

Senate Bill 696

Sponsored by Senator DINGFELDER

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**.

Provides that certain mandatory minimum sentences become presumptive sentences. Allows departure from presumptive sentences under certain circumstances.

A BILL FOR AN ACT

Relating to sentencing; creating new provisions; amending ORS 137.124, 137.700, 137.707, 138.060, 138.222, 161.610, 163.150, 165.072, 420.011 and 420A.203 and section 1, chapter 35, Oregon Laws 2008; repealing ORS 137.712; and providing for criminal sentence reduction that requires approval by a two-thirds majority.

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 **court sentences a person** *[is]* convicted of one of the **following offenses, the presumptive sentence is:** *[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, or of the offense described in subsection (2)(c) of this section and the offense was committed on or after January 1, 2008, 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)]* **(a)** Murder, as defined in
ORS 163.115300 months
 - [(B)]* **(b)** Attempt or conspiracy
to commit aggravated
murder, as defined
in ORS 163.095120 months
 - [(C)]* **(c)** Attempt or conspiracy
to commit murder, as
defined in ORS 163.115.90 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 [(D)] (d) Manslaughter in the
 2 first degree, as defined
 3 in ORS 163.118.....120 months
 4 [(E)] (e) Manslaughter in the
 5 second degree, as defined
 6 in ORS 163.125.....75 months
 7 [(F)] (f) Assault in the first
 8 degree, as defined in
 9 ORS 163.185.....90 months
 10 [(G)] (g) Assault in the second
 11 degree, as defined in
 12 ORS 163.175.....70 months
 13 [(H)] (h) Except as provided in
 14 paragraph [(b)(G)] (y)
 15 of this subsection,
 16 kidnapping in the first
 17 degree, as defined
 18 in ORS 163.235.....90 months
 19 [(I)] (i) Kidnapping in the second
 20 degree, as defined in
 21 ORS 163.225.....70 months
 22 [(J)] (j) Rape in the first degree,
 23 as defined in ORS 163.375
 24 (1)(a), (c) or (d).....100 months
 25 [(K)] (k) Rape in the second degree,
 26 as defined in
 27 ORS 163.365.....75 months
 28 [(L)] (L) Sodomy in the first degree,
 29 as defined in ORS 163.405
 30 (1)(a), (c) or (d).....100 months
 31 [(M)] (m) Sodomy in the second
 32 degree, as defined in
 33 ORS 163.395.....75 months
 34 [(N)] (n) Unlawful sexual penetration
 35 in the first degree, as
 36 defined in ORS 163.411
 37 (1)(a) or (c).....100 months
 38 [(O)] (o) Unlawful sexual penetration
 39 in the second degree, as
 40 defined in ORS 163.408.75 months
 41 [(P)] (p) Sexual abuse in the first
 42 degree, as defined in
 43 ORS 163.427.....75 months
 44 [(Q)] (q) Robbery in the first degree,
 45 as defined in

1 ORS 164.41590 months
 2 [(R)] (r) Robbery in the second
 3 degree, as defined in
 4 ORS 164.40570 months
 5 [(b)(A)] (s) Arson in the first degree,
 6 as defined in ORS 164.325,
 7 when the offense represented
 8 a threat of serious
 9 physical injury90 months
 10 [(B)] (t) Using a child in a display
 11 of sexually explicit
 12 conduct, as defined in
 13 ORS 163.67070 months
 14 [(C)] (u) Compelling prostitution,
 15 as defined in
 16 ORS 167.01770 months
 17 [(D)] (v) Rape in the first degree,
 18 as defined in
 19 ORS 163.375 (1)(b)300 months
 20 [(E)] (w) Sodomy in the first degree,
 21 as defined in
 22 ORS 163.405 (1)(b)300 months
 23 [(F)] (x) Unlawful sexual penetration
 24 in the first degree, as
 25 defined in
 26 ORS 163.411 (1)(b)300 months
 27 [(G)] (y) Kidnapping in the first
 28 degree, as defined in
 29 ORS 163.235, when the
 30 offense is committed in
 31 furtherance of the commission
 32 or attempted commission of an
 33 offense listed in *[subparagraph]*
 34 *[(D), (E) or (F) of]*
 35 *[this paragraph]* **paragraph**
 36 **(v), (w) or (x) of this**
 37 **subsection.**300 months
 38 [(c)] (z) Aggravated vehicular
 39 homicide, as defined in
 40 ORS 163.149240 months

42
 43 **(2) The court may impose a sentence other than the sentence provided in subsection (1)**
 44 **of this section if the court imposes:**

45 **(a) A longer term of incarceration that is otherwise required or authorized by law; or**

(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission and based upon a finding of substantial and compelling reasons.

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)] **(2)(a) to (r)** 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)] **(2)(s) to (u)** 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)] **(2)(v)** 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)] **(2)** of this section if the person was 15, 16 or 17 years of age at the time the act was committed.

(2) When **the court sentences** a person [charged] **prosecuted** under this section [is] **and** convicted of an offense listed in **this** subsection, **the presumptive sentence is:** [(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)] **(a)** Murder, as defined in
ORS 163.115300 months
 - [(B)] **(b)** Attempt or conspiracy
to commit aggravated
murder, as defined
in ORS 163.095120 months
 - [(C)] **(c)** Attempt or conspiracy
to commit murder, as
defined in ORS 163.11590 months
 - [(D)] **(d)** Manslaughter in the
first degree, as defined
in ORS 163.118120 months
 - [(E)] **(e)** Manslaughter in the

1 second degree, as defined
2 in ORS 163.125.....75 months
3 [(F)] (f) Assault in the first
4 degree, as defined
5 in ORS 163.185.....90 months
6 [(G)] (g) Assault in the second
7 degree, as defined
8 in ORS 163.175.....70 months
9 [(H)] (h) Kidnapping in the first
10 degree, as defined in
11 ORS 163.235.....90 months
12 [(I)] (i) Kidnapping in the second
13 degree, as defined in
14 ORS 163.225.....70 months
15 [(J)] (j) Rape in the first degree,
16 as defined in
17 ORS 163.375.....100 months
18 [(K)] (k) Rape in the second
19 degree, as defined in
20 ORS 163.365.....75 months
21 [(L)] (l) Sodomy in the first
22 degree, as defined in
23 ORS 163.405.....100 months
24 [(M)] (m) Sodomy in the second
25 degree, as defined in
26 ORS 163.395.....75 months
27 [(N)] (n) Unlawful sexual
28 penetration in the first
29 degree, as defined
30 in ORS 163.411.....100 months
31 [(O)] (o) Unlawful sexual
32 penetration in the
33 second degree, as
34 defined in ORS 163.40875 months
35 [(P)] (p) Sexual abuse in the first
36 degree, as defined in
37 ORS 163.427.....75 months
38 [(Q)] (q) Robbery in the first
39 degree, as defined in
40 ORS 164.415.....90 months
41 [(R)] (r) Robbery in the second
42 degree, as defined in
43 ORS 164.405.....70 months
44 [(b)(A)] (s) Arson in the first degree,
45 as defined in

1 ORS 164.325, when
2 the offense represented
3 a threat of serious
4 physical injury.90 months
5 [(B)] (t) Using a child in a display
6 of sexually explicit
7 conduct, as defined in
8 ORS 163.670.70 months
9 [(C)] (u) Compelling prostitution,
10 as defined in
11 ORS 167.017.70 months
12 [(c)] (v) Aggravated vehicular
13 homicide, as defined in
14 ORS 163.149.240 months

17 **(3) The court may impose a sentence other than the sentence provided in subsection (2)**
18 **of this section if the court imposes:**

19 **(a) A longer term of incarceration that is otherwise required or authorized by law; or**

20 **(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Com-**
21 **mission and based upon a finding of substantial and compelling reasons.**

22 **(4) ORS 138.012, 163.105 and 163.150 apply to sentencing a person prosecuted under this**
23 **section and convicted of aggravated murder under ORS 163.095 except that a person who was**
24 **under 18 years of age at the time the offense was committed is not subject to a sentence of**
25 **death.**

26 **(5) The court shall commit a person sentenced under this section to the legal and phys-**
27 **ical custody of the Department of Corrections.**

28 [(5)] **(6) If a person charged with an offense under this section is found guilty of a lesser in-**
29 **cluded offense and the lesser included offense is:**

30 (a) An offense listed in subsection [(4)] **(2)** of this section, the court shall sentence the person
31 as provided in [subsection (2)] **subsections (2) to (4)** of this section.

32 (b) Not an offense listed in subsection [(4)] **(2)** of this section:

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

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

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

42 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
43 419C.067 and 419C.411.

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

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

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

4 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
5 419C.067 and 419C.411.

6 [(6)] (7) When a person is charged under this section, other offenses based on the same act or
7 transaction shall be charged as separate counts in the same accusatory instrument and consolidated
8 for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection
9 [(4)] (2) of this section. If it appears, upon motion, that the state or the person charged is prejudiced
10 by the joinder and consolidation of offenses, the court may order an election or separate trials of
11 counts or provide whatever other relief justice requires.

12 [(7)(a)] (8)(a) If a person charged and tried as provided in subsection [(6)] (7) of this section is
13 found guilty of aggravated murder or an offense listed in subsection [(4)] (2) of this section and one
14 or more other offenses, the court shall impose the sentence for aggravated murder or the offense
15 listed in subsection [(4)] (2) of this section as provided in [subsection (2)] **subsections (2) to (4)** of
16 this section and shall impose sentences for the other offenses as otherwise provided by law.

17 (b) If a person charged and tried as provided in subsection [(6)] (7) of this section is not found
18 guilty of aggravated murder or an offense listed in subsection [(4)] (2) of this section, but is found
19 guilty of one of the other charges that constitutes an offense for which waiver is authorized under
20 ORS 419C.349, the court, upon motion of the district attorney, shall hold a hearing to determine
21 whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining
22 whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If
23 the court retains jurisdiction, the court shall sentence the person as an adult under sentencing
24 guidelines. If the court does not retain jurisdiction, the court shall:

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

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

28 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
29 419C.067 and 419C.411.

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

31 137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of
32 incarceration that exceeds 12 months:

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

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

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

44 (b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon
45 conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall

1 commit the defendant to the legal and physical custody of the Department of Corrections if the court
2 orders that the term of incarceration be served consecutively to a term of incarceration that ex-
3 ceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court
4 of this state upon conviction of a felony.

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

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

12 (5)(a) When a person under 18 years of age at the time of committing the offense and under 20
13 years of age at the time of sentencing is committed to the Department of Corrections under ORS
14 137.707, the Department of Corrections shall transfer the physical custody of the person to the
15 Oregon Youth Authority as provided in ORS 420.011 if:

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

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

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

26 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20
27 years of age at the time of sentencing is committed to the legal and physical custody of the De-
28 partment of Corrections or the supervisory authority of a county following waiver under ORS
29 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 [(5)(b)(A) or (7)(b) or
30 137.712] **(6)(b)(A) or (8)(b)**, the Department of Corrections or the supervisory authority of a county
31 shall transfer the person to the physical custody of the Oregon Youth Authority for placement as
32 provided in ORS 420.011 (3). The terms and conditions of the person's incarceration and custody are
33 governed by ORS 420A.200 to 420A.206.

34 (b) When a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or
35 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall
36 transfer the person to a youth correction facility for physical custody as provided in ORS 420.011
37 (3).

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

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

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

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

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

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

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

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

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

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

19 **SECTION 4.** ORS 138.060 is amended to read:

20 138.060. (1) The state may take an appeal from the circuit court to the Court of Appeals from:

21 (a) An order made prior to trial dismissing or setting aside the accusatory instrument;

22 (b) An order arresting the judgment;

23 (c) An order made prior to trial suppressing evidence;

24 (d) An order made prior to trial for the return or restoration of things seized;

25 (e) A judgment of conviction based on the sentence as provided in ORS 138.222;

26 *[(f) An order in a probation revocation hearing finding that a defendant who was sentenced to*
 27 *probation under ORS 137.712 has not violated a condition of probation by committing a new crime;]*

28 *[(g)]* (f) An order made after a guilty finding dismissing or setting aside the accusatory instru-
 29 ment;

30 *[(h)]* (g) An order granting a new trial; or

31 *[(i)]* (h) An order dismissing an accusatory instrument under ORS 136.130.

32 (2) Notwithstanding subsection (1) of this section, when the state chooses to appeal from an or-
 33 der listed in paragraph (a) or (b) of this subsection, the state shall take the appeal from the circuit
 34 court to the Supreme Court if the defendant is charged with murder or aggravated murder. The or-
 35 ders to which this subsection applies are:

36 (a) An order made prior to trial suppressing evidence; and

37 (b) An order made prior to trial dismissing or setting aside the accusatory instrument.

38 (3) In an appeal by the state under subsection (2) of this section, the Supreme Court shall issue
 39 its decision no later than one year after the date of oral argument or, if the appeal is not orally
 40 argued, the date that the State Court Administrator delivers the briefs to the Supreme Court for
 41 decision. Failure of the Supreme Court to issue a decision within one year is not a ground for dis-
 42 missal of the appeal.

43 **SECTION 5.** ORS 138.222 is amended to read:

44 138.222. (1) Notwithstanding the provisions of ORS 138.040 and 138.050, a sentence imposed for
 45 a judgment of conviction entered for a felony committed on or after November 1, 1989, may be re-

1 viewed only as provided by this section.

2 (2) Except as otherwise provided in subsection (4)(c) of this section, on appeal from a judgment
3 of conviction entered for a felony committed on or after November 1, 1989, the appellate court may
4 not review:

5 (a) Any sentence that is within the presumptive sentence prescribed by the rules of the Oregon
6 Criminal Justice Commission.

7 (b) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe
8 a presumptive sentence of imprisonment but allow a sentence of probation without departure.

9 (c) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission pre-
10 scribe a presumptive sentence of imprisonment but allow a sentence of probation without departure.

11 (d) Any sentence resulting from a stipulated sentencing agreement between the state and the
12 defendant which the sentencing court approves on the record.

13 (e) Except as authorized in subsections (3) and (4) of this section, any other issue related to
14 sentencing.

15 (3) In any appeal from a judgment of conviction imposing a sentence that departs from the
16 presumptive sentence prescribed by the rules of the Oregon Criminal Justice Commission, sentence
17 review is limited to whether the sentencing court's findings of fact and reasons justifying a depart-
18 ture from the sentence prescribed by the rules of the Oregon Criminal Justice Commission:

19 (a) Are supported by the evidence in the record; and

20 (b) Constitute substantial and compelling reasons for departure.

21 (4) In any appeal, the appellate court may review a claim that:

22 (a) The sentencing court failed to comply with requirements of law in imposing or failing to
23 impose a sentence;

24 (b) The sentencing court erred in ranking the crime seriousness classification of the current
25 crime or in determining the appropriate classification of a prior conviction or juvenile adjudication
26 for criminal history purposes; or

27 (c) The sentencing court erred in failing to impose a [*minimum*] **presumptive** sentence that is
28 prescribed by ORS 137.700 or 137.707.

29 (5)(a) The appellate court may reverse or affirm the sentence. If the appellate court concludes
30 that the trial court's factual findings are not supported by evidence in the record or do not establish
31 substantial and compelling reasons for a departure, it shall remand the case to the trial court for
32 resentencing. If the appellate court determines that the sentencing court, in imposing a sentence in
33 the case, committed an error that requires resentencing, the appellate court shall remand the entire
34 case for resentencing. The sentencing court may impose a new sentence for any conviction in the
35 remanded case.

36 (b) If the appellate court, in a case involving multiple counts of which at least one is a felony,
37 reverses the judgment of conviction on any count and affirms other counts, the appellate court shall
38 remand the case to the trial court for resentencing on the affirmed count or counts.

39 (6) The appellate court shall issue a written opinion whenever the judgment of the sentencing
40 court is reversed and may issue a written opinion in any other case when the appellate court be-
41 lieves that a written opinion will provide guidance to sentencing judges and others in implementing
42 the sentencing guidelines adopted by the Oregon Criminal Justice Commission provided that the
43 appellate courts may provide by rule for summary disposition of cases arising under this section
44 when no substantial question is presented by the appeal.

45 (7) Either the state or the defendant may appeal a judgment of conviction based on the sentence

1 for a felony committed on or after November 1, 1989, to the Court of Appeals subject to the limita-
2 tions of chapter 790, Oregon Laws 1989. The defendant may appeal under this subsection only upon
3 showing a colorable claim of error in a proceeding if the appeal is from a proceeding in which:

4 (a) A sentence was entered subsequent to a plea of guilty or no contest;

5 (b) Probation was revoked, the period of probation was extended, a new condition of probation
6 was imposed, an existing condition of probation was modified or a sentence suspension was revoked;
7 or

8 (c) A sentence was entered subsequent to a resentencing ordered by an appellate court or a
9 post-conviction relief court.

10 **SECTION 6.** ORS 161.610 is amended to read:

11 161.610. (1) As used in this section, "firearm" means a weapon which is designed to expel a
12 projectile by the action of black powder or smokeless powder.

13 (2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant
14 during the commission of a felony may be pleaded in the accusatory instrument and proved at trial
15 as an element in aggravation of the crime as provided in this section. When a crime is so pleaded,
16 the aggravated nature of the crime may be indicated by adding the words "with a firearm" to the
17 title of the offense. The unaggravated crime shall be considered a lesser included offense.

18 (3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise pro-
19 vided in subsection (6) of this section, if a defendant is convicted of a felony having as an element
20 the defendant's use or threatened use of a firearm during the commission of the crime, the court
21 shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section.
22 Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall
23 any person punishable under this section become eligible for work release, parole, temporary leave
24 or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent
25 to any reduction of imprisonment granted for good time served or time credits earned under ORS
26 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the
27 court.

28 (4) The minimum terms of imprisonment for felonies having as an element the defendant's use
29 or threatened use of a firearm in the commission of the crime shall be as follows:

30 (a) Except as provided in subsection (5) of this section, upon the first conviction for such felony,
31 five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun
32 or is equipped with a firearms silencer, the term of imprisonment shall be 10 years.

33 (b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of
34 this subsection or subsection (5) of this section, 10 years, except that if the firearm is a machine gun,
35 short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of
36 imprisonment shall be 20 years.

37 (c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of
38 this subsection, 30 years.

39 (5) If it is the first time that the defendant is subject to punishment under this section, rather
40 than impose the sentence otherwise required by subsection (4)(a) of this section, the court may:

41 (a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or
42 impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances jus-
43 tifying such lesser sentence and sets forth those circumstances in its statement on sentencing; or

44 (b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance
45 with the rules of the Oregon Criminal Justice Commission.

1 (6) When a defendant who is convicted of a felony having as an element the defendant's use or
 2 threatened use of a firearm during the commission of the crime is a person who was waived from
 3 juvenile court under ORS 137.707 [(5)(b)(A)] **(6)(b)(A)**, 419C.349, 419C.352, 419C.364 or 419C.370, the
 4 court is not required to impose a minimum term of imprisonment under this section.

5 **SECTION 7.** ORS 165.072 is amended to read:

6 165.072. As used in this section and ORS 165.074, unless the context requires otherwise:

7 (1) "Cardholder" means a person to whom a payment card is issued or a person who is author-
 8 ized to use the payment card.

9 (2) "Credit card" means a card, plate, booklet, credit card number, credit card account number
 10 or other identifying symbol, instrument or device that can be used to pay for, or to obtain on credit,
 11 goods or services.

12 (3) "Financial institution" means a financial institution as that term is defined in ORS 706.008.

13 (4) "Merchant" means:

14 (a) An owner or operator of a retail mercantile establishment;

15 (b) An agent, employee, lessee, consignee, franchisee, officer, director or independent contractor
 16 of an owner or operator of a retail mercantile establishment; and

17 (c) A person who receives what the person believes to be a payment card or information from
 18 a payment card from a cardholder as the instrument for obtaining something of value from the per-
 19 son.

20 (5) "Payment card" means a credit card, charge card, debit card, stored value card or any card
 21 that is issued to a person and allows the user to obtain something of value from a merchant.

22 (6) "Payment card transaction" means a sale or other transaction or act in which a payment
 23 card is used to pay for, or to obtain on credit, goods or services.

24 (7) "Payment card transaction record" means any record or evidence of a payment card trans-
 25 action, including, without limitation, any paper, sales draft, instrument or other writing and any
 26 electronic or magnetic transmission or record.

27 (8) "Person" does not include a financial institution or its authorized employee, representative
 28 or agent.

29 (9) "Previous conviction" [*has the meaning given that term in ORS 137.712*] **means a conviction**
 30 **that was entered prior to imposing sentence on the current crime, provided that the prior**
 31 **conviction is based on a crime committed in a separate criminal episode. "Previous con-**
 32 **conviction" does not include a conviction for a Class C felony, including an attempt or sollicita-**
 33 **tion to commit a Class B felony, or a misdemeanor, unless the conviction was entered within**
 34 **the 10-year period immediately preceding the date on which the current crime was commit-**
 35 **ted.**

36 (10) "Reencoder" means an electronic device that places encoded information from one payment
 37 card onto another payment card.

38 (11) "Scanning device" means an electronic device that is used to access, read, scan, obtain,
 39 memorize or store, temporarily or permanently, information encoded on a payment card.

40 **SECTION 8.** ORS 420.011 is amended to read:

41 420.011. (1) Except as provided in subsections (2) and (3) of this section, admissions to the youth
 42 correction facilities are limited to youth offenders who are at least 12 but less than 19 years of age,
 43 found by the juvenile court to have committed an act that if committed by an adult would constitute
 44 aggravated murder, murder, a felony or a Class A misdemeanor and placed in the legal custody of
 45 the Oregon Youth Authority. A youth offender admitted to a youth correction facility may not be

1 transferred by administrative process to any penal or correctional institution.

2 (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS
3 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority
4 or the director's designee, persons who are committed to the Department of Corrections under ORS
5 137.124 and meet the requirements of ORS 137.124 (5) or (7) may be temporarily assigned to a youth
6 correction facility as provided by ORS 137.124 (5) or (7). A person assigned on such a temporary
7 basis remains within the legal custody of the Department of Corrections and such reassignment is
8 subject to termination by the Director of the Oregon Youth Authority by referring the person back
9 to the Department of Corrections as provided in paragraph (b) of this subsection.

10 (b) After a person is transferred to the physical custody of the youth authority under ORS
11 137.124 (5) or (7), the Director of the Oregon Youth Authority may refer the person back to the
12 Department of Corrections for physical custody and placement if the director, after consulting with
13 the Department of Corrections, determines that the person:

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

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

19 (3) Any person under 18 years of age at the time of committing the crime and under 20 years
20 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349, 419C.352,
21 419C.364 or 419C.370 or sentencing under ORS 137.707 [(5)(b)(A) or (7)(b) or 137.712] **(6)(b)(A) or**
22 **(8)(b)**, is sentenced to a term of imprisonment in the custody of the Department of Corrections, and
23 any person under 16 years of age who after waiver under ORS 419C.349, 419C.352, 419C.364 or
24 419C.370 or sentencing under ORS 137.707 [(5)(b)(A) or (7)(b) or 137.712] **(6)(b)(A) or (8)(b)** is sen-
25 tenced to a term of imprisonment in the county jail, shall be temporarily assigned to a youth cor-
26 rection facility by the Department of Corrections, or by the sheriff to whose custody the person has
27 been committed, pursuant to ORS 137.124 (6). The director shall designate the appropriate youth
28 correction facility or schools for such assignment. A person assigned to a youth correction facility
29 under ORS 137.124 (6) and this subsection remains within the legal custody of the Department of
30 Corrections or sheriff to whose custody the person was committed. The assignment of such a person
31 to the youth correction facility is subject, when the person is 16 years of age or older, to termi-
32 nation by the director by referring the person back to the Department of Corrections or the sheriff
33 to serve the balance of the person's sentence. Assignment to a youth correction facility pursuant to
34 ORS 137.124 (6) and this subsection, if not terminated earlier by the director, shall terminate upon
35 the person's attaining the age specified in ORS 420A.010 (5) setting the age limits for which the
36 Oregon Youth Authority may retain legal and physical custody of the person, and the person shall
37 be referred to the Department of Corrections or the sheriff having legal custody of the person to
38 serve the balance of the person's sentence.

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

45 **SECTION 9.** ORS 420A.203 is amended to read:

1 420A.203. (1)(a) This section and ORS 420A.206 apply only to persons who were under 18 years
2 of age at the time of the commission of the offense for which the persons were sentenced to a term
3 of imprisonment, who committed the offense on or after June 30, 1995, and who were:

4 (A) Sentenced to a term of imprisonment of at least 24 months following waiver under ORS
5 419C.349, 419C.352, 419C.364 or 419C.370; or

6 (B) Sentenced to a term of imprisonment of at least 24 months under ORS 137.707 [(5)(b)(A) or
7 (7)(b)] **(6)(b)(A) or (8)(b)**.

8 (b) When a person described in paragraph (a) of this subsection has served one-half of the sen-
9 tence imposed, the sentencing court shall determine what further commitment or disposition is ap-
10 propriate as provided in this section. As used in this subsection and subsection (2) of this section,
11 “sentence imposed” means the total period of mandatory incarceration imposed for all convictions
12 resulting from a single prosecution or criminal proceeding not including any reduction in the sen-
13 tence under ORS 421.121 or any other statute.

14 (2)(a) No more than 120 days and not less than 60 days before the date on which a person has
15 served one-half of the sentence imposed, the Oregon Youth Authority or the Department of Cor-
16 rections, whichever has physical custody of the person, shall file in the sentencing court a notice
17 and request that the court set a time and place for the hearing required under this section. The
18 youth authority or department shall serve the person with a copy of the notice and request for
19 hearing on or before the date of filing.

20 (b) Upon receiving the notice and request for a hearing under paragraph (a) of this subsection,
21 the sentencing court shall schedule a hearing for a date not more than 30 days after the date on
22 which the person will have served one-half of the sentence imposed or such later date as is agreed
23 upon by the parties.

24 (c) The court shall notify the following of the time and place of the hearing:

25 (A) The person and the person’s parents;

26 (B) The records supervisor of the correctional institution in which the person is incarcerated;
27 and

28 (C) The district attorney who prosecuted the case.

29 (d) The court shall make reasonable efforts to notify the following of the time and place of the
30 hearing:

31 (A) The victim and the victim’s parents or legal guardian; and

32 (B) Any other person who has filed a written request with the court to be notified of any hear-
33 ing concerning the transfer, discharge or release of the person.

34 (3) In a hearing under this section:

35 (a) The person and the state are parties to the proceeding.

36 (b) The person has the right to appear with counsel. If the person requests that the court ap-
37 point counsel and the court determines that the person is financially eligible for appointed counsel
38 at state expense, the court shall order that counsel be appointed.

39 (c) The district attorney represents the state.

40 (d) The court shall determine admissibility of evidence as if the hearing were a sentencing pro-
41 ceeding.

42 (e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the
43 Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within
44 a reasonable time before the hearing, as determined by the court, the person must be given the op-
45 portunity to examine all reports and other documents concerning the person that the state, the

1 Oregon Youth Authority or the Department of Corrections intends to submit for consideration by
 2 the court at the hearing.

3 (f) Except as otherwise provided by law or by order of the court based on good cause, the person
 4 must be given access to the records maintained in the person's case by the Oregon Youth Authority
 5 and the Department of Corrections.

6 (g) The person may examine all of the witnesses called by the state, may subpoena and call
 7 witnesses to testify on the person's behalf and may present evidence and argument. The court may
 8 permit witnesses to appear by telephone or other two-way electronic communication device.

9 (h) The hearing must be recorded.

10 (i) The hearing and the record of the hearing are open to the public.

11 (j) The question to be decided is which of the dispositions provided in subsection (4) of this
 12 section should be ordered in the case.

13 (k) The person has the burden of proving by clear and convincing evidence that the person has
 14 been rehabilitated and reformed, and if conditionally released, the person would not be a threat to
 15 the safety of the victim, the victim's family or the community and that the person would comply with
 16 the release conditions.

17 (4)(a) At the conclusion of the hearing and after considering and making findings regarding each
 18 of the factors in paragraph (b) of this subsection, the court shall order one of the following dispo-
 19 sitions:

20 (A) Order that the person serve the entire remainder of the sentence of imprisonment imposed,
 21 taking into account any reduction in the sentence under ORS 421.121 or any other statute, with the
 22 person's physical custody determined under ORS 137.124, 420.011 and 420A.200.

23 (B) Order that the person be conditionally released under ORS 420A.206 at such time as the
 24 court may order, if the court finds that the person:

25 (i) Has been rehabilitated and reformed;

26 (ii) Is not a threat to the safety of the victim, the victim's family or the community; and

27 (iii) Will comply with the conditions of release.

28 (b) In making the determination under this section, the court shall consider:

29 (A) The experiences and character of the person before and after commitment to the Oregon
 30 Youth Authority or the Department of Corrections;

31 (B) The person's juvenile and criminal records;

32 (C) The person's mental, emotional and physical health;

33 (D) The gravity of the loss, damage or injury caused or attempted, during or as part of the
 34 criminal act for which the person was convicted and sentenced;

35 (E) The manner in which the person committed the criminal act for which the person was con-
 36 victed and sentenced;

37 (F) The person's efforts, participation and progress in rehabilitation programs since the person's
 38 conviction;

39 (G) The results of any mental health or substance abuse treatment;

40 (H) Whether the person demonstrates accountability and responsibility for past and future con-
 41 duct;

42 (I) Whether the person has made and will continue to make restitution to the victim and the
 43 community;

44 (J) Whether the person will comply with and benefit from all conditions that will be imposed if
 45 the person is conditionally released;

1 (K) The safety of the victim, the victim’s family and the community;

2 (L) The recommendations of the district attorney, the Oregon Youth Authority and the Depart-
3 ment of Corrections; and

4 (M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Au-
5 thority, the Department of Corrections or the person.

6 (5) The court shall provide copies of its disposition order under subsection (4) of this section to
7 the parties, to the records supervisor of the correctional institution in which the person is
8 incarcerated and to the manager of the institution-based records office of the Department of Cor-
9 rections.

10 (6) The person or the state may appeal an order entered under this section. On appeal, the ap-
11 pellate court’s review is limited to claims that:

12 (a) The disposition is not authorized under this section;

13 (b) The court failed to comply with the requirements of this section in imposing the disposition;

14 or

15 (c) The findings of the court are not supported by substantial evidence in the record.

16 **SECTION 10.** ORS 163.150 is amended to read:

17 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, ex-
18 cept as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing
19 proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described
20 in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in
21 ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial
22 jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror,
23 the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the
24 name of one of the alternate jurors, who shall then become a member of the jury for the sentencing
25 proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt.
26 The substitution of an alternate juror shall be allowed only if the jury has not begun to deliberate
27 on the issue of the sentence. If the defendant has pleaded guilty, the sentencing proceeding shall
28 be conducted before a jury impaneled for that purpose. In the proceeding, evidence may be presented
29 as to any matter that the court deems relevant to sentence including, but not limited to, victim im-
30 pact evidence relating to the personal characteristics of the victim or the impact of the crime on
31 the victim’s family and any aggravating or mitigating evidence relevant to the issue in paragraph
32 (b)(D) of this subsection; however, neither the state nor the defendant shall be allowed to introduce
33 repetitive evidence that has previously been offered and received during the trial on the issue of
34 guilt. The court shall instruct the jury that all evidence previously offered and received may be
35 considered for purposes of the sentencing hearing. This paragraph shall not be construed to au-
36 thorize the introduction of any evidence secured in violation of the Constitution of the United States
37 or of the State of Oregon. The state and the defendant or the counsel of the defendant shall be
38 permitted to present arguments for or against a sentence of death and for or against a sentence of
39 life imprisonment with or without the possibility of release or parole.

40 (b) Upon the conclusion of the presentation of the evidence, the court shall submit the following
41 issues to the jury:

42 (A) Whether the conduct of the defendant that caused the death of the deceased was committed
43 deliberately and with the reasonable expectation that death of the deceased or another would result;

44 (B) Whether there is a probability that the defendant would commit criminal acts of violence
45 that would constitute a continuing threat to society;

1 (C) If raised by the evidence, whether the conduct of the defendant in killing the deceased was
2 unreasonable in response to the provocation, if any, by the deceased; and

3 (D) Whether the defendant should receive a death sentence.

4 (c)(A) The court shall instruct the jury to consider, in determining the issues in paragraph (b)
5 of this subsection, any mitigating circumstances offered in evidence, including but not limited to the
6 defendant's age, the extent and severity of the defendant's prior criminal conduct and the extent of
7 the mental and emotional pressure under which the defendant was acting at the time the offense
8 was committed.

9 (B) The court shall instruct the jury to answer the question in paragraph (b)(D) of this sub-
10 section "no" if, after considering any aggravating evidence and any mitigating evidence concerning
11 any aspect of the defendant's character or background, or any circumstances of the offense and any
12 victim impact evidence as described in paragraph (a) of this subsection, one or more of the jurors
13 believe that the defendant should not receive a death sentence.

14 (d) The state must prove each issue submitted under paragraph (b)(A) to (C) of this subsection
15 beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue
16 considered.

17 (e) The court shall charge the jury that it may not answer any issue "yes," under paragraph (b)
18 of this subsection unless it agrees unanimously.

19 (f) If the jury returns an affirmative finding on each issue considered under paragraph (b) of this
20 subsection, the trial judge shall sentence the defendant to death.

21 (2)(a) Upon the conclusion of the presentation of the evidence, the court shall also instruct the
22 jury that if it reaches a negative finding on any issue under subsection (1)(b) of this section, the trial
23 court shall sentence the defendant to life imprisonment without the possibility of release or parole,
24 as described in ORS 163.105 (1)(b), unless 10 or more members of the jury further find that there are
25 sufficient mitigating circumstances to warrant life imprisonment, in which case the trial court shall
26 sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

27 (b) If the jury returns a negative finding on any issue under subsection (1)(b) of this section and
28 further finds that there are sufficient mitigating circumstances to warrant life imprisonment, the
29 trial court shall sentence the defendant to life imprisonment in the custody of the Department of
30 Corrections as provided in ORS 163.105 (1)(c).

31 (3)(a) When the defendant is found guilty of aggravated murder, and ORS 137.707 (2) ~~to~~ (4) ap-
32 plies or the state advises the court on the record that the state declines to present evidence for
33 purposes of sentencing the defendant to death, the court:

34 (A) Shall not conduct a sentencing proceeding as described in subsection (1) of this section, and
35 a sentence of death shall not be ordered.

36 (B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sen-
37 tenced to life imprisonment without the possibility of release or parole as described in ORS 163.105
38 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to
39 a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact.
40 The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the
41 procedure of subsection (1)(a) of this section, as modified by this subsection. In the proceeding, ev-
42 idence may be presented as to any matter that the court deems relevant to sentence, including, but
43 not limited to, victim impact evidence relating to the personal characteristics of the victim or the
44 impact of the crime on the victim's family.

45 (b) Following the presentation of evidence and argument under paragraph (a) of this subsection,

1 the court shall instruct the jury that the trial court shall sentence the defendant to life
 2 imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b), unless
 3 after considering all of the evidence submitted, 10 or more members of the jury find there are suf-
 4 ficient mitigating circumstances to warrant life imprisonment with the possibility of parole as de-
 5 scribed in ORS 163.105 (1)(c). If 10 or more members of the jury find there are sufficient mitigating
 6 circumstances to warrant life imprisonment with the possibility of parole, the trial court shall sen-
 7 tence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

8 (c) Nothing in this subsection shall preclude the court from sentencing the defendant to life
 9 imprisonment, as described in ORS 163.105 (1)(c), or life imprisonment without the possibility of re-
 10 lease or parole, as described in ORS 163.105 (1)(b), pursuant to a stipulation of sentence or stipu-
 11 lation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to
 12 a jury sentencing proceeding.

13 (4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant
 14 who has been sentenced to life imprisonment without possibility of release or parole will instead be
 15 sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS
 16 163.105 (2), the defendant shall be confined for a minimum of 30 years without possibility of parole,
 17 release on work release or any form of temporary leave or employment at a forest or work camp.
 18 Subsection (2) of this section shall apply only to trials commencing on or after July 19, 1989.

19 (5) Notwithstanding subsection (1)(a) of this section, if the trial court grants a mistrial during
 20 the sentencing proceeding, the trial court, at the election of the state, shall either:

21 (a) Sentence the defendant to imprisonment for life in the custody of the Department of Cor-
 22 rections as provided in ORS 163.105 (1)(c); or

23 (b) Impanel a new sentencing jury for the purpose of conducting a new sentencing proceeding
 24 to determine if the defendant should be sentenced to:

25 (A) Death;

26 (B) Imprisonment for life without the possibility of release or parole as provided in ORS 163.105
 27 (1)(b); or

28 (C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS
 29 163.105 (1)(c).

30 **SECTION 11.** Section 1, chapter 35, Oregon Laws 2008, is amended to read:

31 **Sec. 1.** (1) When a court sentences a defendant to a term of incarceration that exceeds one year,
 32 the defendant may request a determination of the defendant's eligibility for release on post-prison
 33 supervision under ORS 421.508 (4). The court shall order in the judgment that the Department of
 34 Corrections may release the defendant on post-prison supervision under ORS 421.508 (4) only if, after
 35 a hearing, the court finds that:

36 (a) The defendant meets the eligibility requirements of subsections (2) and (3) of this section;

37 (b) The defendant was not on probation, parole or post-prison supervision for an offense [*listed*
 38 *in ORS 137.712 (4) or 811.705 (2)(b)*] **described in subsection (7) of this section** at the time of the
 39 commission of the current crime of conviction;

40 (c) The defendant has not previously been released on post-prison supervision under ORS 421.508
 41 (4);

42 (d) The harm or loss caused by the crime is not greater than usual for that type of crime;

43 (e) The crime was not part of an organized criminal operation; and

44 (f) After considering the nature of the offense and the harm to the victim, the defendant's suc-
 45 cessful completion of the program would:

- 1 (A) Increase public safety;
- 2 (B) Enhance the likelihood that the defendant would be rehabilitated; and
- 3 (C) Not unduly reduce the appropriate punishment.

4 (2) Except as provided in subsection (4) of this section, a defendant may not be released on
 5 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime under
 6 ORS 163.145, 163.165 (1)(a) or (b), 163.525 or 811.705 (2)(b).

7 (3) A defendant may not be released on post-prison supervision under ORS 421.508 (4) if the de-
 8 fendant is being sentenced for a crime listed in ORS 137.700, 137.707, 163.095 or 181.594 (4).

9 (4) Notwithstanding subsection (1) of this section, the parties may stipulate to a defendant’s el-
 10 igibility for release on post-prison supervision under ORS 421.508 (4). If the court accepts the stip-
 11 ulation, the court does not need to make explicit findings regarding the factors described in
 12 subsection (1)(b) to (f) of this section. The parties may not stipulate to the defendant’s release on
 13 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime de-
 14 scribed in subsection (3) of this section.

15 (5) If the court makes the findings described in subsection (1) of this section or accepts the
 16 stipulation of the parties under subsection (4) of this section, the court shall:

17 (a) Order on the record in open court as part of the sentence imposed that the defendant may
 18 be considered by the department for release on post-prison supervision under ORS 421.508 (4); and

19 (b) Include the order described in paragraph (a) of this subsection in the judgment.

20 (6) Subject to the requirements of this section, the court may order that the defendant serve a
 21 minimum period of incarceration before the defendant is released on post-prison supervision under
 22 ORS 421.508 (4). Nothing in this section authorizes the release of the defendant on post-prison
 23 supervision before the defendant has served the period of time described in ORS 421.508 (4)(b).

24 **(7) The offenses to which subsection (1)(b) of this section applies are:**

- 25 **(a) An offense listed in ORS 137.700 or 137.707 (2);**
- 26 **(b) Escape in the first degree, as defined in ORS 162.165;**
- 27 **(c) Aggravated murder, as defined in ORS 163.095;**
- 28 **(d) Criminally negligent homicide, as defined in ORS 163.145;**
- 29 **(e) Assault in the third degree, as defined in ORS 163.165;**
- 30 **(f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);**
- 31 **(g) Rape in the third degree, as defined in ORS 163.355;**
- 32 **(h) Sodomy in the third degree, as defined in ORS 163.385;**
- 33 **(i) Sexual abuse in the second degree, as defined in ORS 163.425;**
- 34 **(j) Stalking, as defined in ORS 163.732;**
- 35 **(k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a per-**
 36 **son felony under the rules of the Oregon Criminal Justice Commission;**
- 37 **(L) Arson in the first degree, as defined in ORS 164.325;**
- 38 **(m) Robbery in the third degree, as defined in ORS 164.395;**
- 39 **(n) Intimidation in the first degree, as defined in ORS 166.165;**
- 40 **(o) Promoting prostitution, as defined in ORS 167.012;**
- 41 **(p) Failure to perform the duties of a driver, as defined in ORS 811.705 (2)(b); or**
- 42 **(q) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a)**
 43 **to (L) of this subsection.**

44 **SECTION 12. ORS 137.712 is repealed.**

45 **SECTION 13. The amendments to ORS 137.124, 137.700, 137.707, 138.060, 138.222, 161.610,**

1 **163.150, 165.072, 420.011 and 420A.203 and section 1, chapter 35, Oregon Laws 2008, by sections**
2 **1 to 11 of this 2009 Act apply to offenses committed on or after the effective date of this 2009**
3 **Act.**

4
