

D R A F T

SUMMARY

Prohibits person who was under 18 years of age at time of committing offense from being sentenced to life imprisonment without possibility of release or parole.

Requires court to consider certain factors as mitigation when sentencing person who was under 18 years of age at time of committing offense. Directs court to include in judgment document age of defendant at time of committing offense and fact that person is eligible for hearing and release after serving 15 years of sentence of imprisonment.

Establishes process for hearing with State Board of Parole and Post-Prison Supervision for persons who were under 18 years of age at time of committing offense and who have served 15 years of sentence of imprisonment. Authorizes release of person on parole or post-prison supervision if certain findings are made.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to sentences for juvenile offenders; creating new provisions;
3 amending ORS 137.707, 144.185, 163.105, 163.115, 163.150 and 163.155; pre-
4 scribing an effective date; and providing for criminal sentence reduction
5 that requires approval by a two-thirds majority.

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

7 **SECTION 1. (1) A court may not impose a sentence of life**
8 **imprisonment without the possibility of release or parole on a person**
9 **who was under 18 years of age at the time of committing the offense.**

10 **(2) In determining the appropriate sentence for a person who was**
11 **under 18 years of age at the time of committing the offense, if the**
12 **court is provided information concerning the following circumstances,**
13 **the court shall consider the circumstances as mitigating factors:**

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 **(a) The person’s age, intellectual capacity and impetuosity at the**
2 **time of the offense.**

3 **(b) The person’s family and community environment, history of**
4 **trauma and prior involvement in the juvenile dependency system at**
5 **the time of the offense.**

6 **(c) The person’s ability at the time of the offense to appreciate the**
7 **risks and consequences of the conduct constituting the offense.**

8 **(d) The person’s community involvement prior to the offense.**

9 **(e) Any peer or familial pressure to which the person was subjected**
10 **at the time of the offense.**

11 **(f) Whether and to what extent an adult was involved in the com-**
12 **mission of the offense.**

13 **(g) The person’s capacity for rehabilitation.**

14 **(h) The person’s school records and special education evaluations.**

15 **(i) Any other mitigating factors or circumstances presented by the**
16 **person.**

17 **(3)(a) If the court is provided with a report of a mental health**
18 **evaluation of the person, the court shall give the evaluation substan-**
19 **tial weight in determining the existence of mitigating factors if:**

20 **(A) The evaluation was conducted by a psychiatrist or psychologist**
21 **whose primary practice involves the treatment of adolescents; and**

22 **(B) The report includes the assessment of the person’s degree of**
23 **insight, judgment, self-awareness, emotional regulation and impulse**
24 **control.**

25 **(b) Paragraph (a) of this subsection does not constitute a require-**
26 **ment that a person obtain or submit an evaluation for sentencing.**

27 **(4) Under no circumstances may the court consider any circum-**
28 **stances listed in subsection (2) of this section or the report of an**
29 **evaluation described in subsection (3) of this section as an aggravating**
30 **factor.**

31 **(5) When sentencing a person who was under 18 years of age at the**

1 **time of committing an offense to a term of imprisonment, the court**
2 **shall indicate in the judgment:**

3 **(a) The age of the person at the time of committing the offense;**
4 **and**

5 **(b) That the person is eligible for a hearing and release under sec-**
6 **tion 2 of this 2019 Act.**

7 **SECTION 2. (1)(a) A person convicted of an offense or offenses**
8 **committed when the person was under 18 years of age, who is serving**
9 **a sentence of imprisonment, is eligible for release on parole or post-**
10 **prison supervision as provided in this section after the person has**
11 **served 15 years of imprisonment.**

12 **(b) Nothing in this section is intended to prevent a person from**
13 **being released prior to serving 15 years of imprisonment under any**
14 **other provision of law.**

15 **(c) As used in this subsection, “served 15 years of imprisonment”**
16 **means that 15 years have passed since the person began serving the**
17 **sentence, including pretrial incarceration but not including any re-**
18 **duction in sentence under ORS 421.121 or any other statute.**

19 **(2) This section applies notwithstanding the fact that the person**
20 **was:**

21 **(a) Sentenced to a minimum sentence under ORS 163.105, 163.115 or**
22 **163.155.**

23 **(b) Sentenced to a mandatory minimum sentence under ORS**
24 **137.700, 137.707 or 137.717, a determinate sentence under ORS 137.635,**
25 **or a sentence required by any other provision of law.**

26 **(c) Sentenced to two or more consecutive sentences under ORS**
27 **137.123.**

28 **(3) When a person eligible for release on parole or post-prison**
29 **supervision as described in subsection (1) of this section has served 15**
30 **years of imprisonment, the State Board of Parole and Post-Prison**
31 **Supervision shall hold a hearing. The hearing must provide the person**

1 a meaningful opportunity to be released on parole or post-prison
2 supervision.

3 (4) The board may require the person, before holding a hearing de-
4 scribed in this section, to be examined by a psychiatrist or psychol-
5 ogist with expertise in adolescent development. Within 60 days of the
6 evaluation, the examining psychiatrist or psychologist shall file a
7 written report of the findings and conclusions of the examination with
8 the board. A certified copy of the report shall be provided to the person
9 and the person's attorney.

10 (5) During a hearing under this section, the board shall consider
11 and give substantial weight to:

12 (a) The following circumstances in all cases:

13 (A) The fact that a person under 18 years of age is incapable of the
14 same reasoning and impulse control as an adult.

15 (B) The diminished culpability of minors as compared to that of
16 adults.

17 (b) The following mitigating circumstances, if relevant to the spe-
18 cific person and offense:

19 (A) The age and immaturity of the person at the time of the of-
20 fense.

21 (B) Whether and to what extent an adult was involved in the of-
22 fense.

23 (C) The person's family and community circumstances at the time
24 of the offense, including any history of abuse, trauma and involvement
25 in the juvenile dependency system.

26 (D) The person's subsequent emotional growth and increased ma-
27 turity during the person's imprisonment.

28 (E) The person's participation in rehabilitative and educational
29 programs while in custody if such programs have been made available
30 to the person and use of self-study for self-improvement.

31 (F) A mental health diagnosis.

1 **(G) Any other mitigating factors or circumstances presented by the**
2 **person.**

3 **(6) Under no circumstances may the board consider the factors de-**
4 **scribed in subsection (5) of this section as aggravating factors.**

5 **(7) If the board finds that, based on the consideration of the age**
6 **and immaturity of the person at the time of the offense and the**
7 **person's behavior thereafter, the person has demonstrated maturity**
8 **and rehabilitation, the board shall release the person as follows:**

9 **(a) For a person sentenced under ORS 163.105, 163.115 or 163.155, the**
10 **board shall set a release date that is not more than 60 days from the**
11 **date of the hearing and, notwithstanding section 28, chapter 790,**
12 **Oregon Laws 1989, the person shall be released on parole in accordance**
13 **with ORS 144.125, 144.260 and 144.270.**

14 **(b) A person sentenced to a term of imprisonment under a provision**
15 **of law other than ORS 163.105, 163.115 or 163.155 shall be released on**
16 **post-prison supervision in accordance with ORS 144.096 and 144.098**
17 **within 60 days of the date of the hearing.**

18 **(8)(a) Unless the context requires otherwise, the provisions of ORS**
19 **144.260 to 144.380 apply to a person released on parole under subsection**
20 **(7)(a) of this section.**

21 **(b) Unless the context requires otherwise, the provisions of ORS**
22 **144.101, 144.102, 144.103, 144.104, 144.106, 144.107 and 144.108 apply to a**
23 **person released on post-prison supervision under subsection (7)(b) of**
24 **this section.**

25 **(9) If the board determines that the person has not demonstrated**
26 **maturity and rehabilitation under subsection (7) of this section, the**
27 **board may postpone a subsequent hearing to a date that is at least two**
28 **years but no more than 10 years from the date of the hearing.**

29 **(10) The person may waive a hearing under this section. Notwith-**
30 **standing waiver of the hearing, the board shall hold a hearing under**
31 **this section upon the person's written request.**

1 **(11) The board shall provide notice of the hearing to:**

2 **(a) The district attorney of the county in which the person was**
3 **convicted; and**

4 **(b) The victim of any offense for which the person is serving a**
5 **sentence, if the victim requests to be notified and furnishes the board**
6 **with a current address.**

7 **(12) A person has the right to counsel, including counsel appointed**
8 **at board expense, at a hearing under this section.**

9 **(13) The board may adopt rules to carry out the provisions of this**
10 **section.**

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

12 137.707. (1)(a) Notwithstanding any other provision of law, when a person
13 charged with aggravated murder, as defined in ORS 163.095, or an offense
14 listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the
15 time the offense is committed, and the offense is committed on or after April
16 1, 1995, or when a person charged with an offense listed in subsection (4)(b)
17 of this section is 15, 16 or 17 years of age at the time the offense is com-
18 mitted, and the offense is committed on or after October 4, 1997, or when a
19 person charged with the offense described in subsection (4)(c) of this section
20 is 15, 16 or 17 years of age at the time the offense is committed and the of-
21 fense is committed on or after January 1, 2008, the person shall be prosecuted
22 as an adult in criminal court.

23 (b) A district attorney, the Attorney General or a juvenile department
24 counselor may not file in juvenile court a petition alleging that a person has
25 committed an act that, if committed by an adult, would constitute aggravated
26 murder or an offense listed in subsection (4) of this section if the person was
27 15, 16 or 17 years of age at the time the act was committed.

28 (2)(a) When a person charged under this section is convicted of an offense
29 listed in subsection (4) of this section, the court shall impose at least the
30 presumptive term of imprisonment provided for the offense in subsection (4)
31 of this section. The court may impose a greater presumptive term if other-

1 wise permitted by law, but may not impose a lesser term. The person is not,
2 during the service of the term of imprisonment, eligible for release on post-
3 prison supervision or any form of temporary leave from custody. The person
4 is not eligible for any reduction in, or based on, the minimum sentence for
5 any reason under ORS 421.121 or any other provision of law.

6 (b) ORS 138.052, 163.105 and 163.150 apply to sentencing a person prose-
7 cuted under this section and convicted of aggravated murder under ORS
8 163.095 except that a person who was under 18 years of age at the time the
9 offense was committed is not subject to a sentence of death **or life**
10 **imprisonment without the possibility of release or parole.**

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

13 (4) The offenses to which this section applies and the presumptive sen-
14 tences are:

15 _____

- 16 (a)(A) Murder, as defined in
- 17 ORS 163.115.....300 months
- 18 (B) Attempt or conspiracy
- 19 to commit aggravated
- 20 murder, as defined
- 21 in ORS 163.095.....120 months
- 22 (C) Attempt or conspiracy
- 23 to commit murder, as
- 24 defined in ORS 163.115.....90 months
- 25 (D) Manslaughter in the
- 26 first degree, as defined
- 27 in ORS 163.118.....120 months
- 28 (E) Manslaughter in the
- 29 second degree, as defined
- 30 in ORS 163.125.....75 months
- 31 (F) Assault in the first

- 1 degree, as defined
- 2 in ORS 163.185.....90 months
- 3 (G) Assault in the second
- 4 degree, as defined
- 5 in ORS 163.175.....70 months
- 6 (H) Kidnapping in the first
- 7 degree, as defined in
- 8 ORS 163.235.....90 months
- 9 (I) Kidnapping in the second
- 10 degree, as defined in
- 11 ORS 163.225.....70 months
- 12 (J) Rape in the first degree,
- 13 as defined in ORS 163.375....100 months
- 14 (K) Rape in the second
- 15 degree, as defined in
- 16 ORS 163.365.....75 months
- 17 (L) Sodomy in the first
- 18 degree, as defined in
- 19 ORS 163.405.....100 months
- 20 (M) Sodomy in the second
- 21 degree, as defined in
- 22 ORS 163.395.....75 months
- 23 (N) Unlawful sexual
- 24 penetration in the first
- 25 degree, as defined
- 26 in ORS 163.411.....100 months
- 27 (O) Unlawful sexual
- 28 penetration in the
- 29 second degree, as
- 30 defined in ORS 163.408.75 months
- 31 (P) Sexual abuse in the first

- 1 degree, as defined in
- 2 ORS 163.427.....75 months
- 3 (Q) Robbery in the first
- 4 degree, as defined in
- 5 ORS 164.415.....90 months
- 6 (R) Robbery in the second
- 7 degree, as defined in
- 8 ORS 164.405.....70 months
- 9 (b)(A) Arson in the first degree,
- 10 as defined in
- 11 ORS 164.325, when
- 12 the offense represented
- 13 a threat of serious
- 14 physical injury.90 months
- 15 (B) Using a child in a display
- 16 of sexually explicit
- 17 conduct, as defined in
- 18 ORS 163.670.....70 months
- 19 (C) Compelling prostitution,
- 20 as defined in ORS 167.017
- 21 (1)(a), (b) or (d).....70 months
- 22 (c) Aggravated vehicular
- 23 homicide, as defined in
- 24 ORS 163.149.....240 months

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

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

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

31 (A) But constitutes an offense for which waiver is authorized under ORS

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

- 7 (i) Order that a presentence report be prepared;
- 8 (ii) Set forth in a memorandum any observations and recommendations
9 that the court deems appropriate; and
- 10 (iii) Enter an order transferring the case to the juvenile court for dispo-
11 sition under ORS 419C.067 and 419C.411.

12 (B) And is not an offense for which waiver is authorized under ORS
13 419C.349, the court may not sentence the person. The court shall:

- 14 (i) Order that a presentence report be prepared;
- 15 (ii) Set forth in a memorandum any observations and recommendations
16 that the court deems appropriate; and
- 17 (iii) Enter an order transferring the case to the juvenile court for dispo-
18 sition under ORS 419C.067 and 419C.411.

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

27 (7)(a) If a person charged and tried as provided in subsection (6) of this
28 section is found guilty of aggravated murder or an offense listed in sub-
29 section (4) of this section and one or more other offenses, the court shall
30 impose the sentence for aggravated murder or the offense listed in subsection
31 (4) of this section as provided in subsection (2) of this section and shall im-

1 pose sentences for the other offenses as otherwise provided by law.

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

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

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

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

17 **SECTION 4.** ORS 144.185 is amended to read:

18 144.185. Before making a determination regarding a prisoner's release on
19 parole as provided by ORS 144.125 **or section 2 of this 2019 Act**, the State
20 Board of Parole and Post-Prison Supervision may cause to be brought before
21 it current records and information regarding the prisoner, including:

22 (1) Any relevant information which may be submitted by the prisoner, the
23 prisoner's attorney, the victim of the crime, the Department of Corrections,
24 or by other persons;

25 (2) The presentence investigation report specified in ORS 144.791 or if no
26 such report has been prepared, a report of similar content prepared by in-
27 stitutional staff;

28 (3) The reports of any physical, mental and psychiatric examinations of
29 the prisoner;

30 (4) The prisoner's parole plan; and

31 (5) Other relevant information concerning the prisoner as may be rea-

1 sonably available.

2 **SECTION 5.** ORS 163.105 is amended to read:

3 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS
4 421.450 to 421.490:

5 (1)(a) Except as otherwise provided in ORS 137.707, when a defendant is
6 convicted of aggravated murder as defined by ORS 163.095, the defendant
7 shall be sentenced, pursuant to ORS 163.150, to death, life imprisonment
8 without the possibility of release or parole or life imprisonment.

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

16 (c) If sentenced to life imprisonment, the court shall order that the de-
17 fendant shall be confined for a minimum of 30 years without possibility of
18 parole[,] **or** release to post-prison supervision **except as provided in section**
19 **2 of this 2019 Act, and without the possibility of** release on work release
20 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
22 pursuant to subsection (1)(c) of this section, the State Board of Parole and
23 Post-Prison Supervision, upon the petition of a prisoner so confined, shall
24 hold a hearing to determine if the prisoner is likely to be rehabilitated
25 within a reasonable period of time. The sole issue is whether or not the
26 prisoner is likely to be rehabilitated within a reasonable period of time. At
27 the hearing, the prisoner has:

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

30 (b) The right, if the prisoner is without sufficient funds to employ an at-
31 torney, to be represented by legal counsel, appointed by the board, at board

1 expense; and

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

6 (3) If, upon hearing all of the evidence, the board, upon a unanimous vote
7 of three board members or, if the chairperson requires all voting members
8 to participate, a unanimous vote of all voting members, finds that the pris-
9 oner is capable of rehabilitation and that the terms of the prisoner's con-
10 finement should be changed to life imprisonment with the possibility of
11 parole, release to post-prison supervision or work release, it shall enter an
12 order to that effect and the order shall convert the terms of the prisoner's
13 confinement to life imprisonment with the possibility of parole, release to
14 post-prison supervision or work release and may set a release date. Otherwise
15 the board shall deny the relief sought in the petition.

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

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

23 **SECTION 6.** ORS 163.115 is amended to read:

24 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal
25 homicide constitutes murder:

26 (a) When it is committed intentionally, except that it is an affirmative
27 defense that, at the time of the homicide, the defendant was under the in-
28 fluence of an extreme emotional disturbance;

29 (b) When it is committed by a person, acting either alone or with one or
30 more persons, who commits or attempts to commit any of the following
31 crimes and in the course of and in furtherance of the crime the person is

1 committing or attempting to commit, or during the immediate flight there-
2 from, the person, or another participant if there be any, causes the death of
3 a person other than one of the participants:

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

5 (B) Criminal mischief in the first degree by means of an explosive as de-
6 fined in ORS 164.365;

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

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

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

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

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

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

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

14 (J) Assault in the first degree, as defined in ORS 163.185, and the victim
15 is under 14 years of age, or assault in the second degree, as defined in ORS
16 163.175 (1)(a) or (b), and the victim is under 14 years of age; or

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

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

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

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

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

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

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

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

1 (d) Had no reasonable ground to believe that any other participant was
2 armed with a dangerous or deadly weapon; and

3 (e) Had no reasonable ground to believe that any other participant in-
4 tended to engage in conduct likely to result in death.

5 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B)
6 of this section that the victim was a dependent person who was at least 18
7 years of age and was under care or treatment solely by spiritual means
8 pursuant to the religious beliefs or practices of the dependent person or the
9 guardian of the dependent person.

10 (5) Except as otherwise provided in ORS 163.155 **and section 2 of this**
11 **2019 Act:**

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

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

19 (c) At any time after completion of a minimum period of confinement
20 pursuant to paragraph (b) of this subsection, the State Board of Parole and
21 Post-Prison Supervision, upon the petition of a prisoner so confined, shall
22 hold a hearing to determine if the prisoner is likely to be rehabilitated
23 within a reasonable period of time. The sole issue is whether the prisoner
24 is likely to be rehabilitated within a reasonable period of time. At the
25 hearing the prisoner has:

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

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

31 (C) The right to a subpoena upon a showing of the general relevance and

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

4 (d) If, upon hearing all of the evidence, the board, upon a unanimous vote
5 of three board members or, if the chairperson requires all voting members
6 to participate, a unanimous vote of all voting members, finds that the pris-
7 oner is capable of rehabilitation and that the terms of the prisoner's con-
8 finement should be changed to life imprisonment with the possibility of
9 parole, release to post-prison supervision or work release, it shall enter an
10 order to that effect and the order shall convert the terms of the prisoner's
11 confinement to life imprisonment with the possibility of parole, release to
12 post-prison supervision or work release and may set a release date. Other-
13 wise, the board shall deny the relief sought in the petition.

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

17 (f) The board's final order shall be accompanied by findings of fact and
18 conclusions of law. The findings of fact shall consist of a concise statement
19 of the underlying facts supporting the findings as to each contested issue of
20 fact and as to each ultimate fact required to support the board's order.

21 (6) As used in this section:

22 (a) "Assault" means the intentional, knowing or reckless causation of
23 physical injury to another person. "Assault" does not include the causation
24 of physical injury in a motor vehicle accident that occurs by reason of the
25 reckless conduct of a defendant.

26 (b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545
27 or 163.547 or a failure to provide adequate food, clothing, shelter or medical
28 care that is likely to endanger the health or welfare of a child under 14 years
29 of age or a dependent person. This paragraph is not intended to replace or
30 affect the duty or standard of care required under ORS chapter 677.

31 (c) "Pattern or practice" means one or more previous episodes.

1 (d) "Torture" means the intentional infliction of intense physical pain
2 upon an unwilling victim as a separate objective apart from any other pur-
3 pose.

4 **SECTION 7.** ORS 163.155 is amended to read:

5 163.155. (1) When a defendant, who was at least 15 years of age at the
6 time of committing the murder, is convicted of murdering a pregnant victim
7 under ORS 163.115 (1)(a) and the defendant knew that the victim was preg-
8 nant, the defendant shall be sentenced to life imprisonment without the
9 possibility of release or parole **if the person was at least 18 years of age**
10 **at the time of committing the offense** or to life imprisonment. The court
11 shall conduct a sentencing proceeding to determine whether the defendant
12 shall be sentenced to life imprisonment without the possibility of release or
13 parole as described in subsection (4) of this section or to life imprisonment
14 as described in subsection (5) of this section. If the defendant waives all
15 rights to a jury sentencing proceeding, the court shall conduct the sentenc-
16 ing proceeding as the trier of fact. The procedure for the sentencing pro-
17 ceeding, whether before a court or a jury, shall follow the procedure of ORS
18 163.150 (1)(a), as modified by this section.

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

1 the possibility of release or parole, the trial court shall sentence the de-
2 fendant to life imprisonment as described in subsection (5) of this section.

3 (3) Nothing in this section precludes the court from sentencing the de-
4 fendant to life imprisonment, as described in subsection (5) of this section,
5 or life imprisonment without the possibility of release or parole, as described
6 in subsection (4) of this section, pursuant to a stipulation of sentence or
7 stipulation of sentencing facts agreed to and offered by both parties if the
8 defendant waives all rights to a jury sentencing proceeding.

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

16 (5) If the defendant is sentenced to life imprisonment, the court shall or-
17 der that the defendant be confined for a minimum of 30 years without pos-
18 sibility of parole[,] **or** release to post-prison supervision **except as provided**
19 **in section 2 of this 2019 Act, and without the possibility of** release on
20 work release or any form of temporary leave or employment at a forest or
21 work camp.

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

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

31 (b) The prisoner has the right, if the prisoner is without sufficient funds

1 to employ an attorney, to be represented by legal counsel, appointed by the
2 board, at board expense; and

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

7 (7) If, upon hearing all of the evidence, the board, upon a unanimous vote
8 of three board members or, if the chairperson requires all voting members
9 to participate, a unanimous vote of all voting members, finds that the pris-
10 oner is capable of rehabilitation and that the terms of the prisoner's con-
11 finement should be changed to life imprisonment with the possibility of
12 parole, release on post-prison supervision or work release, it shall enter an
13 order to that effect and the order shall convert the terms of the prisoner's
14 confinement to life imprisonment with the possibility of parole, release on
15 post-prison supervision or work release and may set a release date. Otherwise
16 the board shall deny the relief sought in the petition.

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

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

22 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated
23 murder, the court, except as otherwise provided in subsection (3) of this
24 section, shall conduct a separate sentencing proceeding to determine whether
25 the defendant shall be sentenced to life imprisonment, as described in ORS
26 163.105 (1)(c), life imprisonment without the possibility of release or parole,
27 as described in ORS 163.105 (1)(b), or death. The proceeding shall be con-
28 ducted in the trial court before the trial jury as soon as practicable. If a
29 juror for any reason is unable to perform the function of a juror, the juror
30 shall be dismissed from the sentencing proceeding. The court shall cause to
31 be drawn the name of one of the alternate jurors, who shall then become a

1 member of the jury for the sentencing proceeding notwithstanding the fact
2 that the alternate juror did not deliberate on the issue of guilt. If the de-
3 fendant has pleaded guilty, the sentencing proceeding shall be conducted
4 before a jury impaneled for that purpose. In the proceeding, evidence may
5 be presented as to any matter that the court deems relevant to sentence in-
6 cluding, but not limited to, victim impact evidence relating to the personal
7 characteristics of the victim or the impact of the crime on the victim's family
8 and any aggravating or mitigating evidence relevant to the issue in para-
9 graph (b)(D) of this subsection; however, neither the state nor the defendant
10 shall be allowed to introduce repetitive evidence that has previously been
11 offered and received during the trial on the issue of guilt. The court shall
12 instruct the jury that all evidence previously offered and received may be
13 considered for purposes of the sentencing hearing. This paragraph shall not
14 be construed to authorize the introduction of any evidence secured in vio-
15 lation of the Constitution of the United States or of the State of Oregon.
16 The state and the defendant or the counsel of the defendant shall be per-
17 mitted to present arguments for or against a sentence of death and for or
18 against a sentence of life imprisonment with or without the possibility of
19 release or parole.

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

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

25 (B) Whether there is a probability that the defendant would commit
26 criminal acts of violence that would constitute a continuing threat to soci-
27 ety;

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

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

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

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

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

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

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

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

29 (b) If the jury returns a negative finding on any issue under subsection
30 (1)(b) of this section and further finds that there are sufficient mitigating
31 circumstances to warrant life imprisonment, the trial court shall sentence

1 the defendant to life imprisonment in the custody of the Department of
2 Corrections as provided in ORS 163.105 (1)(c).

3 (3)(a) When the defendant is found guilty of aggravated murder, and ORS
4 137.707 (2)(b) applies or the state advises the court on the record that the
5 state declines to present evidence for purposes of sentencing the defendant
6 to death, the court:

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

9 (B) Shall conduct a sentencing proceeding to determine whether the de-
10 fendant shall be sentenced to life imprisonment without the possibility of
11 release or parole as described in ORS 163.105 (1)(b) or life imprisonment as
12 described in ORS 163.105 (1)(c). If the defendant waives all rights to a jury
13 sentencing proceeding, the court shall conduct the sentencing proceeding as
14 the trier of fact. The procedure for the sentencing proceeding, whether before
15 a court or a jury, shall follow the procedure of subsection (1)(a) of this sec-
16 tion, as modified by this subsection. In the proceeding, evidence may be
17 presented as to any matter that the court deems relevant to sentence, in-
18 cluding, but not limited to, victim impact evidence relating to the personal
19 characteristics of the victim or the impact of the crime on the victim's fam-
20 ily.

21 (b) Following the presentation of evidence and argument under paragraph
22 (a) of this subsection, the court shall instruct the jury that the trial court
23 shall sentence the defendant to life imprisonment without the possibility of
24 release or parole as described in ORS 163.105 (1)(b), unless after considering
25 all of the evidence submitted, 10 or more members of the jury find there are
26 sufficient mitigating circumstances to warrant life imprisonment with the
27 possibility of parole as described in ORS 163.105 (1)(c). If 10 or more members
28 of the jury find there are sufficient mitigating circumstances to warrant life
29 imprisonment with the possibility of parole, the trial court shall sentence the
30 defendant to life imprisonment as described in ORS 163.105 (1)(c).

31 (c) Nothing in this subsection shall preclude the court from sentencing

1 the defendant to life imprisonment, as described in ORS 163.105 (1)(c), or life
2 imprisonment without the possibility of release or parole, as described in
3 ORS 163.105 (1)(b), pursuant to a stipulation of sentence or stipulation of
4 sentencing facts agreed to and offered by both parties if the defendant waives
5 all rights to a jury sentencing proceeding.

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

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

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

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

21 (A) Death;

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

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

26 **SECTION 9. (1) Sections 1 and 2 of this 2019 Act and the amend-**
27 **ments to ORS 137.707, 144.185, 163.105, 163.115, 163.150 and 163.155 by**
28 **sections 3 to 8 of this 2019 Act become operative on January 1, 2020.**

29 **(2) The State Board of Parole and Post-Prison Supervision may take**
30 **any action before the operative date specified in subsection (1) of this**
31 **section that is necessary to enable the board to exercise, on and after**

1 **the operative date specified in subsection (1) of this section, all of the**
2 **duties, functions and powers conferred on the board by sections 1 and**
3 **2 of this 2019 Act and the amendments to ORS 137.707, 144.185, 163.105,**
4 **163.115, 163.150 and 163.155 by sections 3 to 8 of this 2019 Act.**

5 **SECTION 10. Sections 1 and 2 of this 2019 Act and the amendments**
6 **to ORS 137.707, 144.185, 163.105, 163.115, 163.150 and 163.155 by sections**
7 **3 to 8 of this 2019 Act apply to sentences imposed on or after January**
8 **1, 2020.**

9 **SECTION 11. This 2019 Act takes effect on the 91st day after the**
10 **date on which the 2019 regular session of the Eightieth Legislative**
11 **Assembly adjourns sine die.**

12
