure that the creation and filing of a judgment  
7 document complies with this section. On appeal, the appellate court may give leave as provided in  
8 ORS 19.270 for entry of a judgment document that complies with this section but may not reverse  
9 or set aside a judgment, determination or disposition on the sole ground that the judgment document  
10 fails to comply with this section.

11 (2) A judgment document in a criminal action must comply with ORS 18.038. In addition, a  
12 judgment document in a criminal action must:

13 (a) Indicate whether the defendant was determined to be financially eligible for purposes of ap-  
14 pointed counsel in the action.

15 (b) Indicate whether the court appointed counsel for the defendant in the action.

16 (c) If there is no attorney for the defendant, indicate whether the defendant knowingly waived  
17 any right to an attorney after having been informed of that right.

18 (d) Include the identity of the recorder or reporter for the proceeding or action who is to be  
19 served under ORS 138.081.

20 (e) Include any information specifically required by statute or by court rule.

21 (f) Specify clearly the court's determination for each charge in the information, indictment or  
22 complaint.

23 (g) Specify clearly the court's disposition, including all legal consequences the court establishes  
24 or imposes. If the determination is one of conviction, the judgment document must include any sus-  
25 pension of sentence, forfeiture, imprisonment, cancellation of license, removal from office, monetary  
26 obligation, probation, conditions of probation, discharge, restitution, community service and all other  
27 sentences and legal consequences imposed by the court. Nothing in this paragraph requires the  
28 judgment document to specify any consequences that may result from the determination but are not

**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 established or imposed by the court.

2 (h) Include the identities of the attorney for the state and the attorney, if any, for the defendant.

3 **(i) If the court sentences the defendant to a term of incarceration, and the physical**  
4 **custody of the defendant as determined by ORS 137.124 is related to the age of the defendant**  
5 **at the time of committing an offense, indicate the age of the defendant at the time of com-**  
6 **mitting the offense.**

7 (3) A judgment document in a criminal action that includes a money award, as defined in ORS  
8 18.005, must comply with ORS 18.048.

9 (4) The requirements of this section do not apply to a judgment document if the action was  
10 commenced by the issuance of a uniform citation adopted under ORS 1.525 and the court has used  
11 the space on the citation for the entry of a judgment. The exemption provided by this subsection  
12 does not apply if any indictment, information or complaint other than a uniform citation is filed in  
13 the action.

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

15 137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of  
16 incarceration that exceeds 12 months:

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

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

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

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

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

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

41 (5)(a) When a person under 18 years of age at the time of committing the offense and under 20  
42 years of age at the time of sentencing is committed to the Department of Corrections under ORS  
43 137.707 **or due to the fact that criminal proceedings were initiated after the person attained**  
44 **18 years of age**, the Department of Corrections shall transfer the physical custody of the person to  
45 the Oregon Youth Authority as provided in ORS 420.011 if:

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

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

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

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

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

18 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20  
19 years of age at the time of sentencing is committed to the legal and physical custody of the De-  
20 partment of Corrections or the supervisory authority of a county following waiver under ORS  
21 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or  
22 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the  
23 person to the physical custody of the Oregon Youth Authority for placement as provided in ORS  
24 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS  
25 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Depart-  
26 ment of Corrections or the supervisory authority of a county transfer the person described in this  
27 subsection directly to a youth correction facility for physical custody without first delivering the  
28 person to the Department of Corrections or supervisory authority of the county. As part of the  
29 agreement with the Department of Corrections or supervisory authority of the county, the sheriff  
30 may designate the county juvenile department or the Oregon Youth Authority to conduct the direct  
31 transfer described in this paragraph if the sheriff has entered into a written agreement with the  
32 county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

33 (b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS  
34 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment  
35 in the county jail, the sheriff shall transfer the person to a youth correction facility for physical  
36 custody as provided in ORS 420.011 (3).

37 *[(7) If the Director of the Oregon Youth Authority concurs in the decision, the Department of*  
38 *Corrections or the supervisory authority of a county shall transfer the physical custody of a person*  
39 *committed to the Department of Corrections or the supervisory authority of the county under subsection*  
40 *(1) or (2) of this section to the Oregon Youth Authority as provided in ORS 420.011 (2) if:]*

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

43 *[(b) The person is under 20 years of age at the time of commitment to the Department of Corrections*  
44 *or the supervisory authority of the county;]*

45 *[(c) The person has not been committed previously to the legal and physical custody of the De-*

1 *partment of Corrections or the supervisory authority of a county;]*

2 *[(d) The person has not been convicted and sentenced to a term of incarceration for the commission*  
3 *of a felony in any other state;]*

4 *[(e) The person will complete the term of incarceration imposed before the person attains 25 years*  
5 *of age;]*

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

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

10 *[(h) At the time of the proposed transfer, no more than 50 persons are in the physical custody of*  
11 *the Oregon Youth Authority under this subsection.]*

12 *[(8)] (7) Notwithstanding the provisions of [subsections] **subsection** (5)(a)(A) [or (7)] of this sec-*  
13 *tion, the department or the supervisory authority of a county may not transfer the physical custody*  
14 *of the person under subsection (5)(a)(A) [or (7)] of this section if the Director of the Oregon Youth*  
15 *Authority, after consultation with the Department of Corrections or the supervisory authority of a*  
16 *county, determines that, because of the person's age, mental or emotional condition or risk of*  
17 *physical harm to other persons, the person should not be incarcerated in a youth correction facility.*

18 *[(9)] (8) Notwithstanding any other provision of this section, under no circumstances may a*  
19 *person under 18 years of age be incarcerated in a Department of Corrections institution.*

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

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

25 420.011. (1) Except as provided in subsections (2) and (3) of this section, admissions to the youth  
26 correction facilities are limited to youth offenders who are at least 12 but less than 19 years of age,  
27 found by the juvenile court to have committed an act that if committed by an adult would constitute  
28 aggravated murder, murder, a felony or a Class A misdemeanor and placed in the legal custody of  
29 the Oregon Youth Authority. A youth offender admitted to a youth correction facility may not be  
30 transferred by administrative process to any penal or correctional institution.

31 (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS  
32 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority  
33 or the director's designee, persons who are committed to the Department of Corrections under ORS  
34 137.124 and meet the requirements of ORS 137.124 (5) [or (7)] may be temporarily assigned to a youth  
35 correction facility as provided by ORS 137.124 (5) [or (7)]. A person assigned on such a temporary  
36 basis remains within the legal custody of the Department of Corrections and such reassignment is  
37 subject to termination by the Director of the Oregon Youth Authority by referring the person back  
38 to the Department of Corrections as provided in paragraph (b) of this subsection.

39 (b) After a person is transferred to the physical custody of the youth authority under ORS  
40 137.124 (5) [or (7)], the Director of the Oregon Youth Authority may refer the person back to the  
41 Department of Corrections for physical custody and placement if the director, after consulting with  
42 the Department of Corrections, determines that the person is at least 18 years of age and:

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

45 (B) Is not likely, in the foreseeable future, to benefit from the rehabilitation and treatment pro-

1 grams administered by the youth authority and is appropriate for placement in a Department of  
2 Corrections institution.

3 (3) Any person under 18 years of age at the time of committing the crime and under 20 years  
4 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349, 419C.352,  
5 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to  
6 a term of imprisonment in the custody of the Department of Corrections, and any person under 16  
7 years of age who after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing  
8 under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of imprisonment in the county  
9 jail, shall be temporarily assigned to a youth correction facility by the Department of Corrections,  
10 or by the sheriff to whose custody the person has been committed, pursuant to ORS 137.124 (6). The  
11 director shall designate the appropriate youth correction facility or schools for such assignment. A  
12 person assigned to a youth correction facility under ORS 137.124 (6) and this subsection remains  
13 within the legal custody of the Department of Corrections or sheriff to whose custody the person  
14 was committed. The assignment of such a person to the youth correction facility is subject, when  
15 the person is 18 years of age or older, to termination by the director by referring the person back  
16 to the Department of Corrections or the sheriff to serve the balance of the person's sentence. As-  
17 signment to a youth correction facility pursuant to ORS 137.124 (6) and this subsection, if not ter-  
18 minated earlier by the director, shall terminate upon the person's attaining the age specified in ORS  
19 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and  
20 physical custody of the person, and the person shall be referred to the Department of Corrections  
21 or the sheriff having legal custody of the person to serve the balance of the person's sentence.

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

28 **SECTION 4. (1) The amendments to ORS 137.071, 137.124 and 420.011 by sections 1 to 3**  
29 **of this 2019 Act become operative on January 1, 2020.**

30 **(2) The Department of Corrections and the Oregon Youth Authority may take any action**  
31 **before the operative date specified in subsection (1) of this section that is necessary to enable**  
32 **the department or authority to exercise, on and after the operative date specified in sub-**  
33 **section (1) of this section, all of the duties, functions and powers conferred on the depart-**  
34 **ment or authority by the amendments to ORS 137.071, 137.124 and 420.011 by sections 1 to 3**  
35 **of this 2019 Act.**

36 **SECTION 5. The amendments to ORS 137.071, 137.124 and 420.011 by sections 1 to 3 of this**  
37 **2019 Act apply to sentences imposed on or after January 1, 2020.**

38 **SECTION 6. This 2019 Act takes effect on the 91st day after the date on which the 2019**  
39 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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