

# Senate Bill 682

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

## 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**.

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, 136.230, 137.635, 137.707,  
3 138.500, 138.504, 138.510, 138.590, 144.110, 144.122, 144.126, 146.003, 161.620, 163.105, 163.150,  
4 163.155, 421.084 and 475.188; repealing ORS 137.463, 137.464, 137.466, 137.467, 137.473, 137.476,  
5 137.478, 137.482, 138.012 and 138.686; and prescribing an effective date.

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

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

8 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

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

12 (b) A person sentenced to life imprisonment without the possibility of release or parole under  
13 this section [*shall*] **may** not have that sentence suspended, deferred or commuted by any judicial  
14 officer, and the State Board of Parole and Post-Prison Supervision may not parole the prisoner  
15 [*nor*] **or** reduce the period of confinement in any manner whatsoever. The Department of Corrections  
16 or any executive official may not permit the prisoner to participate in any sort of release or  
17 furlough program.

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

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

26 (a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation  
27 within a reasonable period of time;

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

30 (c) The right to a subpoena upon a showing of the general relevance and reasonable scope of

**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 the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by  
2 the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

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

10 (4) If the board denies the relief sought in the petition, the board shall determine the date of the  
11 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS  
12 144.285.

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

16 **SECTION 2.** 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 pro-  
19 ceeding to determine whether the defendant shall be sentenced to life imprisonment, as described in  
20 ORS 163.105 (1)(c)[,] **or** life imprisonment without the possibility of release or parole, as described  
21 in 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.

28 (b) If the defendant has pleaded guilty, the sentencing proceeding shall be conducted before a  
29 jury impaneled for that purpose. **If the defendant waives all rights to a jury sentencing pro-**  
30 **ceeding, the court shall conduct the sentencing proceeding as trier of fact.**

31 (c) In the **sentencing** proceeding, evidence may be presented as to any matter that the court  
32 deems relevant to sentence including[, *but not limited to,*] victim impact evidence relating to the  
33 personal characteristics of the victim or the impact of the crime on the victim's family and any  
34 **other relevant** aggravating or mitigating evidence. [*relevant to the issue in paragraph (b)(D) of this*  
35 *subsection; however,*] Neither the state nor the defendant [*shall be allowed to*] **may** introduce repet-  
36 itive evidence that has previously been offered and received during the trial on the issue of guilt.  
37 The court shall instruct the jury that all evidence previously offered and received may be considered  
38 for purposes of the sentencing hearing. [*This paragraph shall not be construed to authorize the in-*  
39 *troduction of any evidence secured in violation of the Constitution of the United States or of the State*  
40 *of Oregon.*] The state and the defendant or the counsel of the defendant shall be permitted to present  
41 arguments [*for or against a sentence of death and*] for or against a sentence of life imprisonment with  
42 or without the possibility of release or parole.

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

45 [(A) Whether the conduct of the defendant that caused the death of the deceased was committed

1 *deliberately and with the reasonable expectation that death of the deceased or another would result;]*

2 *[(B) Whether there is a probability that the defendant would commit criminal acts of violence that*  
3 *would constitute a continuing threat to society;]*

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

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

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

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

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

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

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

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

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

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

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

39 *[(B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sentenced*  
40 *to life imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b) or*  
41 *life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to a jury sen-*  
42 *tencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure*  
43 *for the sentencing proceeding, whether before a court or a jury, shall follow the procedure of subsection*  
44 *(1)(a) of this section, as modified by this subsection. In the proceeding, evidence may be presented as*  
45 *to any matter that the court deems relevant to sentence, including, but not limited to, victim impact*

1 *evidence relating to the personal characteristics of the victim or the impact of the crime on the victim's*  
 2 *family.]*

3 [(b)] (d) Following the presentation of evidence and argument under paragraph [(a)] (c) of this  
 4 subsection, the court shall instruct the jury that the trial court [shall] **is required to** sentence the  
 5 defendant to life imprisonment without the possibility of release or parole as described in ORS  
 6 163.105 (1)(b), unless after considering all of the evidence submitted, 10 or more members of the jury  
 7 find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility  
 8 of parole as described in ORS 163.105 (1)(c). If 10 or more members of the jury find there are suffi-  
 9 cient mitigating circumstances to warrant life imprisonment with the possibility of parole, the trial  
 10 court shall sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

11 [(c)] (2) **Notwithstanding subsection (1) of this section, the court may sentence** [Nothing  
 12 *in this subsection shall preclude the court from sentencing*] the defendant to life imprisonment, as  
 13 described in ORS 163.105 (1)(c), or life imprisonment without the possibility of release or parole, as  
 14 described in ORS 163.105 (1)(b), pursuant to a stipulation of sentence or stipulation of sentencing  
 15 facts agreed to and offered by both parties, if the defendant waives all rights to a jury sentencing  
 16 proceeding.

17 [(4)] (3) If any part of [subsection (2) of] this section is held invalid and, as a result [thereof], a  
 18 defendant who has been sentenced to life imprisonment without possibility of release or parole will  
 19 instead be sentenced to life imprisonment in the custody of the Department of Corrections as pro-  
 20 vided in ORS 163.105 (2), the defendant shall be confined for a minimum of 30 years without possi-  
 21 bility of parole, release on work release or any form of temporary leave or employment at a forest  
 22 or work camp. [Subsection (2) of this section shall apply only to trials commencing on or after July  
 23 19, 1989.]

24 [(5)] (4) Notwithstanding subsection (1)[(a)] of this section, if the trial court grants a mistrial  
 25 during the sentencing proceeding, the trial court, at the election of the state, shall either:

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

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

30 [(A) *Death;*]

31 [(B)] (A) Imprisonment for life without the possibility of release or parole as provided in ORS  
 32 163.105 (1)(b); or

33 [(C)] (B) Imprisonment for life in the custody of the Department of Corrections as provided in  
 34 ORS 163.105 (1)(c).

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

36 **SECTION 2b. A person who is found guilty of murder or aggravated murder shall be ac-**  
 37 **tively engaged full-time in work as required by Article I, section 41, of the Oregon Consti-**  
 38 **tution. Notwithstanding ORS 421.437, the Department of Corrections shall first apply all**  
 39 **compensation earned by the person in prison work programs, and all other money available**  
 40 **in the person's inmate trust account, against any restitution, fine or other monetary obli-**  
 41 **gation imposed in the judgment of conviction, and shall thereafter deposit those amounts in**  
 42 **the Criminal Injuries Compensation Account.**

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

44 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-  
 45 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)[(a)] of this section is

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

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

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

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

23 (4) The offenses to which this section applies and the presumptive sentences are:  
 24

- 
- 25
- 26 (a)(A) Murder, as defined in
    - 27 ORS 163.115 .....300 months
  - 28 (B) Attempt or conspiracy
    - 29 to commit aggravated
    - 30 murder, as defined
    - 31 in ORS 163.095 .....120 months
  - 32 (C) Attempt or conspiracy
    - 33 to commit murder, as
    - 34 defined in ORS 163.115 .....90 months
  - 35 (D) Manslaughter in the
    - 36 first degree, as defined
    - 37 in ORS 163.118 .....120 months
  - 38 (E) Manslaughter in the
    - 39 second degree, as defined
    - 40 in ORS 163.125 .....75 months
  - 41 (F) Assault in the first
    - 42 degree, as defined
    - 43 in ORS 163.185 .....90 months
  - 44 (G) Assault in the second
    - 45 degree, as defined

1 in ORS 163.175.....70 months

2 (H) Kidnapping in the first

3 degree, as defined in

4 ORS 163.235.....90 months

5 (I) Kidnapping in the second

6 degree, as defined in

7 ORS 163.225.....70 months

8 (J) Rape in the first degree,

9 as defined in ORS 163.375....100 months

10 (K) Rape in the second

11 degree, as defined in

12 ORS 163.365.....75 months

13 (L) Sodomy in the first

14 degree, as defined in

15 ORS 163.405.....100 months

16 (M) Sodomy in the second

17 degree, as defined in

18 ORS 163.395.....75 months

19 (N) Unlawful sexual

20 penetration in the first

21 degree, as defined

22 in ORS 163.411.....100 months

23 (O) Unlawful sexual

24 penetration in the

25 second degree, as

26 defined in ORS 163.408. ....75 months

27 (P) Sexual abuse in the first

28 degree, as defined in

29 ORS 163.427.....75 months

30 (Q) Robbery in the first

31 degree, as defined in

32 ORS 164.415.....90 months

33 (R) Robbery in the second

34 degree, as defined in

35 ORS 164.405.....70 months

36 (b)(A) Arson in the first degree,

37 as defined in

38 ORS 164.325, when

39 the offense represented

40 a threat of serious

41 physical injury.....90 months

42 (B) Using a child in a display

43 of sexually explicit

44 conduct, as defined in

45 ORS 163.670.....70 months

- 1 (C) Compelling prostitution,
- 2 as defined in ORS 167.017
- 3 (1)(a), (b) or (d).....70 months
- 4 (c) Aggravated vehicular
- 5 homicide, as defined in
- 6 ORS 163.149.....240 months

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8

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

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

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

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

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

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

23 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
 24 419C.067 and 419C.411.

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

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

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

30 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
 31 419C.067 and 419C.411.

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

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

43 (b) If a person charged and tried as provided in subsection (6) of this section is not found guilty  
 44 of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one  
 45 of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349,

1 the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain  
 2 jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain  
 3 jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains  
 4 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court  
 5 does not retain jurisdiction, the court shall:

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

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

9 (C) Enter an order transferring the case to the juvenile court for disposition under ORS  
 10 419C.067 and 419C.411.

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

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

18 (a) Has demonstrated an extended course of conduct indicating outstanding reformation;

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

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

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

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

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

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

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

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

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

35 144.126. (1) The State Board of Parole and Post-Prison Supervision may advance the release date  
 36 of a prisoner who was sentenced in accordance with rules of the Oregon Criminal Justice Commis-  
 37 sion or ORS 161.610. The release date may be advanced if the board determines that continued  
 38 incarceration is cruel and inhumane and that advancing the release date of the prisoner is not in-  
 39 compatible with the best interests of the prisoner and society and that the prisoner is:

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

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

43 (2) The board shall adopt rules establishing criteria for release plans for prisoners released un-  
 44 der this section that, at a minimum, must insure appropriate supervision and services for the person  
 45 released.



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

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

4 161.620. Notwithstanding any other provision of law, a sentence imposed upon any person  
5 waived from the juvenile court under ORS 419C.349, 419C.352, 419C.364 or 419C.370 [shall] **may** not  
6 include [any sentence of death or] **a sentence of** life imprisonment without the possibility of release  
7 or parole [nor] **or the** imposition of any mandatory minimum sentence, except that a mandatory  
8 minimum sentence under:

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

10 (2) ORS 161.610 may be imposed.

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

12 138.500. (1) If a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS  
13 138.510 to 138.680 wishes to appeal from an appealable adverse final order or judgment of a circuit  
14 court and if the person is without funds to employ suitable counsel possessing skills and experience  
15 commensurate with the nature and complexity of the case for the appeal, the person may request  
16 the circuit court from which the appeal is or would be taken to appoint counsel to represent the  
17 person on appeal. The following apply to a request under this subsection:

18 (a) The request shall be in writing and shall be made within the time during which an appeal  
19 may be taken or, if the notice of appeal has been filed, at any time thereafter. The request shall  
20 include a brief statement of the assets, liabilities and income in the previous year of the person  
21 unless the court already determined the person to be financially eligible for appointed counsel at  
22 state expense for purposes of the specific case, in which instance, the written request need only so  
23 indicate. However, if a request relies on a court's previous determination that the person is finan-  
24 cially eligible, the court, in its discretion, may require the person to submit a new statement of as-  
25 sets, liabilities and income.

26 (b) If, based upon a request under paragraph (a) of this subsection, the court finds that petitioner  
27 or defendant previously received the services of appointed counsel or currently is without funds to  
28 employ suitable counsel for an appeal, the court shall appoint counsel to represent petitioner or  
29 defendant on the appeal.

30 [(2)(a) Notwithstanding subsection (1) of this section, when a defendant has been sentenced to death,  
31 the request for appointed counsel shall be made to the Supreme Court. The Supreme Court shall ap-  
32 point suitable counsel to represent the defendant on the appeal.]

33 [(b)] (2)(a) After the notice of appeal has been filed, the Court of Appeals has concurrent au-  
34 thority to appoint or substitute counsel or appoint or substitute a legal advisor for the defendant  
35 under ORS 138.504.

36 [(c)] (b) The Supreme Court has concurrent authority to appoint or substitute counsel or appoint  
37 or substitute a legal advisor for the defendant under ORS 138.504 in connection with review of a  
38 Court of Appeals decision under ORS 2.520.

39 [(d)] (c) Neither the Court of Appeals nor the Supreme Court may substitute one appointed  
40 counsel for another under paragraph [(b) or (c)] (a) or (b) of this subsection except pursuant to the  
41 policies, procedures, standards and guidelines of the Public Defense Services Commission.

42 (3) Whenever a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS  
43 138.510 to 138.680 has filed a notice of appeal from an appealable adverse final order or judgment  
44 of a circuit court and the person is without funds to pay for a transcript, or portion thereof, nec-  
45 essary to present adequately the case upon appeal, the person may request the public defense ser-

1 vices executive director to have the transcript, or portion thereof, prepared for purposes of appeal.

2 The following apply to a request under this subsection:

3 (a) The public defense services executive director shall authorize the preparation of a transcript  
4 after a court has determined that the person is eligible for court-appointed counsel or, if the person  
5 has not applied for court-appointed counsel, the person submits a statement of the person's assets,  
6 liabilities and income in the previous year and the director determines that the person is eligible for  
7 preparation of a transcript at state expense.

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

11 (4) After submission of the original brief by counsel, the public defense services executive di-  
12 rector shall determine the cost of briefs and any other expenses of appellant, except transcripts,  
13 necessary to appellate review and a reasonable amount of compensation for counsel appointed under  
14 this section. Compensation payable to appointed counsel shall be as established under ORS 151.216.  
15 On any review by the Supreme Court of the judgment of the Court of Appeals the public defense  
16 services executive director shall similarly determine the costs of briefs and any other expenses  
17 necessary for review and a reasonable amount of compensation for counsel appointed under this  
18 section.

19 (5) Costs, expenses and compensation determined by the public defense services executive di-  
20 rector under subsection (4) of this section shall be paid by the public defense services executive di-  
21 rector from funds available for that purpose.

22 (6) If the public defense services executive director denies, in whole or in part, costs, expenses  
23 and compensation submitted for review and payment, the person who submitted the payment request  
24 may appeal the decision to the Chief Judge of the Court of Appeals, if the appeal is in the Court  
25 of Appeals, or to the Chief Justice of the Supreme Court, if the appeal is in the Supreme Court. The  
26 Chief Judge, Chief Justice or the designee of the Chief Judge or Chief Justice, as appropriate, shall  
27 review the public defense services executive director's decision for abuse of discretion. The decision  
28 of the Chief Judge, the Chief Justice or the designee of the Chief Judge or Chief Justice is final.

29 (7) The provisions of this section shall apply in favor of the defendant in a criminal action or  
30 the petitioner in a proceeding pursuant to ORS 138.510 to 138.680 when the person is respondent in  
31 an appeal taken by the state in a criminal action or by the defendant in a proceeding pursuant to  
32 ORS 138.510 to 138.680.

33 (8) As used in this section, "criminal action" does not include an action that involves only vio-  
34 lations.

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

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

38 138.510. (1) Except as otherwise provided in ORS 138.540, any person convicted of a crime under  
39 the laws of this state may file a petition for post-conviction relief pursuant to ORS 138.510 to  
40 138.680.

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

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

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

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

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

8       (b) If an appeal is taken, the date the appeal is final in the Oregon appellate courts.

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

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

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

13       **[(4)] (3)** A one-year filing period shall apply retroactively to petitions filed by persons whose  
 14 convictions and appeals became final before August 5, 1989, and any such petitions must be filed  
 15 within one year after November 4, 1993. A person whose post-conviction petition was dismissed prior  
 16 to November 4, 1993, cannot file another post-conviction petition involving the same case.

17       **[(5)] (4)** The remedy created by ORS 138.510 to 138.680 is available to persons convicted before  
 18 May 26, 1959.

19       **[(6)] (5)** In any post-conviction proceeding pending in the courts of this state on May 26, 1959,  
 20 the person seeking relief in such proceedings shall be allowed to amend the action and seek relief  
 21 under ORS 138.510 to 138.680. If such person does not choose to amend the action in this manner,  
 22 the law existing prior to May 26, 1959, shall govern the case.

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

24       138.590. (1) Any petitioner who is unable to pay the expenses of a proceeding pursuant to ORS  
 25 138.510 to 138.680 or to employ suitable counsel possessing skills and experience commensurate with  
 26 the nature of the conviction and complexity of the case for the proceeding may proceed as a finan-  
 27 cially eligible person pursuant to this section upon order of the circuit court in which the petition  
 28 is filed.

29       (2) If the petitioner wishes to proceed as a financially eligible person, the person shall file with  
 30 the petition an affidavit stating inability to pay the expenses of a proceeding pursuant to ORS  
 31 138.510 to 138.680, including, but not limited to, the filing fee required by ORS 138.560, or to employ  
 32 suitable counsel for such a proceeding. The affidavit shall contain a brief statement of the  
 33 petitioner's assets and liabilities and income during the previous year. If the circuit court is satisfied  
 34 that the petitioner is unable to pay such expenses or to employ suitable counsel, it shall order that  
 35 the petitioner proceed as a financially eligible person. *[If the court finds that a petitioner who has*  
 36 *been sentenced to death is not competent to decide whether to accept or reject the appointment of*  
 37 *counsel, the court shall appoint counsel to represent the petitioner. However,]* When a circuit court  
 38 orders petitioner's case transferred to another circuit court as provided in ORS 138.560 (4), the  
 39 matter of petitioner's proceeding as a financially eligible person shall be determined by the latter  
 40 court.

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

45       **[(4)] (3)** In the order to proceed as a financially eligible person, the circuit court shall appoint

1 suitable counsel to represent petitioner. Counsel so appointed shall represent petitioner throughout  
2 the proceedings in the circuit court. The court may not substitute one appointed counsel for another  
3 except pursuant to the policies, procedures, standards and guidelines of the Public Defense Services  
4 Commission.

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

16 [(6)] (5) When a petitioner has been ordered to proceed as a financially eligible person, the ex-  
17 penses which are necessary for the proceedings upon the petition in the circuit court and the com-  
18 pensation to appointed counsel for petitioner as provided in this subsection shall be paid by the  
19 public defense services executive director from funds available for the purpose. At the conclusion  
20 of proceedings on a petition pursuant to ORS 138.510 to 138.680, the public defense services execu-  
21 tive director shall determine and pay, as provided by the policies, procedures, standards and guide-  
22 lines of the Public Defense Services Commission, the amount of expenses of petitioner and  
23 compensation for the services of appointed counsel in the proceedings in the circuit court.

24 [(7)] (6) If the public defense services executive director denies, in whole or in part, expenses  
25 and compensation submitted for review and payment, the person who submitted the payment request  
26 may appeal the decision to the presiding judge of the circuit court. The presiding judge or the  
27 designee of the presiding judge shall review the public defense services executive director's decision  
28 for abuse of discretion. The decision of the presiding judge or the designee of the presiding judge  
29 is final.

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

32 (b) When a petitioner is allowed to file a petition without payment of the fee required by ORS  
33 138.560 due to inability to pay, the fee is not waived but may be drawn from, or charged against,  
34 the petitioner's trust account if the petitioner is an inmate in a correctional facility.

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

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

40 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

41 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS  
42 305.501;

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

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

45 (2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal

1 actions and proceedings and to contempt proceedings except those in which the court may act  
2 summarily.

3 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and pro-  
4 ceedings.

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

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

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

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

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

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

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

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

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

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

21 (j) Proceedings under ORS 147.530 relating to victims' rights, except for the provisions of ORS  
22 40.105 and 40.115.

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

24 137.635. (1) When, in the case of a felony described in subsection (2) of this section, a court  
25 sentences a convicted defendant who has previously been convicted of any felony designated in  
26 subsection (2) of this section, the sentence shall not be an indeterminate sentence to which the de-  
27 fendant otherwise would be subject under ORS 137.120, but[, *unless it imposes a death penalty under*  
28 *ORS 163.105,*] the court shall impose a determinate sentence, the length of which the court shall  
29 determine, to the custody of the Department of Corrections. Any mandatory minimum sentence  
30 otherwise provided by law shall apply. The sentence shall not exceed the maximum sentence oth-  
31 erwise provided by law in such cases. The convicted defendant who is subject to this section shall  
32 not be eligible for probation. The convicted defendant shall serve the entire sentence imposed by the  
33 court and shall not, during the service of such a sentence, be eligible for parole or any form of  
34 temporary leave from custody. The person shall not be eligible for any reduction in sentence pur-  
35 suant to ORS 421.120 or for any reduction in term of incarceration pursuant to ORS 421.121.

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

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

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

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

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

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

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

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

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

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

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

2 (3) When the court imposes a sentence under this section, the court shall indicate in the judg-  
3 ment that the defendant is subject to this section.

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

5 421.084. (1) The Administrator of Correctional Education shall administer an adult basic skills  
6 development program for all individuals in the custody of the Department of Corrections. The pro-  
7 gram shall:

8 (a) Test individuals for basic reading and mathematics skills or, for individuals with limited  
9 English language proficiency, English speaking skills. Testing for basic intelligence, learning disa-  
10 bilities, developmental disabilities and adaptive behavior skills shall be administered as needed ex-  
11 cept that the administrator may accept equivalent test results from other sources.

12 (b) Except as provided in subsection (2) of this section, be mandatory for all individuals testing  
13 below a 8.0 grade equivalency on a standardized reading test approved by the National Reporting  
14 System for Adult Education of the United States Department of Education and by the Adult Basic  
15 Skills Program of the Department of Community Colleges and Workforce Development.

16 (c) Provide progress testing and certification.

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

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

22 (2) Testing for basic skills and participation in the adult basic skills development program are  
23 not required for inmates:

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

25 (b) Sentenced to life imprisonment without parole;

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

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

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

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

31 135.045. (1)(a) If the defendant in a criminal action appears without counsel at arraignment or  
32 thereafter, the court shall determine whether the defendant wishes to be represented by counsel.

33 (b) If the defendant does wish to be represented by counsel, the court, in accordance with ORS  
34 135.050, shall appoint counsel to represent the defendant.

35 (c) If the defendant wishes to waive counsel[,] **and** the court [*shall determine whether*] **deter-**  
36 **mines that** the defendant has made a knowing and voluntary waiver of counsel[,], the court shall  
37 accept the waiver [*of counsel if the defendant is not charged with a capital offense. The court may*  
38 *decline to accept the waiver of counsel if the defendant is charged with a capital offense*].

39 (d) If the court accepts a defendant's waiver of counsel, the court may allow an attorney to  
40 serve as the defendant's legal advisor and may, in accordance with ORS 135.050, appoint an attorney  
41 as the defendant's legal advisor.

42 (2) Appointment of counsel, including a legal advisor, under this section is subject to ORS  
43 135.050, 135.055 and 151.485 to 151.497.

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

45 136.230. (1) If the trial is upon an accusatory instrument in which one or more of the crimes

1 charged is punishable with imprisonment in a Department of Corrections institution for life [*or is*  
 2 *a capital offense*], both the defendant and the state are entitled to 12 peremptory challenges, and no  
 3 more. In any trial before more than six jurors, both are entitled to six. In any trial before six jurors,  
 4 both are entitled to three.

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

6 (a) The defendant may challenge two jurors and the state may challenge two, and so alternating,  
 7 the defendant exercising two challenges and the state two until the peremptory challenges are ex-  
 8 hausted.

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

12 (c) The refusal to challenge by either party in order of alternation does not prevent the adverse  
 13 party from exercising that adverse party's full number of challenges, and such refusal on the part  
 14 of a party to exercise a challenge in proper turn concludes that party as to the jurors once accepted  
 15 by that party. If that party's right of peremptory challenge is not exhausted, that party's further  
 16 challenges shall be confined, in that party's proper turn, to such additional jurors as may be called.

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

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

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

21 138.504. (1) If the defendant wishes to waive counsel in the appeal of a criminal action to the  
 22 Court of Appeals or on review of a criminal action by the Supreme Court[,] **and** the court [*shall*  
 23 *determine whether*] **determines that** the defendant has made a knowing and voluntary waiver of  
 24 counsel[,], the court shall accept the waiver [*of counsel if the defendant is not charged with a capital*  
 25 *offense. The court may decline to accept the waiver of counsel if the defendant is charged with a capital*  
 26 *offense*].

27 (2) If the court accepts a defendant's waiver of counsel, the court may allow an attorney to  
 28 serve as the defendant's legal advisor and, if the defendant is financially eligible for appointed  
 29 counsel at state expense, may appoint an attorney as the defendant's legal advisor.

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

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

34 146.003. As used in ORS 146.003 to 146.189 and 146.710 to 146.992, unless the context requires  
 35 otherwise:

36 (1) "Approved laboratory" means a laboratory approved by the State Medical Examiner as  
 37 competent to perform the blood sample analysis required by ORS 146.113 (2).

38 (2) "Assistant district medical examiner" means a physician appointed by the district medical  
 39 examiner to investigate and certify deaths within a county or district.

40 (3) "Cause of death" means the primary or basic disease process or injury ending life.

41 (4) "Death requiring investigation" means the death of a person occurring in any one of the  
 42 circumstances set forth in ORS 146.090.

43 (5) "Deputy medical examiner" means a person appointed by the district medical examiner to  
 44 assist in the investigation of deaths within a county.

45 (6) "District medical examiner" means a physician appointed by the State Medical Examiner to

1 investigate and certify deaths within a county or district, including a Deputy State Medical Exam-  
2 iner.

3 (7) "Law enforcement agency" means a county sheriff's office, municipal police department, po-  
4 lice department established by a university under ORS 352.383 and the Oregon State Police.

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

7 (9) "Manner of death" means the designation of the probable mode of production of the cause  
8 of death, including natural, accidental, suicidal, homicidal, legal intervention or undetermined.

9 (10) "Medical examiner" means a physician appointed as provided by ORS 146.003 to 146.189 to  
10 investigate and certify the cause and manner of deaths requiring investigation, including the State  
11 Medical Examiner.

12 (11) "Pathologist" means a physician holding a current license to practice medicine and surgery  
13 and who is eligible for certification by the American Board of Pathology.

14 (12) "Unidentified human remains" does not include human remains that are unidentified human  
15 remains that are part of an archaeological site or suspected of being Native American and covered  
16 under ORS chapters 97 and 390 and ORS 358.905 to 358.961.

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

18 163.155. (1) When a defendant, who was at least 15 years of age at the time of committing the  
19 murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a) and the defendant  
20 knew that the victim was pregnant, the defendant shall be sentenced to life imprisonment without  
21 the possibility of release or parole or to life imprisonment. The court shall conduct a sentencing  
22 proceeding to determine whether the defendant shall be sentenced to life imprisonment without the  
23 possibility of release or parole as described in subsection (4) of this section or to life imprisonment  
24 as described in subsection (5) of this section. If the defendant waives all rights to a jury sentencing  
25 proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for  
26 the sentencing proceeding, whether before a court or a jury, shall follow the procedure of ORS  
27 163.150 (1)(a) **to (c)**, as modified by this section.

28 (2) Following the presentation of evidence and argument under subsection (1) of this section, the  
29 court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment  
30 without the possibility of release or parole as described in subsection (4) of this section, unless after  
31 considering all of the evidence submitted, 10 or more members of the jury find there are sufficient  
32 mitigating circumstances to warrant life imprisonment with the possibility of release or parole as  
33 described in subsection (5) of this section. If 10 or more members of the jury do not find there are  
34 sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or  
35 parole, the trial court shall sentence the defendant to life imprisonment without the possibility of  
36 release or parole as described in subsection (4) of this section. If 10 or more members of the jury  
37 find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility  
38 of release or parole, the trial court shall sentence the defendant to life imprisonment as described  
39 in subsection (5) of this section.

40 (3) Nothing in this section precludes the court from sentencing the defendant to life  
41 imprisonment, as described in subsection (5) of this section, or life imprisonment without the possi-  
42 bility of release or parole, as described in subsection (4) of this section, pursuant to a stipulation  
43 of sentence or stipulation of sentencing facts agreed to and offered by both parties if the defendant  
44 waives all rights to a jury sentencing proceeding.

45 (4) A sentence of life imprisonment without the possibility of release or parole under this section



1 may not be suspended, deferred or commuted by any judicial officer, and the State Board of Parole  
2 and Post-Prison Supervision may neither parole the prisoner nor reduce the period of confinement  
3 in any manner whatsoever. The Department of Corrections or any executive official may not permit  
4 the prisoner to participate in any sort of release or furlough program.

5 (5) If the defendant is sentenced to life imprisonment, the court shall order that the defendant  
6 be confined for a minimum of 30 years without possibility of parole, release to post-prison super-  
7 vision, release on work release or any form of temporary leave or employment at a forest or work  
8 camp.

9 (6) At any time after completion of the minimum period of confinement pursuant to subsection  
10 (5) of this section, the board, upon the petition of a prisoner so confined, shall hold a hearing to  
11 determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole  
12 issue shall be whether the prisoner is likely to be rehabilitated within a reasonable period of time.  
13 The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS  
14 chapter 183, except that:

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

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

19 (c) The prisoner has the right to a subpoena upon a showing of the general relevance and rea-  
20 sonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner  
21 must be issued by the board pursuant to rules adopted by the board.

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

29 (8) Not less than two years after the denial of the relief sought in a petition under this section,  
30 the prisoner may petition again for a change in the terms of confinement. Further petitions for a  
31 change may be filed at intervals of not less than two years thereafter.

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

33 475.188. (1) Prescription drug orders may be transmitted by electronic means from a practitioner  
34 authorized to prescribe drugs directly to the dispensing pharmacist.

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

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

37 (b) Be transmitted directly to a pharmacist in a pharmacy of the patient's choice with no in-  
38 tervening person having access to the prescription drug order;

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

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

44 (3) An electronic transmission of a prescription drug order shall be stored by electronic means  
45 or reduced promptly to writing, filed by the pharmacy and retained in conformity with the require-

1 ments of ORS 475.165.

2 (4) The dispensing pharmacist shall exercise professional judgment regarding the accuracy, va-  
3 lidity and authenticity of an electronically transmitted prescription drug order.

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

6 (6) A pharmacist, pharmacy or pharmacy department shall not enter into an agreement with a  
7 practitioner or health care facility concerning the provision of any electronic transmission equip-  
8 ment or apparatus that would adversely affect a patient’s freedom to select the pharmacy or phar-  
9 macy department of the patient’s choice.

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

14 (8) There shall be no additional charge to the patient because the prescription drug order was  
15 electronically transmitted.

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

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

20 144.110. (1) In any felony case, the court may impose a minimum term of imprisonment of up to  
21 one-half of the sentence it imposes.

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

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

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

27 (A) Who has been convicted of murder defined as aggravated murder under the provisions of  
28 ORS 163.095, except as provided in ORS 163.105; or

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

31 **SECTION 20. If a sentencing court has, before the effective date of this 2013 Act, imposed**  
32 **a sentence of death that has not been executed, the court shall, after providing notice to the**  
33 **defendant, the district attorney and the victim as defined in ORS 131.007, hold a hearing to**  
34 **vacate the sentence of death. Notwithstanding any other provision of law, the court shall**  
35 **sentence the person to life imprisonment without the possibility of release or parole as de-**  
36 **scribed in ORS 163.105 (1)(b).**

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

39 **SECTION 22. This 2013 Act does not take effect unless the amendment to the Oregon**  
40 **Constitution proposed by \_\_\_\_\_ Joint Resolution \_\_\_\_\_ (2013) (LC 2488) is approved by the**  
41 **people at the next regular general election held throughout this state. This 2013 Act takes**  
42 **effect on the effective date of that constitutional amendment.**