

# Senate Bill 1063

Sponsored by Senator B STARR; Senators ATKINSON, FERRIOLI, GEORGE, KRUSE, C STARR, WHITSETT

## 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**.

Increases mandatory minimum sentences and extends period of post-prison supervision for, and requires active tracking of, person convicted of rape in first degree, sodomy in first degree or unlawful sexual penetration in first degree.

## A BILL FOR AN ACT

Relating to sex offenses; creating new provisions; and amending ORS 137.700, 137.707 and 144.103.

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

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

137.700. (1) **Notwithstanding ORS 161.605**, when a person is convicted of one of the offenses listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995, or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on or after October 4, 1997, the court shall impose, and the person shall serve, at least the entire term of imprisonment listed in subsection (2) of this section. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute. The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in subsection (2) of this section.

(2) The offenses to which subsection (1) of this section applies and the applicable mandatory minimum sentences are:

- 
- (a)(A) Murder, as defined in  
ORS 163.115 .....300 months
  - (B) Attempt or conspiracy  
to commit aggravated  
murder, as defined  
in ORS 163.095 .....120 months
  - (C) Attempt or conspiracy  
to commit murder, as  
defined in ORS 163.115. ....90 months
  - (D) Manslaughter in the  
first degree, as defined  
in ORS 163.118 .....120 months

**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 (E) Manslaughter in the
- 2 second degree, as defined
- 3 in ORS 163.125.....75 months
- 4 (F) Assault in the first
- 5 degree, as defined in
- 6 ORS 163.185.....90 months
- 7 (G) Assault in the second
- 8 degree, as defined in
- 9 ORS 163.175.....70 months
- 10 (H) Kidnapping in the first
- 11 degree, as defined
- 12 in ORS 163.235.....90 months
- 13 (I) Kidnapping in the second
- 14 degree, as defined in
- 15 ORS 163.225.....70 months
- 16 (J) Rape in the first degree,
- 17 as defined in
- 18 ORS 163.375.....[100] **300** months
- 19 (K) Rape in the second degree,
- 20 as defined in ORS 163.365.....75 months
- 21 (L) Sodomy in the first degree,
- 22 as defined in
- 23 ORS 163.405.....[100] **300** months
- 24 (M) Sodomy in the second
- 25 degree, as defined in
- 26 ORS 163.395.....75 months
- 27 (N) Unlawful sexual penetration
- 28 in the first degree, as
- 29 defined in
- 30 ORS 163.411.....[100] **300** months
- 31 (O) Unlawful sexual penetration
- 32 in the 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 degree,
- 38 as defined in ORS 164.415.....90 months
- 39 (R) Robbery in the second
- 40 degree, as defined in
- 41 ORS 164.405.....70 months
- 42 (b)(A) Arson in the first degree,
- 43 as defined in ORS 164.325,
- 44 when the offense represented
- 45 a threat of serious

- 1 physical injury .....90 months
- 2 (B) Using a child in a display
- 3 of sexually explicit
- 4 conduct, as defined in
- 5 ORS 163.670 .....70 months
- 6 (C) Compelling prostitution,
- 7 as defined in ORS 167.017.....70 months

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

137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggravated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after October 4, 1997, the person shall be prosecuted as an adult in criminal court.

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

(2) **Notwithstanding ORS 161.605**, when a person charged under this section is convicted of an offense listed in subsection (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for the offense in subsection (4) of this section. The court may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser term. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated murder under ORS 163.095 except that a person who was under 18 years of age at the time the offense was committed is not subject to a sentence of death.

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

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

- 
- 36 (a)(A) Murder, as defined in
  - 37 ORS 163.115 .....300 months
  - 38 (B) Attempt or conspiracy
  - 39 to commit aggravated
  - 40 murder, as defined
  - 41 in ORS 163.095 .....120 months
  - 42 (C) Attempt or conspiracy
  - 43 to commit murder, as
  - 44 defined in ORS 163.115 .....90 months
  - 45 (D) Manslaughter in the

- 1 first degree, as defined
- 2 in ORS 163.118.....120 months
- 3 (E) Manslaughter in the
- 4 second degree, as defined
- 5 in ORS 163.125.....75 months
- 6 (F) Assault in the first
- 7 degree, as defined
- 8 in ORS 163.185.....90 months
- 9 (G) Assault in the second
- 10 degree, as defined
- 11 in ORS 163.175.....70 months
- 12 (H) Kidnapping in the first
- 13 degree, as defined in
- 14 ORS 163.235.....90 months
- 15 (I) Kidnapping in the second
- 16 degree, as defined in
- 17 ORS 163.225.....70 months
- 18 (J) Rape in the first degree,
- 19 as defined in
- 20 ORS 163.375.....[100] **300** months
- 21 (K) Rape in the second
- 22 degree, as defined in
- 23 ORS 163.365.....75 months
- 24 (L) Sodomy in the first
- 25 degree, as defined in
- 26 ORS 163.405.....[100] **300** months
- 27 (M) Sodomy in the second
- 28 degree, as defined in
- 29 ORS 163.395.....75 months
- 30 (N) Unlawful sexual
- 31 penetration in the first
- 32 degree, as defined
- 33 in ORS 163.411.....[100] **300** months
- 34 (O) Unlawful sexual
- 35 penetration in the
- 36 second degree, as
- 37 defined in ORS 163.408 .....75 months
- 38 (P) Sexual abuse in the first
- 39 degree, as defined in
- 40 ORS 163.427.....75 months
- 41 (Q) Robbery in the first
- 42 degree, as defined in
- 43 ORS 164.415.....90 months
- 44 (R) Robbery in the second
- 45 degree, as defined in

- 1           ORS 164.405 .....70 months
- 2       (b)(A) Arson in the first degree,
- 3           as defined in
- 4           ORS 164.325, when
- 5           the offense represented
- 6           a threat of serious
- 7           physical injury. ....90 months
- 8       (B) Using a child in a display
- 9           of sexually explicit
- 10          conduct, as defined in
- 11          ORS 163.670. ....70 months
- 12       (C) Compelling prostitution,
- 13          as defined in ORS 167.017. ....70 months

14  
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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 3.** ORS 144.103 is amended to read:

19 144.103. (1) Except as otherwise provided in ORS 137.765, any person sentenced to a term of  
 20 imprisonment for:

21 (a) Violating or attempting to violate ORS 163.365, [163.375,] 163.395, [163.405,] 163.408,  
 22 [163.411,] 163.425 or 163.427 **or attempting to violate ORS 163.375, 163.405 or 163.411** shall serve  
 23 a term of post-prison supervision that [shall continue] **continues** until the term of the post-prison  
 24 supervision, when added to the term of imprisonment served, equals the maximum statutory inde-  
 25 terminate sentence for the violation.

26 (b) **Violating ORS 163.375, 163.405 or 163.411 shall serve a term of post-prison supervision**  
 27 **that continues for the rest of the person's life.**

28 (2) **When a person is sentenced to a term of post-prison supervision described in sub-**  
 29 **section (1)(b) of this section, the person must be actively supervised for at least the first 10**  
 30 **years of the post-prison supervision and actively tracked for the remainder of the term.**  
 31 **Active tracking may be done by means of an electronic device attached to the person.**

32 (3) Any costs incurred as a result of this section shall be paid by increased post-prison super-  
 33 vision fees under ORS 423.570.

34 **SECTION 4. The amendments to ORS 137.700, 137.707 and 144.103 by sections 1 to 3 of this**  
 35 **2005 Act apply to persons convicted of crimes that were committed on or after the effective**  
 36 **date of this 2005 Act.**