

HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2320

By JOINT COMMITTEE ON WAYS AND MEANS

June 29

1 On page 1 of the printed A-engrossed bill, line 2, after “137.225,” delete the rest of the line and
2 insert “144.005, 144.015, 144.025, 144.035, 144.054, 144.079, 144.110, 144.641, 144.783, 163.105, 163.115,
3 163.155, 163.476.”.

4 In line 3, delete “181.807.”.

5 On page 7, delete lines 29 through 36 and insert:

6 “(c) Notwithstanding paragraphs (a) and (b) of this subsection, during the period of supervision
7 or custody authorized by law, the Oregon Youth Authority may register a youth offender committed
8 to its supervision and custody by order of the juvenile court or a person placed in its physical cus-
9 tody under ORS 137.124 or any other provision of law.”.

10 In line 44, delete “county juvenile department.”.

11 On page 8, delete lines 7 through 45 and insert:

12 “**NOTE:** Section 6 was deleted by amendment. Subsequent sections were not renumbered.”.

13 On page 9, delete lines 1 through 19.

14 On page 13, delete lines 2 through 9 and insert:

15 “(8) Notwithstanding subsections (2) and (3) of this section:

16 “(a) The Oregon Youth Authority may register a youth offender committed to its custody and
17 supervision by order of the juvenile court or a person placed in its physical custody under ORS
18 137.124 or any other provision of law.

19 “(b) A county juvenile department may register a youth offender or young person, as those terms
20 are defined in ORS 419A.004.”.

21 In line 22, delete “or”.

22 After line 22, insert:

23 “(h) Fails or refuses to participate in a sex offender risk assessment as directed by the State
24 Board of Parole and Post-Prison Supervision, Psychiatric Security Review Board, Oregon Health
25 Authority or supervisory authority; or”.

26 In line 23, delete “(h)” and insert “(i)”.

27 In line 28, delete the boldfaced material.

28 In lines 33 and 34, delete the boldfaced material.

29 In lines 38 and 39, delete the boldfaced material.

30 In lines 43 and 44, delete the boldfaced material.

31 On page 14, after line 1, insert:

32 “(e) It is an affirmative defense to a charge of failure to report under subsection (1) of this
33 section by a person required to report under ORS 181.806 (3) that the person reported to the Oregon
34 Youth Authority if the person establishes that the authority registered the person under ORS
35 181.806 (3)(c).

1 “(f) It is an affirmative defense to a charge of failure to report under subsection (1) of this sec-
2 tion by a person required to report under ORS 181.809 (2) or (3) that the person reported to the
3 Oregon Youth Authority or a county juvenile department if the person establishes that the authority
4 or department registered the person under ORS 181.809 (8).”.

5 In line 40, before “agency” insert “supervising agency or the”.

6 On page 15, line 3, delete “agency” and insert “supervising agency or the agency making the
7 classification or designation”.

8 In line 18, delete the boldfaced material.

9 In line 20, restore the bracketed material and delete the boldfaced material.

10 After line 20, insert:

11 “(C) The person has not been determined to be a predatory sex offender prior to January 1,
12 2014.”.

13 On page 16, line 26, delete “if” and insert “while”.

14 In line 27, after “Authority” insert “, unless the department is authorized to do so by a request
15 of the supervising agency”.

16 On page 21, line 38, before “State” insert “Psychiatric Security Review Board, the Oregon
17 Health Authority or the” and delete “for the board”.

18 On page 25, line 27, delete “certified”.

19 On page 26, after line 6, insert:

20 “(8) If the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review
21 Board does not classify an existing registrant under ORS 181.800 because the person has failed or
22 refused to participate in a sex offender risk assessment as directed by the State Board of Parole and
23 Post-Prison Supervision or the Psychiatric Security Review Board, the person is, by operation of
24 law, classified as a level three sex offender under ORS 181.800 (3) as of January 1, 2019.”.

25 Delete lines 19 through 45 and insert:

26 **“SECTION 31. (1)(a) The juvenile court shall hold a hearing on the issue of reporting as
27 a sex offender by a person who has been found to be within the jurisdiction of the juvenile
28 court under ORS 419C.005, or found by the juvenile court to be responsible except for insanity
29 under ORS 419C.411, for having committed an act that if committed by an adult would con-
30 stitute a felony sex crime.**

31 **“(b) The hearing described in paragraph (a) of this subsection must be held during the
32 six-month period before:**

33 **“(A) The termination of juvenile court jurisdiction over the person; or**

34 **“(B) The person is discharged from the jurisdiction of the Psychiatric Security Review
35 Board, if the person was placed under the jurisdiction of the board.**

36 **“(c) The court shall notify the person of the person’s right to a hearing under this sec-
37 tion upon finding the person within the jurisdiction of the juvenile court under ORS 419C.005.**

38 **“(d) The county or state agency responsible for supervising the person shall notify the
39 person when the agency determines that termination of jurisdiction will occur within six
40 months.**

41 **“(e) A petition requesting a hearing may be filed under this section by the person within
42 six months of the termination date if the date has been set by the court, or within six
43 months of the projected termination date provided to the person by the supervising agency.**

44 **“(2) The district attorney shall notify the victim prior to the hearing of the right to ap-
45 pear and the right to be heard under ORS 419C.273.**

1 **“(3) At the hearing described in subsection (1) of this section:**
2 **“(a) The district attorney, the victim, the person and the juvenile court counselor or a**
3 **representative of the Oregon Youth Authority shall have an opportunity to be heard.**
4 **“(b) The person who is the subject of the hearing has the burden of proving by clear and**
5 **convincing evidence that the person is rehabilitated and does not pose a threat to the safety**
6 **of the public. If the court finds that the person has not met the burden of proof, the court**
7 **shall enter an order requiring the person to report as a sex offender under ORS 181.809.**
8 **“(4) In determining whether the person has met the burden of proof, the juvenile court**
9 **may consider but need not be limited to considering:**
10 **“(a) The extent and impact of any physical or emotional injury to the victim;**
11 **“(b) The nature of the act that subjected the person to the duty of reporting as a sex**
12 **offender;**
13 **“(c) Whether the person used or threatened to use force in committing the act;**
14 **“(d) Whether the act was premeditated;**
15 **“(e) Whether the person took advantage of a position of authority or trust in committing**
16 **the act;**
17 **“(f) The age of any victim at the time of the act, the age difference between any victim**
18 **and the person and the number of victims;**
19 **“(g) The vulnerability of the victim;**
20 **“(h) Other acts committed by the person that would be crimes if committed by an adult**
21 **and criminal activities engaged in by the person before and after the adjudication;**
22 **“(i) Statements, documents and recommendations by or on behalf of the victim or the**
23 **parents of the victim;**
24 **“(j) The person’s willingness to accept personal responsibility for the act and personal**
25 **accountability for the consequences of the act;**
26 **“(k) The person’s ability and efforts to pay the victim’s expenses for counseling and other**
27 **trauma-related expenses or other efforts to mitigate the effects of the act;**
28 **“(L) Whether the person has participated in and satisfactorily completed a sex offender**
29 **treatment program or any other intervention, and if so the juvenile court may also consider:**
30 **“(A) The availability, duration and extent of the treatment activities;**
31 **“(B) Reports and recommendations from the providers of the treatment;**
32 **“(C) The person’s compliance with court, board or supervision requirements regarding**
33 **treatment; and**
34 **“(D) The quality and thoroughness of the treatment program;**
35 **“(m) The person’s academic and employment history;**
36 **“(n) The person’s use of drugs or alcohol before and after the adjudication;**
37 **“(o) The person’s history of public or private indecency;**
38 **“(p) The person’s compliance with and success in completing the terms of supervision;**
39 **“(q) The results of psychological examinations of the person;**
40 **“(r) The protection afforded the public by the continued existence of the records; and**
41 **“(s) Any other relevant factors.**
42 **“(5) In a hearing under this section, the juvenile court may receive testimony, reports**
43 **and other evidence, without regard to whether the evidence is admissible under ORS 40.010**
44 **to 40.210 and 40.310 to 40.585, if the evidence is relevant evidence related to the determination**
45 **and findings required under this section. As used in this subsection, ‘relevant evidence’ has**

1 the meaning given that term in ORS 40.150.

2 “(6)(a) In a hearing under this section, the juvenile court shall review:

3 “(A) Evaluations and treatment records concerning the person conducted by a clinician
4 or program operating under the standards of practice for the evaluation and treatment of
5 juvenile sex offenders adopted by the Sex Offender Treatment Board under ORS 675.400, and
6 recommendations contained therein regarding the need for the person to register in order
7 to protect the public from future sex crimes; and

8 “(B) All examination preparation material and examination records from polygraph ex-
9 aminations conducted by or for the treatment provider, juvenile department or Oregon
10 Youth Authority.

11 “(b) Any records and materials to be reviewed by the court under this subsection shall
12 be released and disclosed to the court, district attorney, person’s attorney and to the Oregon
13 Youth Authority or juvenile department that is responsible for the supervision of the person,
14 no less than 15 days prior to any hearing held under this section.

15 “(7) When the juvenile court enters an order described in subsection (3)(b) of this section,
16 the court shall ensure that the person completes a form that documents the person’s obli-
17 gation to report under ORS 181.809. No later than three business days after the person
18 completes the form required by this subsection, the court shall ensure that the form is sent
19 to the Department of State Police.

20 “(8)(a) A person who is the subject of a hearing under this section has the right to be
21 represented by suitable legal counsel possessing skills and experience commensurate with the
22 nature and complexity of the case, to consult with counsel prior to the hearing and, if fi-
23 nancially eligible, to have suitable counsel appointed at state expense.

24 “(b) In order to comply with the right to counsel under paragraph (a) of this subsection,
25 the court may:

26 “(A) Continue the appointment of the attorney appointed under ORS 419C.200 at the time
27 of disposition;

28 “(B) Set a date prior to the hearing under this section in order to reappoint the attorney
29 appointed under ORS 419C.200; or

30 “(C) Appoint or reappoint an attorney at any time in response to a request by the person
31 who is the subject of a hearing under this section.

32 “(9) Notwithstanding ORS 419C.005 (4)(e), the juvenile court retains jurisdiction over a
33 person for purposes of this section.”.

34 On page 27, delete lines 1 through 23.

35 On page 35, delete lines 9 through 45 and insert:

36 “**NOTE:** Section 34 was deleted by amendment. Subsequent sections were not renumbered.”.

37 Delete pages 36 and 37.

38 On page 38, delete lines 1 through 38.

39 On page 41, after line 7, insert:

40
41 **“STATE BOARD OF PAROLE AND POST-PRISON SUPERVISION**

42
43 **“SECTION 37.** ORS 144.005 is amended to read:

44 “144.005. (1) A State Board of Parole and Post-Prison Supervision of at least three but no more
45 than five members hereby is created. At least one member must be a woman.

1 “(2)(a) Members of the board shall be appointed by the Governor and serve for a term of four
2 years.

3 “(b) If the number of members falls below three for any cause, the Governor shall make an ap-
4 pointment to become immediately effective for the unexpired term.

5 “(c) The Governor at any time may remove any member for inefficiency, neglect of duty or
6 malfeasance in office.

7 “(3) Each member shall devote the member’s entire time to the performance of the duties im-
8 posed on the board and shall not engage in any partisan political activity.

9 “(4) The members shall receive a salary set by the Governor. In addition, all members may re-
10 ceive actual and necessary travel and other expenses incurred in the performance of their official
11 duties within limits as provided by law or under ORS 292.220 and 292.230.

12 “(5) The Director of the Department of Corrections shall serve as an ex officio nonvoting mem-
13 ber of the board **and shall not be considered a member for the purposes of subsections (1) to**
14 **(4) of this section.**

15 “**SECTION 38.** ORS 144.015 is amended to read:

16 “144.015. **Except as provided in ORS 144.005 (2)(b)**, the appointment of a member of the State
17 Board of Parole and Post-Prison Supervision is subject to confirmation by the Senate as provided in
18 ORS 171.562 and 171.565.

19 “**SECTION 39.** ORS 144.025 is amended to read:

20 “144.025. (1) The Governor shall select one of the members of the State Board of Parole and
21 Post-Prison Supervision as chairperson and another member as vice chairperson, for such terms and
22 with duties and powers, in addition to those established by law, necessary for the performance of
23 the function of such office as the Governor determines.

24 “(2) A majority of the members of the board constitutes a quorum for decisions concerning rules
25 and policies.

26 “(3) Except as otherwise provided in this chapter, decisions affecting individuals under the ju-
27 risdiction of the board shall be made as designated by the rules of the board.

28 “(4) **Except as otherwise provided by statute, all board hearings are presumed to be panel**
29 **hearings.**

30 “(5) **The chairperson of the board may require all voting members of the board to par-**
31 **ticipate in any hearing or decision requiring at least three board members. The decision to**
32 **require the participation of all board members is not appealable.**

33 “(6) **The board shall adopt rules concerning the number of board members that partic-**
34 **ipate in board hearings and decisions.**

35 “**SECTION 40.** ORS 144.035 is amended to read:

36 “144.035. (1) In hearings conducted by the State Board of Parole and Post-Prison Supervision,
37 the board may sit together or in panels.

38 “(2) Panels may consist of one or two board members or of one member and one hearings officer,
39 appointed by the chairperson as a designated representative of the board. A panel consisting of one
40 member or of one member and one hearings officer shall be used only when considering inmates
41 convicted of non person-to-person crimes as defined in the rules of the Oregon Criminal Justice
42 Commission. The chairperson of the board from time to time shall make assignments of members to
43 the panels. The chairperson of the board may participate on any panel.

44 “(3) The chairperson shall apportion matters for decision to the panels. Each panel shall have
45 the authority to hear and determine all questions before it. However:

1 “(a) If there is a division in the panel so that a decision is not unanimous, another member shall
2 vote after administrative review of the record.

3 “(b) In case of a panel consisting of one board member, another member shall vote after ad-
4 ministrative review of the record.

5 “(c) If the original panel was made up of one board member and the member voting after ad-
6 ministrative review of the record disagrees with the decision, the matter shall be reassigned to a
7 panel made up of the remaining board members. If this second panel agrees with neither member
8 of the original panel, the matter will be referred to a hearing before the full board.

9 “(4) The provisions of subsections (1) to (3) of this section shall not apply to a decision to re-
10 lease a prisoner sentenced under ORS 144.110 (1). In such cases, the board shall release the prisoner
11 only upon affirmative vote of a majority of [*the board*] **three board members or, if the chair-
12 person requires all voting members to participate, a majority of all voting members.**

13 “(5) The chairperson may elect to conduct the hearings described in this section by conference
14 call with the prisoner.

15 “**SECTION 41.** ORS 144.054 is amended to read:

16 “144.054. Whenever the State Board of Parole and Post-Prison Supervision makes a decision af-
17 fecting a person sentenced to life imprisonment or convicted of a crime involving the death of a
18 victim, whether or not the prosecution directly charged the person with causing the death of the
19 victim, the decision affecting such person must be reviewed by [*the full membership of the board*]
20 **no fewer than three board members.**

21 “**SECTION 42.** ORS 144.079 is amended to read:

22 “144.079. (1)(a) If a prisoner is sentenced to terms of imprisonment that are consecutive to one
23 another and result from crimes committed during the period before the prisoner’s first initial parole
24 hearing, or if a prisoner is sentenced to terms of imprisonment that are consecutive to one another
25 and result from crimes committed during the period between any two initial parole hearings, the
26 total term resulting from the crimes committed during each such separate period shall be determined
27 by the State Board of Parole and Post-Prison Supervision as follows, except as provided in sub-
28 section (2) of this section, and the total terms so determined shall then be summed as provided in
29 ORS 144.783 (1):

30 “(A) First, the board shall establish the appropriate range for the felony determined by the
31 board, according to its rules, to be the most serious of the felonies committed during the period.
32 If two or more felonies are determined to be equally the most serious, the board shall establish the
33 appropriate range under this paragraph only for one of those felonies.

34 “(B) Second, the board shall establish a range for each of the remaining felonies committed
35 during the same period. For purposes of establishing the ranges for the remaining felonies under this
36 paragraph, the board shall not consider prior criminal history.

37 “(C) Third, the board shall determine the total range applicable in the offender’s case for crimes
38 committed during the same period by summing the ranges established under subparagraph (B) of this
39 paragraph with the range established under subparagraph (A) of this paragraph and shall determine
40 an appropriate term within that range.

41 “(D) Finally, the board shall vary the term determined under subparagraph (C) of this paragraph
42 according to rules established under ORS 144.785 (1), if the board finds aggravating or mitigating
43 factors in the case. The board shall consider as an aggravating factor the fact that the prisoner has
44 been sentenced to consecutive terms of imprisonment.

45 “(b) Whenever a prisoner is committed to the custody of the Department of Corrections for a

1 crime that was committed during a period already considered at an initial parole hearing and upon
2 a sentence consecutive to any sentence imposed for crimes committed during that period, the board
3 shall conduct a hearing to consider the previously unconsidered crime. The hearing shall be a
4 hearing supplemental to the original initial hearing concerning crimes committed during the period.
5 Time limitations and other procedural provisions applicable to initial hearings shall apply to a sup-
6 plemental hearing under this subsection. Upon conclusion of the supplemental hearing, the board
7 shall redetermine the appropriate total term for the period. The redetermination shall be conducted
8 de novo under the provisions of subsection (2) of this section.

9 “(2) The method established by this section for determining, where applicable, the total term
10 resulting from the summing of consecutive sentences shall apply only if none of the crimes involved
11 is:

12 “(a) Murder, as defined in ORS 163.115 or any aggravated form thereof;

13 “(b) Assault in the first degree, as defined in ORS 163.185;

14 “(c) Kidnapping in the first degree, as defined in ORS 163.235;

15 “(d) Rape in the first degree, as defined in ORS 163.375;

16 “(e) Sodomy in the first degree, as defined in ORS 163.405;

17 “(f) Unlawful sexual penetration, as defined in ORS 163.411;

18 “(g) Arson in the first degree, as defined in ORS 164.325; or

19 “(h) Treason, as defined in ORS 166.005.

20 “(3) The duration of imprisonment pursuant to consecutive sentences may be less than the sum
21 of the terms under subsection (1) of this section if the board finds, by affirmative vote of a majority
22 of *[its]* **three board members or, if the chairperson requires all voting members to participate,**
23 **a majority of all voting** members, that consecutive sentences are not appropriate penalties for the
24 criminal offenses involved and that the combined terms of imprisonment are not necessary to protect
25 community security.

26 “(4) The *[State]* board *[of Parole and Post-Prison Supervision]* shall use the method set forth in
27 subsections (1) to (3) of this section to determine the parole release date for any person serving a
28 sentence in the custody of the Department of Corrections for crimes committed before or after July
29 11, 1987.

30 “**SECTION 43.** ORS 144.110 is amended to read:

31 “144.110. (1) In any felony case, the court may impose a minimum term of imprisonment of up
32 to one-half of the sentence it imposes.

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

34 “(a) The State Board of Parole and Post-Prison Supervision shall not release a prisoner on
35 parole who has been sentenced under subsection (1) of this section until the minimum term has been
36 served, except upon affirmative vote of a majority of *[the members of the board]* **three board**
37 **members or, if the chairperson requires all voting members to participate, a majority of all**
38 **voting members.**

39 “(b) The board shall not release a prisoner on parole:

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

42 “(B) Who has been convicted of murder under the provisions of ORS 163.115, except as provided
43 in ORS 163.115 (5)(c) to (f) **or 163.155 (6) to (8).**

44 “**SECTION 44.** ORS 144.783 is amended to read:

45 “144.783. (1) When a prisoner is sentenced to two or more consecutive terms of imprisonment,

1 the duration of the term of imprisonment shall be the sum of the terms set by the State Board of
2 Parole and Post-Prison Supervision pursuant to the ranges established for the offenses, subject to
3 ORS 144.079, and subject to the variations established pursuant to ORS 144.785 (1).

4 “(2) The duration of imprisonment pursuant to consecutive sentences may be less than the sum
5 of the terms under subsection (1) of this section if the board finds, by affirmative vote of a majority
6 of *[its members]* **three board members or, if the chairperson requires all voting members to**
7 **participate, a majority of all voting members**, that consecutive sentences are not appropriate
8 penalties for the criminal offenses involved and that the combined terms of imprisonment are not
9 necessary to protect community security.

10 “**SECTION 45.** ORS 163.105 is amended to read:

11 “163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

12 “(1)(a) Except as otherwise provided in ORS *[137.700]* **137.707**, when a defendant is convicted of
13 aggravated murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS
14 163.150, to death, life imprisonment without the possibility of release or parole or life imprisonment.

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

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

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

28 “(a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation
29 within a reasonable period of time;

30 “(b) The right, if the prisoner is without sufficient funds to employ an attorney, to be repres-
31 ented by legal counsel, appointed by the board, at board expense; and

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

35 “(3) If, upon hearing all of the evidence, the board, upon a unanimous vote of *[all of its]* **three**
36 **board members or, if the chairperson requires all voting members to participate, a unani-**
37 **mous vote of all voting** members, finds that the prisoner is capable of rehabilitation and that the
38 terms of the prisoner’s confinement should be changed to life imprisonment with the possibility of
39 parole, release to post-prison supervision or work release, it shall enter an order to that effect and
40 the order shall convert the terms of the prisoner’s confinement to life imprisonment with the possi-
41 bility of parole, release to post-prison supervision or work release and may set a release date. Oth-
42 erwise the board shall deny the relief sought in the petition.

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

1 “(5) The board’s final order shall be accompanied by findings of fact and conclusions of law. The
2 findings of fact shall consist of a concise statement of the underlying facts supporting the findings
3 as to each contested issue of fact and as to each ultimate fact required to support the board’s order.

4 “**SECTION 46.** ORS 163.115 is amended to read:

5 “163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes
6 murder:

7 “(a) When it is committed intentionally, except that it is an affirmative defense that, at the time
8 of the homicide, the defendant was under the influence of an extreme emotional disturbance;

9 “(b) When it is committed by a person, acting either alone or with one or more persons, who
10 commits or attempts to commit any of the following crimes and in the course of and in furtherance
11 of the crime the person is committing or attempting to commit, or during the immediate flight
12 therefrom, the person, or another participant if there be any, causes the death of a person other
13 than one of the participants:

14 “(A) Arson in the first degree as defined in ORS 164.325;

15 “(B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

16 “(C) Burglary in the first degree as defined in ORS 164.225;

17 “(D) Escape in the first degree as defined in ORS 162.165;

18 “(E) Kidnapping in the second degree as defined in ORS 163.225;

19 “(F) Kidnapping in the first degree as defined in ORS 163.235;

20 “(G) Robbery in the first degree as defined in ORS 164.415;

21 “(H) Any felony sexual offense in the first degree defined in this chapter;

22 “(I) Compelling prostitution as defined in ORS 167.017; or

23 “(J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
24 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
25 14 years of age; or

26 “(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference
27 to the value of human life, causes the death of a child under 14 years of age or a dependent person,
28 as defined in ORS 163.205, and:

29 “(A) The person has previously engaged in a pattern or practice of assault or torture of the
30 victim or another child under 14 years of age or a dependent person; or

31 “(B) The person causes the death by neglect or maltreatment.

32 “(2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section
33 need not allege specific incidents of assault or torture.

34 “(3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the
35 defendant:

36 “(a) Was not the only participant in the underlying crime;

37 “(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause
38 or aid in the commission thereof;

39 “(c) Was not armed with a dangerous or deadly weapon;

40 “(d) Had no reasonable ground to believe that any other participant was armed with a danger-
41 ous or deadly weapon; and

42 “(e) Had no reasonable ground to believe that any other participant intended to engage in con-
43 duct likely to result in death.

44 “(4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that
45 the victim was a dependent person who was at least 18 years of age and was under care or treat-

1 ment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person
2 or the guardian of the dependent person.

3 “[5)(a)] (5) Except as otherwise provided in ORS 163.155[,]:

4 “(a) A person convicted of murder, who was at least 15 years of age at the time of committing
5 the murder, shall be punished by imprisonment for life.

6 “(b) When a defendant is convicted of murder under this section, the court shall order that the
7 defendant shall be confined for a minimum of 25 years without possibility of parole, release to
8 post-prison supervision, release on work release or any form of temporary leave or employment at
9 a forest or work camp.

10 “(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
11 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
12 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
13 within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabili-
14 tated within a reasonable period of time. At the hearing the prisoner has:

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

17 “(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be repres-
18 ented by legal counsel, appointed by the board, at board expense; and

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

22 “(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of *[all of its]* **three**
23 **board members or, if the chairperson requires all voting members to participate, a unani-**
24 **mous vote of all voting** members, finds that the prisoner is capable of rehabilitation and that the
25 terms of the prisoner’s confinement should be changed to life imprisonment with the possibility of
26 parole, release to post-prison supervision or work release, it shall enter an order to that effect and
27 the order shall convert the terms of the prisoner’s confinement to life imprisonment with the possi-
28 bility of parole, release to post-prison supervision or work release and may set a release date. Oth-
29 erwise, the board shall deny the relief sought in the petition.

30 “(e) If the board denies the relief sought in the petition, the board shall determine the date of
31 the subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with
32 ORS 144.285.

33 “(f) The board’s final order shall be accompanied by findings of fact and conclusions of law. The
34 findings of fact shall consist of a concise statement of the underlying facts supporting the findings
35 as to each contested issue of fact and as to each ultimate fact required to support the board’s order.

36 “(6) As used in this section:

37 “(a) ‘Assault’ means *[to intentionally, knowingly or recklessly cause]* **the intentional, knowing**
38 **or reckless causation of** physical injury to another person. ‘Assault’ does not include the
39 *[causing]* **causation** of physical injury in a motor vehicle accident that occurs by reason of the
40 reckless conduct of a defendant.

41 “(b) ‘Neglect or maltreatment’ means a violation of ORS 163.535, 163.545 or 163.547 or a failure
42 to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
43 welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to
44 replace or affect the duty or standard of care required under ORS chapter 677.

45 “(c) ‘Pattern or practice’ means one or more previous episodes.

1 “(d) ‘Torture’ means [*to intentionally inflict*] **the intentional infliction of** intense physical pain
2 upon an unwilling victim as a separate objective apart from any other purpose.

3 “**SECTION 47.** ORS 163.155 is amended to read:

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

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

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

31 “(4) A sentence of life imprisonment without the possibility of release or parole under this sec-
32 tion may not be suspended, deferred or commuted by any judicial officer, and the State Board of
33 Parole and Post-Prison Supervision may neither parole the prisoner nor reduce the period of con-
34 finement in any manner whatsoever. The Department of Corrections or any executive official may
35 not permit the prisoner to participate in any sort of release or furlough program.

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

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

