

# D R A F T

## SUMMARY

Repeals death penalty.

Takes effect only if \_\_\_\_\_ Joint Resolution \_\_\_\_\_ (2013) (LC 2488) is approved by people at next regular general election. Takes effect on effective date of constitutional amendment proposed in \_\_\_\_\_ Joint Resolution \_\_\_\_\_ (2013) (LC 2488).

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; amending ORS 40.015, 135.045,  
3 136.230, 137.635, 137.707, 138.500, 138.504, 138.510, 138.590, 144.110, 144.122,  
4 144.126, 146.003, 161.620, 163.105, 163.150, 163.155, 421.084 and 475.188; re-  
5 pealing ORS 137.463, 137.464, 137.466, 137.467, 137.473, 137.476, 137.478,  
6 137.482, 138.012 and 138.686; and prescribing an effective date.

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

8 **SECTION 1.** ORS 163.105 is amended to read:

9 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS  
10 421.450 to 421.490:

11 (1)(a) [*Except as otherwise provided in ORS 137.700,*] When a defendant is  
12 convicted of aggravated murder as defined by ORS 163.095, the defendant  
13 shall be sentenced, pursuant to ORS 163.150, to [*death,*] life imprisonment  
14 without the possibility of release or parole or life imprisonment.

15 (b) A person sentenced to life imprisonment without the possibility of  
16 release or parole under this section [*shall*] **may** not have that sentence sus-  
17 pended, deferred or commuted by any judicial officer, and the State Board  
18 of Parole and Post-Prison Supervision may not parole the prisoner [*nor*] **or**  
19 reduce the period of confinement in any manner whatsoever. The Department

1 of Corrections or any executive official may not permit the prisoner to par-  
2 ticipate in any sort of release or furlough program.

3 (c) If sentenced to life imprisonment, the court shall order that the de-  
4 fendant [*shall*] be confined for a minimum of 30 years without possibility of  
5 parole, release to post-prison supervision, release on work release or any  
6 form of temporary leave or employment at a forest or work camp.

7 (2) At any time after completion of a minimum period of confinement  
8 pursuant to subsection (1)(c) of this section, the State Board of Parole and  
9 Post-Prison Supervision, upon the petition of a prisoner so confined, shall  
10 hold a hearing to determine if the prisoner is likely to be rehabilitated  
11 within a reasonable period of time. The sole issue is whether [*or not*] the  
12 prisoner is likely to be rehabilitated within a reasonable period of time. At  
13 the hearing, the prisoner has:

14 (a) The burden of proving by a preponderance of the evidence the likeli-  
15 hood of rehabilitation within a reasonable period of time;

16 (b) The right, if the prisoner is without sufficient funds to employ an at-  
17 torney, to be represented by legal counsel, appointed by the board, at board  
18 expense; and

19 (c) The right to a subpoena upon a showing of the general relevance and  
20 reasonable scope of the evidence sought, provided that any subpoena issued  
21 on behalf of the prisoner must be issued by the State Board of Parole and  
22 Post-Prison Supervision pursuant to rules adopted by the board.

23 (3) If, upon hearing all of the evidence, the board, upon a unanimous vote  
24 of all of its members, finds that the prisoner is capable of rehabilitation and  
25 that the terms of the prisoner's confinement should be changed to life  
26 imprisonment with the possibility of parole, release to post-prison super-  
27 vision or work release, it shall enter an order to that effect and the order  
28 shall convert the terms of the prisoner's confinement to life imprisonment  
29 with the possibility of parole, release to post-prison supervision or work re-  
30 lease and may set a release date. Otherwise the board shall deny the relief  
31 sought in the petition.

1 (4) If the board denies the relief sought in the petition, the board shall  
 2 determine the date of the subsequent hearing, and the prisoner may petition  
 3 for an interim hearing, in accordance with ORS 144.285.

4 (5) The board's final order shall be accompanied by findings of fact and  
 5 conclusions of law. The findings of fact shall consist of a concise statement  
 6 of the underlying facts supporting the findings as to each contested issue of  
 7 fact and as to each ultimate fact required to support the board's order.

8 **SECTION 2.** ORS 163.150 is amended to read:

9 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated  
 10 murder, the court[, *except as otherwise provided in subsection (3) of this sec-*  
 11 *tion,*] shall conduct a separate sentencing proceeding to determine whether  
 12 the defendant shall be sentenced to life imprisonment, as described in ORS  
 13 163.105 (1)(c)[,] **or** life imprisonment without the possibility of release or  
 14 parole, as described in ORS 163.105 (1)(b)[, *or death*]. The proceeding shall  
 15 be conducted in the trial court before the trial jury as soon as practicable.  
 16 If a juror for any reason is unable to perform the function of a juror, the  
 17 juror shall be dismissed from the sentencing proceeding. The court shall  
 18 cause to be drawn the name of one of the alternate jurors, who shall then  
 19 become a member of the jury for the sentencing proceeding notwithstanding  
 20 the fact that the alternate juror did not deliberate on the issue of guilt. The  
 21 substitution of an alternate juror shall be allowed only if the jury has not  
 22 begun to deliberate on the issue of the sentence.

23 (b) If the defendant has pleaded guilty, the sentencing proceeding shall  
 24 be conducted before a jury impaneled for that purpose. **If the defendant**  
 25 **waives all rights to a jury sentencing proceeding, the court shall con-**  
 26 **duct the sentencing proceeding as trier of fact.**

27 (c) In the **sentencing** proceeding, evidence may be presented as to any  
 28 matter that the court deems relevant to sentence including[, *but not limited*  
 29 *to,*] victim impact evidence relating to the personal characteristics of the  
 30 victim or the impact of the crime on the victim's family and any **other rel-**  
 31 **evant** aggravating or mitigating evidence. [*relevant to the issue in paragraph*

1 *(b)(D) of this subsection; however,*] Neither the state nor the defendant [*shall*  
2 *be allowed to*] **may** introduce repetitive evidence that has previously been  
3 offered and received during the trial on the issue of guilt. The court shall  
4 instruct the jury that all evidence previously offered and received may be  
5 considered for purposes of the sentencing hearing. [*This paragraph shall not*  
6 *be construed to authorize the introduction of any evidence secured in violation*  
7 *of the Constitution of the United States or of the State of Oregon.*] The state  
8 and the defendant or the counsel of the defendant shall be permitted to  
9 present arguments [*for or against a sentence of death and*] for or against a  
10 sentence of life imprisonment with or without the possibility of release or  
11 parole.

12 [*(b) Upon the conclusion of the presentation of the evidence, the court shall*  
13 *submit the following issues to the jury:*]

14 [*(A) Whether the conduct of the defendant that caused the death of the*  
15 *deceased was committed deliberately and with the reasonable expectation that*  
16 *death of the deceased or another would result;*]

17 [*(B) Whether there is a probability that the defendant would commit crim-*  
18 *inal acts of violence that would constitute a continuing threat to society;*]

19 [*(C) If raised by the evidence, whether the conduct of the defendant in*  
20 *killing the deceased was unreasonable in response to the provocation, if any,*  
21 *by the deceased; and*]

22 [*(D) Whether the defendant should receive a death sentence.*]

23 [*(c)(A) The court shall instruct the jury to consider, in determining the is-*  
24 *ssues in paragraph (b) of this subsection, any mitigating circumstances offered*  
25 *in evidence, including but not limited to the defendant's age, the extent and*  
26 *severity of the defendant's prior criminal conduct and the extent of the mental*  
27 *and emotional pressure under which the defendant was acting at the time the*  
28 *offense was committed.*]

29 [*(B) The court shall instruct the jury to answer the question in paragraph*  
30 *(b)(D) of this subsection "no" if, after considering any aggravating evidence*  
31 *and any mitigating evidence concerning any aspect of the defendant's character*

1 *or background, or any circumstances of the offense and any victim impact ev-*  
2 *idence as described in paragraph (a) of this subsection, one or more of the*  
3 *jurors believe that the defendant should not receive a death sentence.]*

4 *[(d) The state must prove each issue submitted under paragraph (b)(A) to*  
5 *(C) of this subsection beyond a reasonable doubt, and the jury shall return a*  
6 *special verdict of “yes” or “no” on each issue considered.]*

7 *[(e) The court shall charge the jury that it may not answer any issue*  
8 *“yes,” under paragraph (b) of this subsection unless it agrees unanimously.]*

9 *[(f) If the jury returns an affirmative finding on each issue considered un-*  
10 *der paragraph (b) of this subsection, the trial judge shall sentence the de-*  
11 *fendant to death.]*

12 *[(2)(a) Upon the conclusion of the presentation of the evidence, the court*  
13 *shall also instruct the jury that if it reaches a negative finding on any issue*  
14 *under subsection (1)(b) of this section, the trial court shall sentence the de-*  
15 *fendant to life imprisonment without the possibility of release or parole, as*  
16 *described in ORS 163.105 (1)(b), unless 10 or more members of the jury further*  
17 *find that there are sufficient mitigating circumstances to warrant life*  
18 *imprisonment, in which case the trial court shall sentence the defendant to life*  
19 *imprisonment as described in ORS 163.105 (1)(c).]*

20 *[(b) If the jury returns a negative finding on any issue under subsection*  
21 *(1)(b) of this section and further finds that there are sufficient mitigating cir-*  
22 *cumstances to warrant life imprisonment, the trial court shall sentence the*  
23 *defendant to life imprisonment in the custody of the Department of Corrections*  
24 *as provided in ORS 163.105 (1)(c).]*

25 *[(3)(a) When the defendant is found guilty of aggravated murder, and ORS*  
26 *137.707 (2) applies or the state advises the court on the record that the state*  
27 *declines to present evidence for purposes of sentencing the defendant to death,*  
28 *the court:]*

29 *[(A) Shall not conduct a sentencing proceeding as described in subsection*  
30 *(1) of this section, and a sentence of death shall not be ordered.]*

31 *[(B) Shall conduct a sentencing proceeding to determine whether the de-*

1 *defendant shall be sentenced to life imprisonment without the possibility of re-*  
2 *lease or parole as described in ORS 163.105 (1)(b) or life imprisonment as*  
3 *described in ORS 163.105 (1)(c). If the defendant waives all rights to a jury*  
4 *sentencing proceeding, the court shall conduct the sentencing proceeding as the*  
5 *trier of fact. The procedure for the sentencing proceeding, whether before a*  
6 *court or a jury, shall follow the procedure of subsection (1)(a) of this section,*  
7 *as modified by this subsection. In the proceeding, evidence may be presented*  
8 *as to any matter that the court deems relevant to sentence, including, but not*  
9 *limited to, victim impact evidence relating to the personal characteristics of the*  
10 *victim or the impact of the crime on the victim's family.]*

11 [(b)] **(d)** Following the presentation of evidence and argument under par-  
12 agraph [(a)] **(c)** of this subsection, the court shall instruct the jury that the  
13 trial court [*shall*] **is required to** sentence the defendant to life imprisonment  
14 without the possibility of release or parole as described in ORS 163.105 (1)(b),  
15 unless after considering all of the evidence submitted, 10 or more members  
16 of the jury find there are sufficient mitigating circumstances to warrant life  
17 imprisonment with the possibility of parole as described in ORS 163.105  
18 (1)(c). If 10 or more members of the jury find there are sufficient mitigating  
19 circumstances to warrant life imprisonment with the possibility of parole,  
20 the trial court shall sentence the defendant to life imprisonment as described  
21 in ORS 163.105 (1)(c).

22 [(c)] **(2) Notwithstanding subsection (1) of this section, the court**  
23 **may sentence** [*Nothing in this subsection shall preclude the court from sen-*  
24 *tencing*] the defendant to life imprisonment, as described in ORS 163.105  
25 (1)(c), or life imprisonment without the possibility of release or parole, as  
26 described in ORS 163.105 (1)(b), pursuant to a stipulation of sentence or  
27 stipulation of sentencing facts agreed to and offered by both parties, if the  
28 defendant waives all rights to a jury sentencing proceeding.

29 [(4)] **(3)** If any part of [*subsection (2) of*] this section is held invalid and,  
30 as a result [*thereof*], a defendant who has been sentenced to life  
31 imprisonment without possibility of release or parole will instead be sen-

1 tenced to life imprisonment in the custody of the Department of Corrections  
2 as provided in ORS 163.105 (2), the defendant shall be confined for a mini-  
3 mum of 30 years without possibility of parole, release on work release or any  
4 form of temporary leave or employment at a forest or work camp. [*Subsection*  
5 *(2) of this section shall apply only to trials commencing on or after July 19,*  
6 *1989.*]

7 [(5)] (4) Notwithstanding subsection (1)[(a)] of this section, if the trial  
8 court grants a mistrial during the sentencing proceeding, the trial court, at  
9 the election of the state, shall either:

10 (a) Sentence the defendant to imprisonment for life in the custody of the  
11 Department of Corrections as provided in ORS 163.105 (1)(c); or

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

14 [(A) *Death;*]

15 [(B)] (A) Imprisonment for life without the possibility of release or parole  
16 as provided in ORS 163.105 (1)(b); or

17 [(C)] (B) Imprisonment for life in the custody of the Department of Cor-  
18 rections as provided in ORS 163.105 (1)(c).

19 **SECTION 2a. Section 2b of this 2013 Act is added to and made a part**  
20 **of ORS chapter 163.**

21 **SECTION 2b. A person who is found guilty of murder or aggravated**  
22 **murder shall be actively engaged full-time in work as required by Ar-**  
23 **icle I, section 41, of the Oregon Constitution. Notwithstanding ORS**  
24 **421.437, the Department of Corrections shall first apply all compen-**  
25 **sation earned by the person in prison work programs, and all other**  
26 **money available in the person's inmate trust account, against any**  
27 **restitution, fine or other monetary obligation imposed in the judgment**  
28 **of conviction, and shall thereafter deposit those amounts in the**  
29 **Criminal Injuries Compensation Account.**

30 **SECTION 3. ORS 137.707 is amended to read:**

31 137.707. (1)(a) Notwithstanding any other provision of law, when a person

1 charged with aggravated murder, as defined in ORS 163.095, or an offense  
2 listed in subsection (4)[(a)] of this section is 15, 16 or 17 years of age at the  
3 time the offense is committed, [*and the offense is committed on or after April*  
4 *1, 1995, or when a person charged with an offense listed in subsection (4)(b)*  
5 *of this section is 15, 16 or 17 years of age at the time the offense is committed,*  
6 *and the offense is committed on or after October 4, 1997, or when a person*  
7 *charged with the offense described in subsection (4)(c) of this section is 15, 16*  
8 *or 17 years of age at the time the offense is committed and the offense is*  
9 *committed on or after January 1, 2008,*] the person shall be prosecuted as an  
10 adult in criminal court.

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

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

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

31 (4) The offenses to which this section applies and the presumptive sen-



1 tences are:

2



- 3 (a)(A) Murder, as defined in  
4 ORS 163.115.....300 months
- 5 (B) Attempt or conspiracy  
6 to commit aggravated  
7 murder, as defined  
8 in ORS 163.095.....120 months
- 9 (C) Attempt or conspiracy  
10 to commit murder, as  
11 defined in ORS 163.115. ....90 months
- 12 (D) Manslaughter in the  
13 first degree, as defined  
14 in ORS 163.118.....120 months
- 15 (E) Manslaughter in the  
16 second degree, as defined  
17 in ORS 163.125.....75 months
- 18 (F) Assault in the first  
19 degree, as defined  
20 in ORS 163.185.....90 months
- 21 (G) Assault in the second  
22 degree, as defined  
23 in ORS 163.175.....70 months
- 24 (H) Kidnapping in the first  
25 degree, as defined in  
26 ORS 163.235.....90 months
- 27 (I) Kidnapping in the second  
28 degree, as defined in  
29 ORS 163.225.....70 months
- 30 (J) Rape in the first degree,  
31 as defined in ORS 163.375....100 months

- 1 (K) Rape in the second
- 2 degree, as defined in
- 3 ORS 163.365.....75 months
- 4 (L) Sodomy in the first
- 5 degree, as defined in
- 6 ORS 163.405.....100 months
- 7 (M) Sodomy in the second
- 8 degree, as defined in
- 9 ORS 163.395.....75 months
- 10 (N) Unlawful sexual
- 11 penetration in the first
- 12 degree, as defined
- 13 in ORS 163.411.....100 months
- 14 (O) Unlawful sexual
- 15 penetration in the
- 16 second degree, as
- 17 defined in ORS 163.408. ....75 months
- 18 (P) Sexual abuse in the first
- 19 degree, as defined in
- 20 ORS 163.427.....75 months
- 21 (Q) Robbery in the first
- 22 degree, as defined in
- 23 ORS 164.415.....90 months
- 24 (R) Robbery in the second
- 25 degree, as defined in
- 26 ORS 164.405.....70 months
- 27 (b)(A) Arson in the first degree,
- 28 as defined in
- 29 ORS 164.325, when
- 30 the offense represented
- 31 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
- 8 (1)(a), (b) or (d). ....70 months
- 9 (c) Aggravated vehicular
- 10 homicide, as defined in
- 11 ORS 163.149. ....240 months

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

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

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

18 (A) But constitutes an offense for which waiver is authorized under ORS  
19 419C.349, the court, upon motion of the district attorney, shall hold a hearing  
20 to determine whether to retain jurisdiction or to transfer the case to juvenile  
21 court for disposition. In determining whether to retain jurisdiction, the court  
22 shall consider the criteria for waiver in ORS 419C.349. If the court retains  
23 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 (i) Order that a presentence report be prepared;

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

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

30 (B) And is not an offense for which waiver is authorized under ORS  
31 419C.349, the court may not 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  
3 that the court deems appropriate; and

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

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

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

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

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

31 (B) Set forth in a memorandum any observations and recommendations

1 that the court deems appropriate; and

2 (C) Enter an order transferring the case to the juvenile court for dispo-  
3 sition under ORS 419C.067 and 419C.411.

4 **SECTION 4.** ORS 144.122 is amended to read:

5 144.122. (1) After the initial parole release date has been set under ORS  
6 144.120 and after a minimum period of time established by the State Board  
7 of Parole and Post-Prison Supervision under subsection (2)(a) of this section,  
8 the prisoner may request that the parole release date be reset to an earlier  
9 date. The board may grant the request upon a determination by the board  
10 that continued incarceration is cruel and inhumane and that resetting the  
11 release date to an earlier date is not incompatible with the best interests of  
12 the prisoner and society and that the prisoner:

13 (a) Has demonstrated an extended course of conduct indicating outstand-  
14 ing reformation;

15 (b) Suffers from a severe medical condition including terminal illness; or

16 (c) Is elderly and is permanently incapacitated in such a manner that the  
17 prisoner is unable to move from place to place without the assistance of  
18 another person.

19 (2) The Advisory Commission on Prison Terms and Parole Standards may  
20 propose to the board and the board shall adopt rules:

21 (a) Establishing minimum periods of time to be served by prisoners before  
22 application may be made for a reset of release date under subsection (1) of  
23 this section;

24 (b) Detailing the criteria set forth under subsection (1) of this section for  
25 the resetting of a parole release date; and

26 (c) Establishing criteria for parole release plans for prisoners released  
27 under this section that, at a minimum, must insure appropriate supervision  
28 and services for the person released.

29 (3) The provisions of subsection (1)(b) of this section apply to prisoners  
30 sentenced in accordance with ORS 161.610.

31 (4) The provisions of this section do not apply to prisoners sentenced to

1 life imprisonment without the possibility of release or parole under ORS  
2 [138.012 or] 163.150.

3 **SECTION 5.** ORS 144.126 is amended to read:

4 144.126. (1) The State Board of Parole and Post-Prison Supervision may  
5 advance the release date of a prisoner who was sentenced in accordance with  
6 rules of the Oregon Criminal Justice Commission or ORS 161.610. The release  
7 date may be advanced if the board determines that continued incarceration  
8 is cruel and inhumane and that advancing the release date of the prisoner  
9 is not incompatible with the best interests of the prisoner and society and  
10 that the prisoner is:

11 (a) Suffering from a severe medical condition including terminal illness;  
12 or

13 (b) Elderly and permanently incapacitated in such a manner that the  
14 prisoner is unable to move from place to place without the assistance of  
15 another person.

16 (2) The board shall adopt rules establishing criteria for release plans for  
17 prisoners released under this section that, at a minimum, must insure ap-  
18 propriate supervision and services for the person released.

19 (3) The provisions of this section do not apply to prisoners sentenced to  
20 life imprisonment without the possibility of release or parole under ORS  
21 [138.012 or] 163.150.

22 **SECTION 6.** ORS 161.620 is amended to read:

23 161.620. Notwithstanding any other provision of law, a sentence imposed  
24 upon any person waived from the juvenile court under ORS 419C.349,  
25 419C.352, 419C.364 or 419C.370 [*shall*] **may** not include [*any sentence of death*  
26 *or*] **a sentence of** life imprisonment without the possibility of release or  
27 parole [*nor*] **or the** imposition of any mandatory minimum sentence, except  
28 that a mandatory minimum sentence under:

29 (1) ORS 163.105 (1)(c) shall be imposed; and

30 (2) ORS 161.610 may be imposed.

31 **SECTION 7.** ORS 138.500 is amended to read:

1 138.500. (1) If a defendant in a criminal action or a petitioner in a pro-  
2 ceeding pursuant to ORS 138.510 to 138.680 wishes to appeal from an  
3 appealable adverse final order or judgment of a circuit court and if the per-  
4 son is without funds to employ suitable counsel possessing skills and expe-  
5 rience commensurate with the nature and complexity of the case for the  
6 appeal, the person may request the circuit court from which the appeal is  
7 or would be taken to appoint counsel to represent the person on appeal. The  
8 following apply to a request under this subsection:

9 (a) The request shall be in writing and shall be made within the time  
10 during which an appeal may be taken or, if the notice of appeal has been  
11 filed, at any time thereafter. The request shall include a brief statement of  
12 the assets, liabilities and income in the previous year of the person unless  
13 the court already determined the person to be financially eligible for ap-  
14 pointed counsel at state expense for purposes of the specific case, in which  
15 instance, the written request need only so indicate. However, if a request  
16 relies on a court's previous determination that the person is financially eli-  
17 gible, the court, in its discretion, may require the person to submit a new  
18 statement of assets, liabilities and income.

19 (b) If, based upon a request under paragraph (a) of this subsection, the  
20 court finds that petitioner or defendant previously received the services of  
21 appointed counsel or currently is without funds to employ suitable counsel  
22 for an appeal, the court shall appoint counsel to represent petitioner or de-  
23 fendant on the appeal.

24 [(2)(a) *Notwithstanding subsection (1) of this section, when a defendant has*  
25 *been sentenced to death, the request for appointed counsel shall be made to the*  
26 *Supreme Court. The Supreme Court shall appoint suitable counsel to represent*  
27 *the defendant on the appeal.*]

28 [(b)] **(2)(a)** After the notice of appeal has been filed, the Court of Appeals  
29 has concurrent authority to appoint or substitute counsel or appoint or  
30 substitute a legal advisor for the defendant under ORS 138.504.

31 [(c)] **(b)** The Supreme Court has concurrent authority to appoint or sub-

1 stitute counsel or appoint or substitute a legal advisor for the defendant  
2 under ORS 138.504 in connection with review of a Court of Appeals decision  
3 under ORS 2.520.

4 [(d)] (c) Neither the Court of Appeals nor the Supreme Court may sub-  
5 stitute one appointed counsel for another under paragraph [(b) or (c)] (a) or  
6 (b) of this subsection except pursuant to the policies, procedures, standards  
7 and guidelines of the Public Defense Services Commission.

8 (3) Whenever a defendant in a criminal action or a petitioner in a pro-  
9 ceeding pursuant to ORS 138.510 to 138.680 has filed a notice of appeal from  
10 an appealable adverse final order or judgment of a circuit court and the  
11 person is without funds to pay for a transcript, or portion thereof, necessary  
12 to present adequately the case upon appeal, the person may request the  
13 public defense services executive director to have the transcript, or portion  
14 thereof, prepared for purposes of appeal. The following apply to a request  
15 under this subsection:

16 (a) The public defense services executive director shall authorize the  
17 preparation of a transcript after a court has determined that the person is  
18 eligible for court-appointed counsel or, if the person has not applied for  
19 court-appointed counsel, the person submits a statement of the person's as-  
20 sets, liabilities and income in the previous year and the director determines  
21 that the person is eligible for preparation of a transcript at state expense.

22 (b) The cost of the transcript preparation under paragraph (a) of this  
23 subsection shall be in the amount prescribed in ORS 21.345 and paid for as  
24 provided by the policies, procedures, standards and guidelines of the Public  
25 Defense Services Commission.

26 (4) After submission of the original brief by counsel, the public defense  
27 services executive director shall determine the cost of briefs and any other  
28 expenses of appellant, except transcripts, necessary to appellate review and  
29 a reasonable amount of compensation for counsel appointed under this sec-  
30 tion. Compensation payable to appointed counsel shall be as established  
31 under ORS 151.216. On any review by the Supreme Court of the judgment



1 of the Court of Appeals the public defense services executive director shall  
2 similarly determine the costs of briefs and any other expenses necessary for  
3 review and a reasonable amount of compensation for counsel appointed under  
4 this section.

5 (5) Costs, expenses and compensation determined by the public defense  
6 services executive director under subsection (4) of this section shall be paid  
7 by the public defense services executive director from funds available for  
8 that purpose.

9 (6) If the public defense services executive director denies, in whole or in  
10 part, costs, expenses and compensation submitted for review and payment,  
11 the person who submitted the payment request may appeal the decision to  
12 the Chief Judge of the Court of Appeals, if the appeal is in the Court of  
13 Appeals, or to the Chief Justice of the Supreme Court, if the appeal is in the  
14 Supreme Court. The Chief Judge, Chief Justice or the designee of the Chief  
15 Judge or Chief Justice, as appropriate, shall review the public defense ser-  
16 vices executive director's decision for abuse of discretion. The decision of the  
17 Chief Judge, the Chief Justice or the designee of the Chief Judge or Chief  
18 Justice is final.

19 (7) The provisions of this section shall apply in favor of the defendant in  
20 a criminal action or the petitioner in a proceeding pursuant to ORS 138.510  
21 to 138.680 when the person is respondent in an appeal taken by the state in  
22 a criminal action or by the defendant in a proceeding pursuant to ORS  
23 138.510 to 138.680.

24 (8) As used in this section, "criminal action" does not include an action  
25 that involves only violations.

26 (9) As used in subsection (4) of this section, "counsel" includes a legal  
27 advisor appointed under ORS 138.504.

28 **SECTION 8.** ORS 138.510 is amended to read:

29 138.510. (1) Except as otherwise provided in ORS 138.540, any person  
30 convicted of a crime under the laws of this state may file a petition for  
31 post-conviction relief pursuant to ORS 138.510 to 138.680.

1       [(2) *A petition for post-conviction relief may be filed by one person on behalf*  
2 *of another person who has been convicted of aggravated murder and sentenced*  
3 *to death only if the person filing the petition demonstrates by a preponderance*  
4 *of the evidence that:]*

5       [(a) *The person sentenced to death is unable to file a petition on the*  
6 *person's own behalf due to mental incapacity or because of a lack of access to*  
7 *the court; and]*

8       [(b) *The person filing the petition has a significant relationship with the*  
9 *person sentenced to death and will act in the best interest of the person on*  
10 *whose behalf the petition is being filed.]*

11       [(3)] **(2)** A petition pursuant to ORS 138.510 to 138.680 must be filed within  
12 two years of the following, unless the court on hearing a subsequent petition  
13 finds grounds for relief asserted which could not reasonably have been raised  
14 in the original or amended petition:

15       (a) If no appeal is taken, the date the judgment or order on the conviction  
16 was entered in the register.

17       (b) If an appeal is taken, the date the appeal is final in the Oregon ap-  
18 pellate courts.

19       (c) If a petition for certiorari to the United States Supreme Court is filed,  
20 the later of:

21       (A) The date of denial of certiorari, if the petition is denied; or

22       (B) The date of entry of a final state court judgment following remand  
23 from the United States Supreme Court.

24       [(4)] **(3)** A one-year filing period shall apply retroactively to petitions filed  
25 by persons whose convictions and appeals became final before August 5, 1989,  
26 and any such petitions must be filed within one year after November 4, 1993.  
27 A person whose post-conviction petition was dismissed prior to November 4,  
28 1993, cannot file another post-conviction petition involving the same case.

29       [(5)] **(4)** The remedy created by ORS 138.510 to 138.680 is available to  
30 persons convicted before May 26, 1959.

31       [(6)] **(5)** In any post-conviction proceeding pending in the courts of this

1 state on May 26, 1959, the person seeking relief in such proceedings shall  
2 be allowed to amend the action and seek relief under ORS 138.510 to 138.680.  
3 If such person does not choose to amend the action in this manner, the law  
4 existing prior to May 26, 1959, shall govern the case.

5 **SECTION 9.** ORS 138.590 is amended to read:

6 138.590. (1) Any petitioner who is unable to pay the expenses of a pro-  
7 ceeding pursuant to ORS 138.510 to 138.680 or to employ suitable counsel  
8 possessing skills and experience commensurate with the nature of the con-  
9 viction and complexity of the case for the proceeding may proceed as a fi-  
10 nancially eligible person pursuant to this section upon order of the circuit  
11 court in which the petition is filed.

12 (2) If the petitioner wishes to proceed as a financially eligible person, the  
13 person shall file with the petition an affidavit stating inability to pay the  
14 expenses of a proceeding pursuant to ORS 138.510 to 138.680, including, but  
15 not limited to, the filing fee required by ORS 138.560, or to employ suitable  
16 counsel for such a proceeding. The affidavit shall contain a brief statement  
17 of the petitioner's assets and liabilities and income during the previous year.  
18 If the circuit court is satisfied that the petitioner is unable to pay such ex-  
19 penses or to employ suitable counsel, it shall order that the petitioner pro-  
20 ceed as a financially eligible person. *[If the court finds that a petitioner who*  
21 *has been sentenced to death is not competent to decide whether to accept or*  
22 *reject the appointment of counsel, the court shall appoint counsel to represent*  
23 *the petitioner. However,]* When a circuit court orders petitioner's case trans-  
24 ferred to another circuit court as provided in ORS 138.560 (4), the matter of  
25 petitioner's proceeding as a financially eligible person shall be determined  
26 by the latter court.

27 *[(3) If a petitioner who has been sentenced to death qualifies for the ap-*  
28 *pointment of counsel under this section but rejects the appointment, the court*  
29 *shall determine, after a hearing if necessary, whether the petitioner rejected the*  
30 *offer of counsel and made the decision with an understanding of its legal*  
31 *consequences. The court shall make appropriate findings on the record.]*

1        [(4)] **(3)** In the order to proceed as a financially eligible person, the circuit  
2 court shall appoint suitable counsel to represent petitioner. Counsel so ap-  
3 pointed shall represent petitioner throughout the proceedings in the circuit  
4 court. The court may not substitute one appointed counsel for another except  
5 pursuant to the policies, procedures, standards and guidelines of the Public  
6 Defense Services Commission.

7        [(5)] **(4)** If counsel appointed by the circuit court determines that the pe-  
8 tition as filed by petitioner is defective, either in form or in substance, or  
9 both, counsel may move to amend the petition within 15 days following  
10 counsel's appointment, or within a further period as the court may allow.  
11 The amendment shall be permitted as of right at any time during this period.  
12 If appointed counsel believes that the original petition cannot be construed  
13 to state a ground for relief under ORS 138.510 to 138.680, and cannot be  
14 amended to state a ground for relief, counsel shall, in lieu of moving to  
15 amend the petition, inform the petitioner and notify the circuit court of  
16 counsel's belief by filing an affidavit stating the belief and the reasons  
17 therefor with the clerk of the circuit court. This affidavit does not constitute  
18 a ground for denying the petition prior to a hearing upon its sufficiency, but  
19 the circuit court may consider the affidavit in deciding upon the sufficiency  
20 of the petition at the hearing.

21        [(6)] **(5)** When a petitioner has been ordered to proceed as a financially  
22 eligible person, the expenses which are necessary for the proceedings upon  
23 the petition in the circuit court and the compensation to appointed counsel  
24 for petitioner as provided in this subsection shall be paid by the public de-  
25 fense services executive director from funds available for the purpose. At the  
26 conclusion of proceedings on a petition pursuant to ORS 138.510 to 138.680,  
27 the public defense services executive director shall determine and pay, as  
28 provided by the policies, procedures, standards and guidelines of the Public  
29 Defense Services Commission, the amount of expenses of petitioner and  
30 compensation for the services of appointed counsel in the proceedings in the  
31 circuit court.

1 [(7)] (6) If the public defense services executive director denies, in whole  
2 or in part, expenses and compensation submitted for review and payment, the  
3 person who submitted the payment request may appeal the decision to the  
4 presiding judge of the circuit court. The presiding judge or the designee of  
5 the presiding judge shall review the public defense services executive  
6 director's decision for abuse of discretion. The decision of the presiding judge  
7 or the designee of the presiding judge is final.

8 [(8)(a)] (7)(a) When a petitioner has been authorized to proceed as a fi-  
9 nancially eligible person, all court fees in the circuit court, except for the  
10 filing fee required by ORS 138.560, are waived.

11 (b) When a petitioner is allowed to file a petition without payment of the  
12 fee required by ORS 138.560 due to inability to pay, the fee is not waived but  
13 may be drawn from, or charged against, the petitioner's trust account if the  
14 petitioner is an inmate in a correctional facility.

15 [(9) *Notwithstanding any other provision of this chapter, a court may not*  
16 *appoint as counsel for a petitioner who has been sentenced to death a counsel*  
17 *who previously represented the petitioner at trial or on automatic and direct*  
18 *review in the case resulting in the death sentence unless the petitioner and the*  
19 *counsel expressly request continued representation.*]

20 **SECTION 10.** ORS 40.015 is amended to read:

21 40.015. (1) The Oregon Evidence Code applies to all courts in this state  
22 except for:

23 (a) A hearing or mediation before a magistrate of the Oregon Tax Court  
24 as provided by ORS 305.501;

25 (b) The small claims department of a circuit court as provided by ORS  
26 46.415; and

27 (c) The small claims department of a justice court as provided by ORS  
28 55.080.

29 (2) The Oregon Evidence Code applies generally to civil actions, suits and  
30 proceedings, criminal actions and proceedings and to contempt proceedings  
31 except those in which the court may act summarily.

1 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all  
2 actions, suits and proceedings.

3 (4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following  
4 situations:

5 (a) The determination of questions of fact preliminary to admissibility of  
6 evidence when the issue is to be determined by the court under ORS 40.030.

7 (b) Proceedings before grand juries, except as required by ORS 132.320.

8 (c) Proceedings for extradition, except as required by ORS 133.743 to  
9 133.857.

10 (d) Sentencing proceedings, except proceedings under ORS [138.012 and]  
11 163.150, as required by ORS 137.090 or proceedings under ORS 136.765 to  
12 136.785.

13 (e) Proceedings to revoke probation, except as required by ORS 137.090.

14 (f) Issuance of warrants of arrest, bench warrants or search warrants.

15 (g) Proceedings under ORS chapter 135 relating to conditional release,  
16 security release, release on personal recognizance, or preliminary hearings,  
17 subject to ORS 135.173.

18 (h) Proceedings to determine proper disposition of a child in accordance  
19 with ORS 419B.325 (2) and 419C.400 (4).

20 (i) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and  
21 813.255 to determine whether a driving while under the influence of  
22 intoxicants diversion agreement should be allowed or terminated.

23 (j) Proceedings under ORS 147.530 relating to victims' rights, except for  
24 the provisions of ORS 40.105 and 40.115.

25 **SECTION 11.** ORS 137.635 is amended to read:

26 137.635. (1) When, in the case of a felony described in subsection (2) of  
27 this section, a court sentences a convicted defendant who has previously  
28 been convicted of any felony designated in subsection (2) of this section, the  
29 sentence shall not be an indeterminate sentence to which the defendant  
30 otherwise would be subject under ORS 137.120, but[, *unless it imposes a death*  
31 *penalty under ORS 163.105,*] the court shall impose a determinate sentence,

1 the length of which the court shall determine, to the custody of the Depart-  
2 ment of Corrections. Any mandatory minimum sentence otherwise provided  
3 by law shall apply. The sentence shall not exceed the maximum sentence  
4 otherwise provided by law in such cases. The convicted defendant who is  
5 subject to this section shall not be eligible for probation. The convicted de-  
6 fendant shall serve the entire sentence imposed by the court and shall not,  
7 during the service of such a sentence, be eligible for parole or any form of  
8 temporary leave from custody. The person shall not be eligible for any re-  
9 duction in sentence pursuant to ORS 421.120 or for any reduction in term  
10 of incarceration pursuant to ORS 421.121.

11 (2) Felonies to which subsection (1) of this section applies include and  
12 are limited to:

13 (a) Murder, as defined in ORS 163.115, and any aggravated form thereof.

14 (b) Manslaughter in the first degree, as defined in ORS 163.118.

15 (c) Assault in the first degree, as defined in ORS 163.185.

16 (d) Kidnapping in the first degree, as defined in ORS 163.235.

17 (e) Rape in the first degree, as defined in ORS 163.375.

18 (f) Sodomy in the first degree, as defined in ORS 163.405.

19 (g) Unlawful sexual penetration in the first degree, as defined in ORS  
20 163.411.

21 (h) Burglary in the first degree, as defined in ORS 164.225.

22 (i) Arson in the first degree, as defined in ORS 164.325.

23 (j) Robbery in the first degree, as defined in ORS 164.415.

24 (3) When the court imposes a sentence under this section, the court shall  
25 indicate in the judgment that the defendant is subject to this section.

26 **SECTION 12.** ORS 421.084 is amended to read:

27 421.084. (1) The Administrator of Correctional Education shall administer  
28 an adult basic skills development program for all individuals in the custody  
29 of the Department of Corrections. The program shall:

30 (a) Test individuals for basic reading and mathematics skills or, for indi-  
31 viduals with limited English language proficiency, English speaking skills.

1 Testing for basic intelligence, learning disabilities, developmental disabilities  
2 and adaptive behavior skills shall be administered as needed except that the  
3 administrator may accept equivalent test results from other sources.

4 (b) Except as provided in subsection (2) of this section, be mandatory for  
5 all individuals testing below a 8.0 grade equivalency on a standardized  
6 reading test approved by the National Reporting System for Adult Education  
7 of the United States Department of Education and by the Adult Basic Skills  
8 Program of the Department of Community Colleges and Workforce Develop-  
9 ment.

10 (c) Provide progress testing and certification.

11 (d) Provide strong incentives for entering the program and for achieving  
12 the minimum reading level and, for those individuals with demonstrated  
13 ability, provide incentives for making progress toward earning a General  
14 Educational Development (GED) certificate.

15 (e) Maintain records of an individual's achievement in the program and  
16 make those records available to the State Board of Parole and Post-Prison  
17 Supervision.

18 (2) Testing for basic skills and participation in the adult basic skills de-  
19 velopment program are not required for inmates:

20 (a) Sentenced to or otherwise confined by the department for less than  
21 one year;

22 (b) Sentenced to life imprisonment without parole;

23 [(c) *Sentenced to death;*]

24 [(d)] (c) With developmental disabilities; or

25 [(e)] (d) Who are specifically exempted by the Department of Corrections  
26 for security or health reasons.

27 **SECTION 13.** ORS 135.045 is amended to read:

28 135.045. (1)(a) If the defendant in a criminal action appears without  
29 counsel at arraignment or thereafter, the court shall determine whether the  
30 defendant wishes to be represented by counsel.

31 (b) If the defendant does wish to be represented by counsel, the court, in



1 accordance with ORS 135.050, shall appoint counsel to represent the defend-  
2 ant.

3 (c) If the defendant wishes to waive counsel[,] **and** the court [*shall de-*  
4 *termine whether*] **determines that** the defendant has made a knowing and  
5 voluntary waiver of counsel[.], the court shall accept the waiver [*of counsel*  
6 *if the defendant is not charged with a capital offense. The court may decline*  
7 *to accept the waiver of counsel if the defendant is charged with a capital of-*  
8 *fense*].

9 (d) If the court accepts a defendant's waiver of counsel, the court may  
10 allow an attorney to serve as the defendant's legal advisor and may, in ac-  
11 cordance with ORS 135.050, appoint an attorney as the defendant's legal ad-  
12 visor.

13 (2) Appointment of counsel, including a legal advisor, under this section  
14 is subject to ORS 135.050, 135.055 and 151.485 to 151.497.

15 **SECTION 14.** ORS 136.230 is amended to read:

16 136.230. (1) If the trial is upon an accusatory instrument in which one or  
17 more of the crimes charged is punishable with imprisonment in a Department  
18 of Corrections institution for life [*or is a capital offense*], both the defendant  
19 and the state are entitled to 12 peremptory challenges, and no more. In any  
20 trial before more than six jurors, both are entitled to six. In any trial before  
21 six jurors, both are entitled to three.

22 (2) Peremptory challenges shall be taken in writing by secret ballot as  
23 follows:

24 (a) The defendant may challenge two jurors and the state may challenge  
25 two, and so alternating, the defendant exercising two challenges and the  
26 state two until the peremptory challenges are exhausted.

27 (b) After each challenge the panel shall be filled and the additional juror  
28 passed for cause before another peremptory challenge is exercised. Neither  
29 party shall be required to exercise a peremptory challenge unless the full  
30 number of jurors is in the jury box at the time.

31 (c) The refusal to challenge by either party in order of alternation does

1 not prevent the adverse party from exercising that adverse party's full num-  
2 ber of challenges, and such refusal on the part of a party to exercise a  
3 challenge in proper turn concludes that party as to the jurors once accepted  
4 by that party. If that party's right of peremptory challenge is not exhausted,  
5 that party's further challenges shall be confined, in that party's proper turn,  
6 to such additional jurors as may be called.

7 (3) Notwithstanding subsection (2) of this section, the defendant and the  
8 state may stipulate to taking peremptory challenges orally.

9 (4) Peremptory challenges are subject to ORCP 57 D(4).

10 **SECTION 15.** ORS 138.504 is amended to read:

11 138.504. (1) If the defendant wishes to waive counsel in the appeal of a  
12 criminal action to the Court of Appeals or on review of a criminal action  
13 by the Supreme Court[,] **and** the court [*shall determine whether*] **determines**  
14 **that** the defendant has made a knowing and voluntary waiver of counsel[.],  
15 the court shall accept the waiver [*of counsel if the defendant is not charged*  
16 *with a capital offense. The court may decline to accept the waiver of counsel*  
17 *if the defendant is charged with a capital offense*].

18 (2) If the court accepts a defendant's waiver of counsel, the court may  
19 allow an attorney to serve as the defendant's legal advisor and, if the de-  
20 fendant is financially eligible for appointed counsel at state expense, may  
21 appoint an attorney as the defendant's legal advisor.

22 (3) If the court declines to accept a defendant's waiver of counsel under  
23 subsection (1) of this section, the court shall give the defendant a reasonable  
24 opportunity, as prescribed by order or rule of the court, to file a brief on the  
25 defendant's own behalf.

26 **SECTION 16.** ORS 146.003 is amended to read:

27 146.003. As used in ORS 146.003 to 146.189 and 146.710 to 146.992, unless  
28 the context requires otherwise:

29 (1) "Approved laboratory" means a laboratory approved by the State  
30 Medical Examiner as competent to perform the blood sample analysis re-  
31 quired by ORS 146.113 (2).

1 (2) “Assistant district medical examiner” means a physician appointed by  
2 the district medical examiner to investigate and certify deaths within a  
3 county or district.

4 (3) “Cause of death” means the primary or basic disease process or injury  
5 ending life.

6 (4) “Death requiring investigation” means the death of a person occurring  
7 in any one of the circumstances set forth in ORS 146.090.

8 (5) “Deputy medical examiner” means a person appointed by the district  
9 medical examiner to assist in the investigation of deaths within a county.

10 (6) “District medical examiner” means a physician appointed by the State  
11 Medical Examiner to investigate and certify deaths within a county or dis-  
12 trict, including a Deputy State Medical Examiner.

13 (7) “Law enforcement agency” means a county sheriff’s office, municipal  
14 police department, police department established by a university under ORS  
15 352.383 and the Oregon State Police.

16 (8) “Legal intervention” includes [*an execution pursuant to ORS 137.463,*  
17 *137.467 and 137.473 and other*] **the** legal use of force resulting in death.

18 (9) “Manner of death” means the designation of the probable mode of  
19 production of the cause of death, including natural, accidental, suicidal,  
20 homicidal, legal intervention or undetermined.

21 (10) “Medical examiner” means a physician appointed as provided by ORS  
22 146.003 to 146.189 to investigate and certify the cause and manner of deaths  
23 requiring investigation, including the State Medical Examiner.

24 (11) “Pathologist” means a physician holding a current license to practice  
25 medicine and surgery and who is eligible for certification by the American  
26 Board of Pathology.

27 (12) “Unidentified human remains” does not include human remains that  
28 are unidentified human remains that are part of an archaeological site or  
29 suspected of being Native American and covered under ORS chapters 97 and  
30 390 and ORS 358.905 to 358.961.

31 **SECTION 17.** ORS 163.155 is amended to read:

1 163.155. (1) When a defendant, who was at least 15 years of age at the  
2 time of committing the murder, is convicted of murdering a pregnant victim  
3 under ORS 163.115 (1)(a) and the defendant knew that the victim was preg-  
4 nant, the defendant shall be sentenced to life imprisonment without the  
5 possibility of release or parole or to life imprisonment. The court shall con-  
6 duct a sentencing proceeding to determine whether the defendant shall be  
7 sentenced to life imprisonment without the possibility of release or parole  
8 as described in subsection (4) of this section or to life imprisonment as de-  
9 scribed in subsection (5) of this section. If the defendant waives all rights  
10 to a jury sentencing proceeding, the court shall conduct the sentencing pro-  
11 ceeding as the trier of fact. The procedure for the sentencing proceeding,  
12 whether before a court or a jury, shall follow the procedure of ORS 163.150  
13 (1)(a) **to (c)**, as modified by this section.

14 (2) Following the presentation of evidence and argument under subsection  
15 (1) of this section, the court shall instruct the jury that the trial court shall  
16 sentence the defendant to life imprisonment without the possibility of release  
17 or parole as described in subsection (4) of this section, unless after consid-  
18 ering all of the evidence submitted, 10 or more members of the jury find  
19 there are sufficient mitigating circumstances to warrant life imprisonment  
20 with the possibility of release or parole as described in subsection (5) of this  
21 section. If 10 or more members of the jury do not find there are sufficient  
22 mitigating circumstances to warrant life imprisonment with the possibility  
23 of release or parole, the trial court shall sentence the defendant to life  
24 imprisonment without the possibility of release or parole as described in  
25 subsection (4) of this section. If 10 or more members of the jury find there  
26 are sufficient mitigating circumstances to warrant life imprisonment with  
27 the possibility of release or parole, the trial court shall sentence the de-  
28 fendant to life imprisonment as described in subsection (5) of this section.

29 (3) Nothing in this section precludes the court from sentencing the de-  
30 fendant to life imprisonment, as described in subsection (5) of this section,  
31 or life imprisonment without the possibility of release or parole, as described

1 in subsection (4) of this section, pursuant to a stipulation of sentence or  
2 stipulation of sentencing facts agreed to and offered by both parties if the  
3 defendant waives all rights to a jury sentencing proceeding.

4 (4) A sentence of life imprisonment without the possibility of release or  
5 parole under this section may not be suspended, deferred or commuted by any  
6 judicial officer, and the State Board of Parole and Post-Prison Supervision  
7 may neither parole the prisoner nor reduce the period of confinement in any  
8 manner whatsoever. The Department of Corrections or any executive official  
9 may not permit the prisoner to participate in any sort of release or furlough  
10 program.

11 (5) If the defendant is sentenced to life imprisonment, the court shall or-  
12 der that the defendant be confined for a minimum of 30 years without pos-  
13 sibility of parole, release to post-prison supervision, release on work release  
14 or any form of temporary leave or employment at a forest or work camp.

15 (6) At any time after completion of the minimum period of confinement  
16 pursuant to subsection (5) of this section, the board, upon the petition of a  
17 prisoner so confined, shall hold a hearing to determine if the prisoner is  
18 likely to be rehabilitated within a reasonable period of time. The sole issue  
19 shall be whether the prisoner is likely to be rehabilitated within a reason-  
20 able period of time. The proceeding shall be conducted in the manner pre-  
21 scribed for a contested case hearing under ORS chapter 183, except that:

22 (a) The prisoner has the burden of proving by a preponderance of the  
23 evidence the likelihood of rehabilitation within a reasonable period of time;

24 (b) The prisoner has the right, if the prisoner is without sufficient funds  
25 to employ an attorney, to be represented by legal counsel, appointed by the  
26 board, at board expense; and

27 (c) The prisoner has the right to a subpoena upon a showing of the gen-  
28 eral relevance and reasonable scope of the evidence sought, provided that  
29 any subpoena issued on behalf of the prisoner must be issued by the board  
30 pursuant to rules adopted by the board.

31 (7) If, upon hearing all of the evidence, the board, upon a unanimous vote

1 of all of its members, finds that the prisoner is capable of rehabilitation and  
2 that the terms of the prisoner's confinement should be changed to life  
3 imprisonment with the possibility of parole, release on post-prison super-  
4 vision or work release, it shall enter an order to that effect and the order  
5 shall convert the terms of the prisoner's confinement to life imprisonment  
6 with the possibility of parole, release on post-prison supervision or work re-  
7 lease and may set a release date. Otherwise the board shall deny the relief  
8 sought in the petition.

9 (8) Not less than two years after the denial of the relief sought in a pe-  
10 tition under this section, the prisoner may petition again for a change in the  
11 terms of confinement. Further petitions for a change may be filed at inter-  
12 vals of not less than two years thereafter.

13 **SECTION 18.** ORS 475.188 is amended to read:

14 475.188. (1) Prescription drug orders may be transmitted by electronic  
15 means from a practitioner authorized to prescribe drugs directly to the dis-  
16 pensing pharmacist.

17 (2) All prescription drug orders communicated by way of electronic  
18 transmission shall:

19 (a) Be transmitted only by an authorized practitioner;

20 (b) Be transmitted directly to a pharmacist in a pharmacy of the patient's  
21 choice with no intervening person having access to the prescription drug  
22 order;

23 (c) Specify the prescribing practitioner's telephone number for verbal  
24 confirmation, the time and date of transmission, the identity of the pharmacy  
25 intended to receive the transmission and all other information required for  
26 a prescription by federal or state law; and

27 (d) Be traceable to the prescribing practitioner by an electronic signature  
28 or other secure method of validation.

29 (3) An electronic transmission of a prescription drug order shall be stored  
30 by electronic means or reduced promptly to writing, filed by the pharmacy  
31 and retained in conformity with the requirements of ORS 475.165.

1 (4) The dispensing pharmacist shall exercise professional judgment re-  
2 garding the accuracy, validity and authenticity of an electronically trans-  
3 mitted prescription drug order.

4 (5) All equipment for transmission, storage or receipt of electronically  
5 transmitted prescription drug orders shall be maintained to protect against  
6 unauthorized access.

7 (6) A pharmacist, pharmacy or pharmacy department shall not enter into  
8 an agreement with a practitioner or health care facility concerning the pro-  
9 vision of any electronic transmission equipment or apparatus that would  
10 adversely affect a patient's freedom to select the pharmacy or pharmacy de-  
11 partment of the patient's choice.

12 (7) A pharmacist, pharmacy or pharmacy department shall not provide any  
13 electronic equipment or apparatus to a practitioner or health care facility  
14 for the purpose of providing an incentive to the practitioner or health care  
15 facility to refer patients to a particular pharmacy or pharmacy department.

16 (8) There shall be no additional charge to the patient because the pre-  
17 scription drug order was electronically transmitted.

18 (9) Nothing in this section shall be construed as authorizing the elec-  
19 tronic transmission of a prescription drug order when a written prescription  
20 is required under ORS 127.815, [137.473,] 169.750, 453.025 or 475.185 (1).

21 **SECTION 19.** ORS 144.110 is amended to read:

22 144.110. (1) In any felony case, the court may impose a minimum term of  
23 imprisonment of up to one-half of the sentence it imposes.

24 (2) Notwithstanding the provisions of ORS 144.120 and 144.780:

25 (a) The State Board of Parole and Post-Prison Supervision [*shall*] **may**  
26 not release a prisoner on parole who has been sentenced under subsection  
27 (1) of this section until the minimum term has been served, except upon af-  
28 firmative vote of a majority of the members of the board.

29 (b) The board [*shall*] **may** not release a prisoner on parole:

30 (A) Who has been convicted of murder defined as aggravated murder un-  
31 der the provisions of ORS 163.095, except as provided in ORS 163.105; or

1 (B) Who has been convicted of murder under the provisions of ORS  
2 163.115, except as provided in ORS 163.115 (5)(c) to (f) or 163.155.

3 **SECTION 20.** If a sentencing court has, before the effective date of  
4 this 2013 Act, imposed a sentence of death that has not been executed,  
5 the court shall, after providing notice to the defendant, the district  
6 attorney and the victim as defined in ORS 131.007, hold a hearing to  
7 vacate the sentence of death. Notwithstanding any other provision  
8 of law, the court shall sentence the person to life imprisonment with-  
9 out the possibility of release or parole as described in ORS 163.105  
10 (1)(b).

11 **SECTION 21.** ORS 137.463, 137.464, 137.466, 137.467, 137.473, 137.476,  
12 137.478, 137.482, 138.012 and 138.686 are repealed.

13 **SECTION 22.** This 2013 Act does not take effect unless the amend-  
14 ment to the Oregon Constitution proposed by \_\_\_\_\_ Joint Resolution  
15 \_\_\_\_\_ (2013) (LC 2488) is approved by the people at the next regular  
16 general election held throughout this state. This 2013 Act takes effect  
17 on the effective date of that constitutional amendment.

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