

137.707 Adult prosecution of 15-, 16- or 17-year-old offenders; mandatory minimum sentences; lesser included offenses; transfer to juvenile court.

(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, or when a person charged with the offense described in subsection (4)(c) 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 January 1, 2008, 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) 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:

(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
- (E) Manslaughter in the second degree, as defined in
ORS 163.125..... 75 months
- (F) Assault in the first degree, as defined in
ORS 163.185..... 90 months
- (G) Assault in the second degree, as defined in
ORS 163.175..... 70 months
- (H) Except as provided in paragraph (b)(G) of this subsection,
kidnapping in the first degree, as defined in
ORS 163.235..... 90 months
- (I) Kidnapping in the second degree, as defined in
ORS 163.225..... 70 months
- (J) Rape in the first degree, as defined in
ORS 163.375 (1)(a), (c) or (d)... 100 months
- (K) Rape in the second degree, as defined in
ORS 163.365..... 75 months
- (L) Sodomy in the first degree, as defined in
ORS 163.405 (1)(a), (c) or (d)... 100 months

- (M) Sodomy in the second degree, as defined in
ORS 163.395..... 75 months
- (N) Unlawful sexual penetration in the first degree, as defined in
ORS 163.411 (1)(a) or (c)..... 100 months
- (O) Unlawful sexual penetration in the second degree, as defined in
ORS 163.408..... 75 months
- (P) Sexual abuse in the first degree, as defined in
ORS 163.427..... 75 months
- (Q) Robbery in the first degree, as defined in
ORS 164.415..... 90 months
- (R) Robbery in the second degree, as defined in
ORS 164.405..... 70 months
- (b)(A) Arson in the first degree, as defined in ORS 164.325,
when the offense represented a threat of serious physical injury
..... 90 months
- (B) Using a child in a display of sexually explicit conduct, as defined in
ORS 163.670..... 70 months
- (C) Compelling prostitution, as defined in
ORS 167.017..... 70 month
- (c) Aggravated vehicular homicide, as defined in
ORS 163.149..... 240 months

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

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

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

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

(i) Order that a presentence report be prepared;

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

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

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

(i) Order that a presentence report be prepared;

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

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

(6) When a person is charged under this section, other offenses based on the same act or transaction shall be charged as separate counts in the same accusatory instrument and consolidated for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by the joinder and consolidation of offenses, the court may

order an election or separate trials of counts or provide whatever other relief justice requires.

(7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty of aggravated murder or an offense listed in subsection (4) of this section and one or more other offenses, the court shall impose the sentence for aggravated murder or the offense listed in subsection (4) of this section as provided in subsection (2) of this section and shall impose sentences for the other offenses as otherwise provided by law.

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

(A) Order that a presentence report be prepared;

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

(C) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411. [1995 c.422 §49; 1995 c.421 §4; 1997 c.852 §3; 1999 c.1055 §12; 2007 c.867 §6]

Note: See second note under 137.700.