

# D R A F T

## SUMMARY

Removes future dangerousness as factor for jury to determine when deciding on sentence of death. Requires state to prove beyond reasonable doubt that defendant should receive death sentence.

Redefines crime of aggravated murder. Reclassifies current manners of committing aggravated murder as murder in the first degree. Renames crime of murder to murder in the second degree. Specifies penalties.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to murder; creating new provisions; amending ORS 40.355, 133.705,  
3 136.450, 137.635, 137.700, 137.707, 144.079, 144.085, 144.110, 161.005, 161.535,  
4 163.095, 163.098, 163.103, 163.115, 163.135, 163.150, 163.707, 342.143,  
5 419A.260, 419C.349, 419C.352, 419C.501, 421.121, 443.004 and 671.610; and  
6 prescribing an effective date.

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

8 **SECTION 1.** ORS 163.095 is amended to read:

9 163.095. As used in ORS 163.105 and this section, “aggravated murder”  
10 means [*murder as defined in ORS 163.115 which*] **criminal homicide of two**  
11 **or more persons that is premeditated and committed intentionally** [*un-*  
12 *der, or accompanied by, any of the following circumstances*] **and with the**  
13 **intent to:**

14 **(1) Intimidate, injure or coerce a civilian population;**

15 **(2) Influence the policy of a government by intimidation or**  
16 **coercion; or**

17 **(3) Affect the conduct of a government through destruction of**  
18 **property, murder, kidnapping or aircraft piracy.**

**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 [(1)(a) *The defendant committed the murder pursuant to an agreement that*  
2 *the defendant receive money or other thing of value for committing the*  
3 *murder.*]

4 [(b) *The defendant solicited another to commit the murder and paid or*  
5 *agreed to pay the person money or other thing of value for committing the*  
6 *murder.*]

7 [(c) *The defendant committed murder after having been convicted previously*  
8 *in any jurisdiction of any homicide, the elements of which constitute the crime*  
9 *of murder as defined in ORS 163.115 or manslaughter in the first degree as*  
10 *defined in ORS 163.118.*]

11 [(d) *There was more than one murder victim in the same criminal episode*  
12 *as defined in ORS 131.505.*]

13 [(e) *The homicide occurred in the course of or as a result of intentional*  
14 *maiming or torture of the victim.*]

15 [(f) *The victim of the intentional homicide was a person under the age of*  
16 *14 years.*]

17 [(2)(a) *The victim was one of the following and the murder was related to*  
18 *the performance of the victim's official duties in the justice system.:*]

19 [(A) *A police officer as defined in ORS 181A.355;*]

20 [(B) *A correctional, parole and probation officer or other person charged*  
21 *with the duty of custody, control or supervision of convicted persons;*]

22 [(C) *A member of the Oregon State Police;*]

23 [(D) *A judicial officer as defined in ORS 1.210;*]

24 [(E) *A juror or witness in a criminal proceeding;*]

25 [(F) *An employee or officer of a court of justice;*]

26 [(G) *A member of the State Board of Parole and Post-Prison Supervision;*  
27 *or*]

28 [(H) *A regulatory specialist.*]

29 [(b) *The defendant was confined in a state, county or municipal penal or*  
30 *correctional facility or was otherwise in custody when the murder occurred.*]

31 [(c) *The defendant committed murder by means of an explosive as defined*

1 *in ORS 164.055.]*

2 *[(d) Notwithstanding ORS 163.115 (1)(b), the defendant personally and in-*  
3 *tentionally committed the homicide under the circumstances set forth in ORS*  
4 *163.115 (1)(b).]*

5 *[(e) The murder was committed in an effort to conceal the commission of a*  
6 *crime, or to conceal the identity of the perpetrator of a crime.]*

7 *[(f) The murder was committed after the defendant had escaped from a*  
8 *state, county or municipal penal or correctional facility and before the de-*  
9 *fendant had been returned to the custody of the facility.]*

10 **SECTION 2. Section 3 of this 2019 Act is added to and made a part**  
11 **of ORS 163.095 to 163.115.**

12 **SECTION 3. (1) “Murder in the first degree” means murder in the**  
13 **second degree as defined in ORS 163.115 which is committed under, or**  
14 **accompanied by, any of the following circumstances:**

15 **(a) The defendant committed the murder pursuant to an agreement**  
16 **that the defendant receive money or other thing of value for commit-**  
17 **ting the murder.**

18 **(b) The defendant solicited another to commit the murder and paid**  
19 **or agreed to pay the person money or other thing of value for com-**  
20 **mitting the murder.**

21 **(c) The defendant committed murder after having been convicted**  
22 **previously in any jurisdiction of any homicide, the elements of which**  
23 **constitute the crime of aggravated murder as defined in ORS 163.095,**  
24 **murder in the first degree under this section, murder in the second**  
25 **degree as defined in ORS 163.115 or manslaughter in the first degree**  
26 **as defined in ORS 163.118.**

27 **(d) There was more than one murder victim in the same criminal**  
28 **episode as defined in ORS 131.505.**

29 **(e) The homicide occurred in the course of or as a result of inten-**  
30 **tional maiming or torture of the victim.**

31 **(f) The victim of the intentional homicide was a person under the**

1 **age of 14 years.**

2 **(g) The victim was one of the following and the murder was related**  
3 **to the performance of the victim's official duties in the justice system:**

4 **(A) A police officer as defined in ORS 181A.355;**

5 **(B) A correctional, parole and probation officer or other person**  
6 **charged with the duty of custody, control or supervision of convicted**  
7 **persons;**

8 **(C) A member of the Oregon State Police;**

9 **(D) A judicial officer as defined in ORS 1.210;**

10 **(E) A juror or witness in a criminal proceeding;**

11 **(F) An employee or officer of a court of justice;**

12 **(G) A member of the State Board of Parole and Post-Prison Super-**  
13 **vision; or**

14 **(H) A regulatory specialist.**

15 **(h) The defendant was confined in a state, county or municipal**  
16 **penal or correctional facility or was otherwise in custody when the**  
17 **murder occurred.**

18 **(i) The defendant committed murder by means of an explosive as**  
19 **defined in ORS 164.055.**

20 **(j) Notwithstanding ORS 163.115 (1)(b), the defendant personally and**  
21 **intentionally committed the homicide under the circumstances set**  
22 **forth in ORS 163.115 (1)(b).**

23 **(k) The murder was committed in an effort to conceal the com-**  
24 **mission of a crime, or to conceal the identity of the perpetrator of a**  
25 **crime.**

26 **(L) The murder was committed after the defendant had escaped**  
27 **from a state, county or municipal penal or correctional facility and**  
28 **before the defendant had been returned to the custody of the facility.**

29 **(2)(a) Except as otherwise provided in ORS 163.155 and paragraph**  
30 **(b) of this subsection, the court shall sentence a person convicted of**  
31 **murder in the first degree, who was at least 15 years of age at the time**

1 of committing the murder, to life imprisonment. The court shall order  
2 that the defendant be confined for a minimum of 30 years without  
3 possibility of parole, release to post-prison supervision, release on  
4 work release or any form of temporary leave or employment at a for-  
5 est or work camp.

6 (b) The court may sentence the person to life imprisonment without  
7 the possibility of parole if the person was at least 18 years of age at  
8 the time of committing the murder. The court shall state on the re-  
9 cord the reasons for imposing the sentence. A person sentenced to life  
10 imprisonment without the possibility of release or parole under this  
11 paragraph shall not have that sentence suspended, deferred or com-  
12 muted by any judicial officer, and the State Board of Parole and  
13 Post-Prison Supervision may not parole the prisoner nor reduce the  
14 period of confinement in any manner whatsoever. The Department of  
15 Corrections or any executive official may not permit the prisoner to  
16 participate in any sort of release or furlough program.

17 (3)(a) For a person sentenced to life imprisonment, at any time af-  
18 ter completion of the minimum period of confinement described in  
19 subsection (2)(a) of this section, the State Board of Parole and Post-  
20 Prison Supervision, upon the petition of a prisoner so confined, shall  
21 hold a hearing to determine if the prisoner is likely to be rehabilitated  
22 within a reasonable period of time. The sole issue is whether the  
23 prisoner is likely to be rehabilitated within a reasonable period of  
24 time. At the hearing the prisoner has:

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

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

30 (C) The right to a subpoena upon a showing of the general relevance  
31 and reasonable scope of the evidence sought, provided that any

1 subpoena issued on behalf of the prisoner must be issued by the State  
2 Board of Parole and Post-Prison Supervision pursuant to rules adopted  
3 by the board.

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

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

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

23 **SECTION 4.** ORS 163.115 is amended to read:

24 163.115. (1) Except as provided in ORS **163.095**, 163.118 and 163.125, crim-  
25 inal homicide constitutes murder **in the second degree**:

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:

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

14 (b) When a defendant is convicted of murder **in the second degree** under  
15 this section, the court shall order that the defendant shall be confined for  
16 a minimum of 25 years without possibility of parole, release to post-prison  
17 supervision, release on work release or any form of temporary leave or em-  
18 ployment at a forest or 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 5.** ORS 163.150 is amended to read:

5 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated  
6 murder, the court, except as otherwise provided in subsection (3) of this  
7 section, shall conduct a separate sentencing proceeding to determine whether  
8 the defendant shall be sentenced to life imprisonment, as described in ORS  
9 163.105 (1)(c), life imprisonment without the possibility of release or parole,  
10 as described in ORS 163.105 (1)(b), or death. The proceeding shall be con-  
11 ducted in the trial court before the trial jury as soon as practicable. If a  
12 juror for any reason is unable to perform the function of a juror, the juror  
13 shall be dismissed from the sentencing proceeding. The court shall cause to  
14 be drawn the name of one of the alternate jurors, who shall then become a  
15 member of the jury for the sentencing proceeding notwithstanding the fact  
16 that the alternate juror did not deliberate on the issue of guilt. If the de-  
17 fendant has pleaded guilty, the sentencing proceeding shall be conducted  
18 before a jury impaneled for that purpose. In the proceeding, evidence may  
19 be presented as to any matter that the court deems relevant to sentence in-  
20 cluding, but not limited to, victim impact evidence relating to the personal  
21 characteristics of the victim or the impact of the crime on the victim's family  
22 and any aggravating or mitigating evidence relevant to the issue in para-  
23 graph [(b)(D)] **(b)(C)** of this subsection; however, neither the state nor the  
24 defendant shall be allowed to introduce repetitive evidence that has previ-  
25 ously been offered and received during the trial on the issue of guilt. The  
26 court shall instruct the jury that all evidence previously offered and received  
27 may be considered for purposes of the sentencing hearing. This paragraph  
28 shall not be construed to authorize the introduction of any evidence secured  
29 in violation of the Constitution of the United States or of the State of  
30 Oregon. The state and the defendant or the counsel of the defendant shall  
31 be permitted to present arguments for or against a sentence of death and for

1 or against a sentence of life imprisonment with or without the possibility  
2 of release or parole.

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

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

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

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

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

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

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

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

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

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

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

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

17 (3)(a) When the defendant is found guilty of aggravated murder, and ORS  
18 137.707 (2) applies or the state advises the court on the record that the state  
19 declines to present evidence for purposes of sentencing the defendant to  
20 death, the court:

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

23 (B) Shall conduct a sentencing proceeding to determine whether the de-  
24 fendant shall be sentenced to life imprisonment without the possibility of  
25 release or parole as described in ORS 163.105 (1)(b) or life imprisonment as  
26 described in ORS 163.105 (1)(c). If the defendant waives all rights to a jury  
27 sentencing proceeding, the court shall conduct the sentencing proceeding as  
28 the trier of fact. The procedure for the sentencing proceeding, whether before  
29 a court or a jury, shall follow the procedure of subsection (1)(a) of this sec-  
30 tion, as modified by this subsection. In the proceeding, evidence may be  
31 presented as to any matter that the court deems relevant to sentence, in-

1 cluding, but not limited to, victim impact evidence relating to the personal  
2 characteristics of the victim or the impact of the crime on the victim's fam-  
3 ily.

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

14 (c) Nothing in this subsection shall preclude the court from sentencing  
15 the defendant to life imprisonment, as described in ORS 163.105 (1)(c), or life  
16 imprisonment without the possibility of release or parole, as described in  
17 ORS 163.105 (1)(b), pursuant to a stipulation of sentence or stipulation of  
18 sentencing facts agreed to and offered by both parties if the defendant waives  
19 all rights to a jury sentencing proceeding.

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

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

31 (a) Sentence the defendant to imprisonment for life in the custody of the

1 Department of Corrections as provided in ORS 163.105 (1)(c); or

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

4 (A) Death;

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

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

9 **SECTION 6.** ORS 40.355 is amended to read:

10 40.355. (1) For the purpose of attacking the credibility of a witness, evi-  
11 dence that the witness has been convicted of a crime shall be admitted if  
12 elicited from the witness or established by public record, but only if the  
13 crime:

14 (a) Was punishable by death or imprisonment in excess of one year under  
15 the law under which the witness was convicted; or

16 (b) Involved false statement or dishonesty.

17 (2)(a) If a defendant is charged with one or more of the crimes listed in  
18 paragraph (b) of this subsection, and the defendant is a witness, evidence  
19 that the defendant has been convicted of committing one or more of the fol-  
20 lowing crimes against a family or household member, as defined in ORS  
21 135.230, may be elicited from the defendant, or established by public record,  
22 and admitted into evidence for the purpose of attacking the credibility of the  
23 defendant:

24 (A) Assault in the fourth degree under ORS 163.160.

25 (B) Menacing under ORS 163.190.

26 (C) Harassment under ORS 166.065.

27 (D) Attempted assault in the fourth degree under ORS 163.160 (1).

28 (E) Attempted assault in the fourth degree under ORS 163.160 (3).

29 (F) Strangulation under ORS 163.187.

30 (G) The statutory counterpart in another jurisdiction to a crime listed in  
31 this paragraph.

1 (b) Evidence may be admitted into evidence for the purpose of attacking  
2 the credibility of a defendant under the provisions of this subsection only if  
3 the defendant is charged with committing one or more of the following  
4 crimes against a family or household member, as defined in ORS 135.230:

5 (A) Aggravated murder under ORS 163.095.

6 **(B) Murder in the first degree under section 3 of this 2019 Act.**

7 [(B)] (C) Murder **in the second degree** under ORS 163.115.

8 [(C)] (D) Manslaughter in the first degree under ORS 163.118.

9 [(D)] (E) Manslaughter in the second degree under ORS 163.125.

10 [(E)] (F) Assault in the first degree under ORS 163.185.

11 [(F)] (G) Assault in the second degree under ORS 163.175.

12 [(G)] (H) Assault in the third degree under ORS 163.165.

13 [(H)] (I) Assault in the fourth degree under ORS 163.160.

14 [(I)] (J) Rape in the first degree under ORS 163.375 (1)(a).

15 [(J)] (K) Sodomy in the first degree under ORS 163.405 (1)(a).

16 [(K)] (L) Unlawful sexual penetration in the first degree under ORS  
17 163.411 (1)(a).

18 [(L)] (M) Sexual abuse in the first degree under ORS 163.427 (1)(a)(B).

19 [(M)] (N) Kidnapping in the first degree under ORS 163.235.

20 [(N)] (O) Kidnapping in the second degree under ORS 163.225.

21 [(O)] (P) Burglary in the first degree under ORS 164.225.

22 [(P)] (Q) Coercion under ORS 163.275.

23 [(Q)] (R) Stalking under ORS 163.732.

24 [(R)] (S) Violating a court's stalking protective order under ORS 163.750.

25 [(S)] (T) Menacing under ORS 163.190.

26 [(T)] (U) Harassment under ORS 166.065.

27 [(U)] (V) Strangulation under ORS 163.187.

28 [(V)] (W) Attempting to commit a crime listed in this paragraph.

29 (3) Evidence of a conviction under this section is not admissible if:

30 (a) A period of more than 15 years has elapsed since the date of the con-  
31 viction or of the release of the witness from the confinement imposed for that

1 conviction, whichever is the later date; or

2 (b) The conviction has been expunged by pardon, reversed, set aside or  
3 otherwise rendered nugatory.

4 (4) When the credibility of a witness is attacked by evidence that the  
5 witness has been convicted of a crime, the witness shall be allowed to ex-  
6 plain briefly the circumstances of the crime or former conviction; once the  
7 witness explains the circumstances, the opposing side shall have the oppor-  
8 tunity to rebut the explanation.

9 (5) The pendency of an appeal therefrom does not render evidence of a  
10 conviction inadmissible. Evidence of the pendency of an appeal is admissible.

11 (6) An adjudication by a juvenile court that a child is within its juris-  
12 diction is not a conviction of a crime.

13 (7) A conviction of any of the statutory counterparts of offenses desig-  
14 nated as violations as described in ORS 153.008 may not be used to impeach  
15 the character of a witness in any criminal or civil action or proceeding.

16 **SECTION 7.** ORS 133.705 is amended to read:

17 133.705. As used in ORS 133.705 to 133.717:

18 (1) “Biological evidence” means an individual’s blood, semen, hair, saliva,  
19 skin tissue, fingernail scrapings, bone, bodily fluids or other identified bi-  
20 ological material. “Biological evidence” includes the contents of a sexual  
21 assault forensic evidence kit.

22 (2) “Convicted” includes a finding of guilty or responsible except for in-  
23 sanity and a finding that a person is within the jurisdiction of the juvenile  
24 court under ORS 419C.005.

25 (3) “Covered offense” means:

26 (a) Aggravated murder under ORS 163.095;

27 **(b) Murder in the first degree under section 3 of this 2019 Act;**

28 [(b)] **(c) Murder in the second degree** under ORS 163.115;

29 [(c)] **(d) Manslaughter in the first degree** under ORS 163.118;

30 [(d)] **(e) Manslaughter in the second degree** under ORS 163.125;

31 [(e)] **(f) Aggravated vehicular homicide** under ORS 163.149;



- 1 [(f)] (g) Rape in the first degree under ORS 163.375;  
2 [(g)] (h) Sodomy in the first degree under ORS 163.405; or  
3 [(h)] (i) Unlawful sexual penetration in the first degree under ORS  
4 163.411.

5 (4) “Custodian” means a law enforcement agency as defined in ORS  
6 131.550, or any other person or public body as defined in ORS 174.109, that  
7 is charged with the collection, preservation or retrieval of evidence in con-  
8 nection with a criminal investigation or criminal prosecution. “Custodian”  
9 does not include a court.

10 (5) “DNA” means deoxyribonucleic acid.

11 (6) “DNA profile” means the unique identifier of an individual that is  
12 derived from DNA.

13 (7) “Sentence” means a term of incarceration in a correctional or juvenile  
14 detention facility, a period of probation, parole or post-prison supervision  
15 and the period of time during which a person is under the jurisdiction of the  
16 Psychiatric Security Review Board.

17 (8) “Supervisory authority” has the meaning given that term in ORS  
18 144.087.

19 (9) “Victim” has the meaning given that term in ORS 131.007.

20 **SECTION 8.** ORS 136.450 is amended to read:

21 136.450. [(1) *Except as otherwise provided in subsection (2) of this section,*]  
22 The verdict of a trial jury in a criminal action shall be by concurrence of  
23 at least 10 of 12 jurors.

24 [(2) *Except when the state requests a unanimous verdict, a verdict of guilty*  
25 *for murder or aggravated murder shall be by concurrence of at least 11 of 12*  
26 *jurors.*]

27 **SECTION 9.** ORS 137.635 is amended to read:

28 137.635. (1) When, in the case of a felony described in subsection (2) of  
29 this section, a court sentences a convicted defendant who has previously  
30 been convicted of any felony designated in subsection (2) of this section, the  
31 sentence shall not be an indeterminate sentence to which the defendant

1 otherwise would be subject under ORS 137.120, but, unless it imposes a death  
2 penalty under ORS 163.105, the court shall impose a determinate sentence,  
3 the length of which the court shall determine, to the custody of the Depart-  
4 ment of Corrections. Any mandatory minimum sentence otherwise provided  
5 by law shall apply. The sentence shall not exceed the maximum sentence  
6 otherwise provided by law in such cases. The convicted defendant who is  
7 subject to this section shall not be eligible for probation. The convicted de-  
8 fendant shall serve the entire sentence imposed by the court and shall not,  
9 during the service of such a sentence, be eligible for parole or any form of  
10 temporary leave from custody. The person shall not be eligible for any re-  
11 duction in sentence pursuant to ORS 421.120 or for any reduction in term  
12 of incarceration pursuant to ORS 421.121.

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

15 (a) Murder **in any degree**, as defined in ORS 163.115 **or section 3 of this**  
16 **2019 Act**, and any aggravated form thereof.

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

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

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

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

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

22 (g) Unlawful sexual penetration in the first degree, as defined in ORS  
23 163.411.

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

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

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

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

29 **SECTION 10.** ORS 137.700 is amended to read:

30 137.700. (1) Notwithstanding ORS 161.605, when a person is convicted of  
31 one of the offenses listed in subsection (2)(a) of this section and the offense

1 was committed on or after April 1, 1995, or of one of the offenses listed in  
2 subsection (2)(b) of this section and the offense was committed on or after  
3 October 4, 1997, or of the offense described in subsection (2)(c) of this section  
4 and the offense was committed on or after January 1, 2008, the court shall  
5 impose, and the person shall serve, at least the entire term of imprisonment  
6 listed in subsection (2) of this section. The person is not, during the service  
7 of the term of imprisonment, eligible for release on post-prison supervision  
8 or any form of temporary leave from custody. The person is not eligible for  
9 any reduction in, or based on, the minimum sentence for any reason what-  
10 soever under ORS 421.121 or any other statute. The court may impose a  
11 greater sentence if otherwise permitted by law, but may not impose a lower  
12 sentence than the sentence specified in subsection (2) of this section.

13 (2) The offenses to which subsection (1) of this section applies and the  
14 applicable mandatory minimum sentences are:

15 \_\_\_\_\_

16 (a)(A) **Murder in the second**  
17 **degree**, as defined in  
18 ORS 163.115.....300 months

19 (B) **Murder in the first**  
20 **degree, as defined**  
21 **in section 3 of this**  
22 **2019 Act.....360 months**

23 [(B)] (C) Attempt or conspiracy  
24 to commit aggravated  
25 murder, as defined  
26 in ORS 163.095.....120 months

27 [(C)] (D) Attempt or conspiracy  
28 to commit murder[, *as*]  
29 [*defined in ORS 163.115*]  
30 **in any degree.....90 months**

31 [(D)] (E) Manslaughter in the

1 first degree, as defined  
2 in ORS 163.118.....120 months  
3 ~~[(E)]~~ **(F)** Manslaughter in the  
4 second degree, as defined  
5 in ORS 163.125.....75 months  
6 ~~[(F)]~~ **(G)** Assault in the first  
7 degree, as defined in  
8 ORS 163.185.....90 months  
9 ~~[(G)]~~ **(H)** Assault in the second  
10 degree, as defined in  
11 ORS 163.175.....70 months  
12 ~~[(H)]~~ **(I)** Except as provided in  
13 paragraph (b)(G) of  
14 this subsection,  
15 kidnapping in the first  
16 degree, as defined  
17 in ORS 163.235.....90 months  
18 ~~[(I)]~~ **(J)** Kidnapping in the second  
19 degree, as defined in  
20 ORS 163.225.....70 months  
21 ~~[(J)]~~ **(K)** Rape in the first degree,  
22 as defined in ORS 163.375  
23 (1)(a), (c) or (d).....100 months  
24 ~~[(K)]~~ **(L)** Rape in the second degree,  
25 as defined in  
26 ORS 163.365.....75 months  
27 ~~[(L)]~~ **(M)** Sodomy in the first degree,  
28 as defined in ORS 163.405  
29 (1)(a), (c) or (d).....100 months  
30 ~~[(M)]~~ **(N)** Sodomy in the second  
31 degree, as defined in

- 1           ORS 163.395.....75 months
- 2    [(N)] (O) Unlawful sexual penetration
- 3           in the first degree, as
- 4           defined in ORS 163.411
- 5           (1)(a) or (c).....100 months
- 6    [(O)] (P) Unlawful sexual penetration
- 7           in the second degree, as
- 8           defined in ORS 163.408. ....75 months
- 9    [(P)] (Q) Sexual abuse in the first
- 10          degree, as defined in
- 11          ORS 163.427.....75 months
- 12   [(Q)] (R) Robbery in the first degree,
- 13          as defined in
- 14          ORS 164.415.....90 months
- 15   [(R)] (S) Robbery in the second
- 16          degree, as defined in
- 17          ORS 164.405.....70 months
- 18   (b)(A) Arson in the first degree,
- 19          as defined in ORS 164.325,
- 20          when the offense represented
- 21          a threat of serious
- 22          physical injury. ....90 months
- 23   (B)    Using a child in a display
- 24          of sexually explicit
- 25          conduct, as defined in
- 26          ORS 163.670.....70 months
- 27   (C)    Compelling prostitution,
- 28          as defined in
- 29          ORS 167.017.....70 months
- 30   (D)    Rape in the first degree,
- 31          as defined in

- 1           ORS 163.375 (1)(b). .....300 months  
2       (E)    Sodomy in the first degree,  
3            as defined in  
4            ORS 163.405 (1)(b). .....300 months  
5       (F)    Unlawful sexual penetration  
6            in the first degree, as  
7            defined in  
8            ORS 163.411 (1)(b). .....300 months  
9       (G)    Kidnapping in the first  
10          degree, as defined in  
11          ORS 163.235, when the  
12          offense is committed in  
13          furtherance of the commission  
14          or attempted commission of an  
15          offense listed in subparagraph  
16          (D), (E) or (F) of  
17          this paragraph.....300 months  
18       (c)    Aggravated vehicular  
19          homicide, as defined in  
20          ORS 163.149.....240 months

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

23       137.707. (1)(a) Notwithstanding any other provision of law, when a person  
24 charged with aggravated murder, as defined in ORS 163.095, or an offense  
25 listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the  
26 time the offense is committed, and the offense is committed on or after April  
27 1, 1995, or when a person charged with an offense listed in subsection (4)(b)  
28 of this section is 15, 16 or 17 years of age at the time the offense is com-  
29 mitted, and the offense is committed on or after October 4, 1997, or when a  
30 person charged with the offense described in subsection (4)(c) of this section  
31 is 15, 16 or 17 years of age at the time the offense is committed and the of-

1 fense is committed on or after January 1, 2008, the person shall be prosecuted  
2 as an adult in criminal court.

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

8 (2) When a person charged under this section is convicted of an offense  
9 listed in subsection (4) of this section, the court shall impose at least the  
10 presumptive term of imprisonment provided for the offense in subsection (4)  
11 of this section. The court may impose a greater presumptive term if other-  
12 wise permitted by law, but may not impose a lesser term. The person is not,  
13 during the service of the term of imprisonment, eligible for release on post-  
14 prison supervision or any form of temporary leave from custody. The person  
15 is not eligible for any reduction in, or based on, the minimum sentence for  
16 any reason under ORS 421.121 or any other provision of law. ORS 138.052,  
17 163.105 and 163.150 apply to sentencing a person prosecuted under this sec-  
18 tion and convicted of aggravated murder under ORS 163.095 except that a  
19 person who was under 18 years of age at the time the offense was committed  
20 is not subject to a sentence of death.

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

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

25 \_\_\_\_\_

- 26 (a)(A) **Murder in the second**
- 27 **degree**, as defined in
- 28 ORS 163.115.....300 months
- 29 (B) **Murder in the first**
- 30 **degree, as defined**
- 31 **in section 3 of this**

1           **2019 Act.....360 months**

2    [(B)] (C) Attempt or conspiracy

3           to commit aggravated

4           murder, as defined

5           in ORS 163.095.....120 months

6    [(C)] (D) Attempt or conspiracy

7           to commit murder[, *as*]

8           [*defined in ORS 163.115*]

9           **in any degree.....90 months**

10 [(D)] (E) Manslaughter in the

11          first degree, as defined

12          in ORS 163.118.....120 months

13 [(E)] (F) Manslaughter in the

14          second degree, as defined

15          in ORS 163.125.....75 months

16 [(F)] (G) Assault in the first

17          degree, as defined

18          in ORS 163.185.....90 months

19 [(G)] (H) Assault in the second

20          degree, as defined

21          in ORS 163.175.....70 months

22 [(H)] (I) Kidnapping in the first

23          degree, as defined in

24          ORS 163.235.....90 months

25 [(I)] (J) Kidnapping in the second

26          degree, as defined in

27          ORS 163.225.....70 months

28 [(J)] (K) Rape in the first degree,

29          as defined in

30          ORS 163.375.....100 months

31 [(K)] (L) Rape in the second



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

- 1 (B) Using a child in a display
- 2 of sexually explicit
- 3 conduct, as defined in
- 4 ORS 163.670.....70 months
- 5 (C) Compelling prostitution,
- 6 as defined in ORS 167.017
- 7 (1)(a), (b) or (d). .....70 months
- 8 (c) Aggravated vehicular
- 9 homicide, as defined in
- 10 ORS 163.149.....240 months

11 \_\_\_\_\_

12 (5) If a person charged with an offense under this section is found guilty

13 of a lesser included offense and the lesser included offense is:

14 (a) An offense listed in subsection (4) of this section, the court shall

15 sentence the person as provided in subsection (2) of this section.

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

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

18 419C.349, the court, upon motion of the district attorney, shall hold a hearing

19 to determine whether to retain jurisdiction or to transfer the case to juvenile

20 court for disposition. In determining whether to retain jurisdiction, the court

21 shall consider the criteria for waiver in ORS 419C.349. If the court retains

22 jurisdiction, the court shall sentence the person as an adult under sentencing

23 guidelines. If the court does not retain jurisdiction, the court shall:

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

29 (B) And is not an offense for which waiver is authorized under ORS

30 419C.349, the court may not sentence the person. The court shall:

- 31 (i) Order that a presentence report be prepared;

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

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

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

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

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

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

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

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

3 **SECTION 12.** ORS 144.079 is amended to read:

4 144.079. (1)(a) If a prisoner is sentenced to terms of imprisonment that are  
5 consecutive to one another and result from crimes committed during the pe-  
6 riod before the prisoner's first initial parole hearing, or if a prisoner is sen-  
7 tenced to terms of imprisonment that are consecutive to one another and  
8 result from crimes committed during the period between any two initial  
9 parole hearings, the total term resulting from the crimes committed during  
10 each such separate period shall be determined by the State Board of Parole  
11 and Post-Prison Supervision as follows, except as provided in subsection (2)  
12 of this section, and the total terms so determined shall then be summed as  
13 provided in ORS 144.783 (1):

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

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

23 (C) Third, the board shall determine the total range applicable in the  
24 offender's case for crimes committed during the same period by summing the  
25 ranges established under subparagraph (B) of this paragraph with the range  
26 established under subparagraph (A) of this paragraph and shall determine  
27 an appropriate term within that range.

28 (D) Finally, the board shall vary the term determined under subparagraph  
29 (C) of this paragraph according to rules established under ORS 144.785 (1),  
30 if the board finds aggravating or mitigating factors in the case. The board  
31 shall consider as an aggravating factor the fact that the prisoner has been

1 sentenced to consecutive terms of imprisonment.

2 (b) Whenever a prisoner is committed to the custody of the Department  
3 of Corrections for a crime that was committed during a period already con-  
4 sidered at an initial parole hearing and upon a sentence consecutive to any  
5 sentence imposed for crimes committed during that period, the board shall  
6 conduct a hearing to consider the previously unconsidered crime. The hear-  
7 ing shall be a hearing supplemental to the original initial hearing concern-  
8 ing crimes committed during the period. Time limitations and other  
9 procedural provisions applicable to initial hearings shall apply to a supple-  
10 mental hearing under this subsection. Upon conclusion of the supplemental  
11 hearing, the board shall redetermine the appropriate total term for the pe-  
12 riod. The redetermination shall be conducted de novo under the provisions  
13 of subsection (2) of this section.

14 (2) The method established by this section for determining, where appli-  
15 cable, the total term resulting from the summing of consecutive sentences  
16 shall apply only if none of the crimes involved is:

17 (a) Murder **in any degree**, as defined in ORS 163.115 **or section 3 of this**  
18 **2019 Act**, or any aggravated form thereof;

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

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

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

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

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

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

25 (h) Treason, as defined in ORS 166.005.

26 (3) The duration of imprisonment pursuant to consecutive sentences may  
27 be less than the sum of the terms under subsection (1) of this section if the  
28 board finds, by affirmative vote of a majority of three board members or, if  
29 the chairperson requires all voting members to participate, a majority of all  
30 voting members, that consecutive sentences are not appropriate penalties for  
31 the criminal offenses involved and that the combined terms of imprisonment

1 are not necessary to protect community security.

2 (4) The board shall use the method set forth in subsections (1) to (3) of  
3 this section to determine the parole release date for any person serving a  
4 sentence in the custody of the Department of Corrections for crimes com-  
5 mitted before or after July 11, 1987.

6 **SECTION 13.** ORS 144.085 is amended to read:

7 144.085. (1) All prisoners sentenced to prison for more than 12 months  
8 shall serve active periods of parole or post-prison supervision as follows:

9 (a) Six months of active parole or post-prison supervision for crimes in  
10 crime categories one to three;

11 (b) Twelve months of active parole or post-prison supervision for crimes  
12 in crime categories four to 10;

13 (c) Prisoners sentenced as dangerous offenders under ORS 161.725 and  
14 161.735, for aggravated murder under ORS 163.105 or for murder **in any de-**  
15 **gree** under ORS 163.115 **or section 3 of this 2019 Act** shall serve at least  
16 three years of active parole or post-prison supervision;

17 (d) Prisoners sentenced for violating or attempting to violate ORS 163.365,  
18 163.375, 163.395, 163.405, 163.408, 163.411, 163.425 or 163.427 shall serve a term  
19 of active parole that extends for the entire term of the offender's sentence  
20 or a term of active post-prison supervision as provided in ORS 144.103; and

21 (e) Prisoners sentenced for robbery in the first degree under ORS 164.415  
22 or for arson in the first degree under ORS 164.325 shall serve three years of  
23 active parole or post-prison supervision.

24 (2) Except as authorized in subsections (3) and (4) of this section, when  
25 an offender has served the active period of parole or post-prison supervision  
26 established under subsection (1)(a) or (b) of this section, the supervisory au-  
27 thority shall place the offender on inactive supervision status.

28 (3) No sooner than 30 days prior to the expiration of an offender's active  
29 parole or post-prison supervision period as provided in subsection (1) of this  
30 section, the supervisory authority may send to the State Board of Parole and  
31 Post-Prison Supervision a report requesting the board to extend the active

1 supervision period or to return the offender to active supervision status, not  
2 to exceed the supervision term imposed by the sentencing court under the  
3 rules of the Oregon Criminal Justice Commission and applicable laws, if the  
4 offender has not substantially fulfilled the supervision conditions or has  
5 failed to complete payment of restitution. The report shall include:

6 (a) An evaluation of the offender's compliance with supervision condi-  
7 tions;

8 (b) The status of the offender's court-ordered monetary obligations, in-  
9 cluding fines and restitution, if any;

10 (c) The offender's employment status;

11 (d) The offender's address;

12 (e) Treatment program outcome;

13 (f) Any new criminal activity; and

14 (g) A recommendation that the board extend the supervision period or  
15 return the offender to active supervision status.

16 (4) After reviewing the report submitted under subsection (3) of this sec-  
17 tion, the board may extend the active supervision period or return the  
18 offender to active supervision status, not to exceed the supervision term im-  
19 posed by the sentencing court under the rules of the Oregon Criminal Justice  
20 Commission and applicable laws, if it finds the offender has not substantially  
21 fulfilled the supervision conditions or has failed to complete payment of  
22 restitution.

23 (5) During the pendency of any violation proceedings, the running of the  
24 supervision period and the sentence is stayed, and the board has jurisdiction  
25 over the offender until the proceedings are resolved.

26 (6) The board shall send written notification to the supervised offender  
27 of the expiration of the sentence.

28 **SECTION 14.** ORS 144.110 is amended to read:

29 144.110. (1) In any felony case, the court may impose a minimum term of  
30 imprisonment of up to one-half of the sentence it imposes.

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

1 (a) The State Board of Parole and Post-Prison Supervision shall not re-  
2 lease a prisoner on parole who has been sentenced under subsection (1) of  
3 this section until the minimum term has been served, except upon affirmative  
4 vote of a majority of three board members or, if the chairperson requires all  
5 voting members to participate, a majority of all voting members.

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

7 (A) Who has been convicted of murder defined as aggravated murder un-  
8 der the provisions of ORS 163.095, except as provided in ORS 163.105; [*or*]

9 **(B) Who has been convicted of murder in the first degree under the**  
10 **provisions of section 3 of this 2019 Act, except as provided in ORS**  
11 **163.155 (6) to (8) or section 3 (2)(c) to (f) of this 2019 Act; or**

12 [*(B)*] (C) Who has been convicted of murder **in the second degree** under  
13 the provisions of ORS 163.115, except as provided in ORS 163.115 (5)(c) to (f)  
14 or 163.155 (6) to (8).

15 **SECTION 15.** ORS 161.005 is amended to read:

16 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175,  
17 161.190 to 161.275, 161.290 to 161.370, 161.405 to 161.485, 161.505 to 161.585,  
18 161.605, 161.615 to 161.685, 161.705 to 161.737, 162.005, 162.015 to 162.035,  
19 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to 162.425,  
20 162.465, 163.005, **163.095**, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208,  
21 163.196, 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285,  
22 163.305 to 163.467, 163.432, 163.433, 163.472, 163.505 to 163.575, 163.665 to  
23 163.693, 163.700, 163.701, 163.715, 164.005, 164.015 to 164.135, 164.138, 164.140,  
24 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857,  
25 164.886, 165.002 to 165.102, 165.109, 165.118, 165.805, 165.815, 166.005 to 166.095,  
26 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to 167.100,  
27 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340, 167.350,  
28 167.810 and 167.820 **and section 3 of this 2019 Act** shall be known and may  
29 be cited as Oregon Criminal Code of 1971.

30 **SECTION 16.** ORS 161.535 is amended to read:

31 161.535. (1) Felonies are classified for the purpose of sentence into the



1 following categories:

2 (a) Class A felonies;

3 (b) Class B felonies;

4 (c) Class C felonies; and

5 (d) Unclassified felonies.

6 (2) The particular classification of each felony defined in the Oregon  
7 Criminal Code, except murder **in any degree** under ORS 163.115 **or section**  
8 **3 of this 2019 Act** and treason under ORS 166.005, is expressly designated  
9 in the section defining the crime. An offense defined outside this code which,  
10 because of the express sentence provided is within the definition of ORS  
11 161.525, shall be considered an unclassified felony.

12 **SECTION 17.** ORS 163.098 is amended to read:

13 163.098. Notwithstanding [*ORS 163.095*] **section 3 of this 2019 Act**, when  
14 an element of a crime charged is that the victim of the crime is a police of-  
15 ficer as defined in ORS 181A.355 and the crime was related to the officer's  
16 performance of official duties, the state may alternatively prove that the  
17 victim of the crime is a certified reserve officer or a reserve officer, as those  
18 terms are defined in ORS 181A.355, and the crime was related to the officer's  
19 performance of official duties.

20 **SECTION 18.** ORS 163.103 is amended to read:

21 163.103. (1) In a prosecution for [*aggravated murder under ORS 163.095*  
22 (*1)(c)*] **murder in the first degree under section 3 (1)(c) of this 2019**  
23 **Act**, the state shall plead the previous conviction, and shall prove the pre-  
24 vious conviction unless the defendant stipulates to that fact prior to trial.  
25 If the defendant so stipulates and the trial is by jury:

26 (a) The court shall accept the stipulation regardless of whether or not the  
27 state agrees to it;

28 (b) The defendant's stipulation to the previous conviction constitutes a  
29 judicial admission to that element of the accusatory instrument. The stipu-  
30 lation shall be made a part of the record of the case, but shall not be offered  
31 or received in the presence of the jury;

1 (c) For the purpose of establishing the prior conviction solely as an ele-  
 2 ment of the crime under [ORS 163.095 (1)(c)] **section 3 (1)(c) of this 2019**  
 3 **Act**, neither the court nor the state shall reveal to the jury the previous  
 4 conviction, but the previous conviction is established in the record by the  
 5 defendant's stipulation; and

6 (d) The court shall not submit the accusatory instrument or evidence of  
 7 the previous conviction to the jury.

8 (2) In a proceeding under [ORS 163.095 (1)(c)] **section 3 (1)(c) of this 2019**  
 9 **Act**, the state may offer, and the court may receive and submit to the jury,  
 10 evidence of the previous conviction for impeachment of the defendant or  
 11 another purpose, other than establishing the conviction as an element of the  
 12 offense, when the evidence of the previous conviction is otherwise admissible  
 13 for that purpose. When evidence of the previous conviction has been admit-  
 14 ted by the court, the state may comment upon, and the court may give in-  
 15 structions about, the evidence of the previous conviction only to the extent  
 16 that the comments or instructions relate to the purpose for which the evi-  
 17 dence was admitted.

18 (3) When the defendant stipulates to the prior conviction required as an  
 19 element of [aggravated] murder **in the first degree** under [ORS 163.095  
 20 (1)(c)] **section 3 (1)(c) of this 2019 Act**, if the jury finds the defendant guilty  
 21 upon instruction regarding the balance of the elements of the crime, the  
 22 court shall enter a judgment of guilty of [aggravated] murder **in the first**  
 23 **degree**.

24 **SECTION 19.** ORS 163.135 is amended to read:

25 163.135. (1) It is an affirmative defense to murder **in the second degree**  
 26 for purposes of ORS 163.115 (1)(a) that the homicide was committed under the  
 27 influence of extreme emotional disturbance if the disturbance is not the re-  
 28 sult of the person's own intentional, knowing, reckless or criminally  
 29 negligent act and if there is a reasonable explanation for the disturbance.  
 30 The reasonableness of the explanation for the disturbance must be deter-  
 31 mined from the standpoint of an ordinary person in the actor's situation

1 under the circumstances that the actor reasonably believed them to be. Ex-  
2 tremе emotional disturbance does not constitute a defense to a prosecution  
3 for, or preclude a conviction of, manslaughter in the first degree or any other  
4 crime.

5 (2) The defendant may not introduce in the defendant’s case in chief ex-  
6 pert testimony regarding extreme emotional disturbance under this section  
7 unless the defendant gives notice of the defendant’s intent to do so.

8 (3) The notice required must be in writing and must be filed at the time  
9 the defendant pleads not guilty. The defendant may file the notice at any  
10 time after the defendant pleads but before trial if the court determines that  
11 there was just cause for failure to file the notice at the time of the  
12 defendant’s plea.

13 (4) If the defendant fails to file notice, the defendant may not introduce  
14 evidence for the purpose of proving extreme emotional disturbance under  
15 ORS 163.115 unless the court, in its discretion, determines that there was  
16 just cause for failure to file notice.

17 (5) After the defendant files notice as provided in this section, the state  
18 may have at least one psychiatrist or licensed psychologist of its selection  
19 examine the defendant in the same manner and subject to the same pro-  
20 visions as provided in ORS 161.315.

21 **SECTION 20.** ORS 163.707 is amended to read:

22 163.707. (1) A motor vehicle used by the owner in a drive-by shooting is  
23 subject to civil in rem forfeiture.

24 (2) Seizure and forfeiture proceedings under this section shall be con-  
25 ducted in accordance with ORS chapter 131A.

26 (3) As used in this section, “drive-by shooting” means discharge of a  
27 firearm from a motor vehicle while committing or attempting to commit:

28 (a) Aggravated murder under ORS 163.095;

29 (b) Murder **in any degree** under ORS 163.115 **or section 3 of this 2019**  
30 **Act**;

31 (c) Manslaughter in any degree under ORS 163.118 or 163.125;

- 1 (d) Assault in any degree under ORS 163.160, 163.165, 163.175 or 163.185;
- 2 (e) Menacing under ORS 163.190;
- 3 (f) Recklessly endangering another person under ORS 163.195;
- 4 (g) Assaulting a public safety officer under ORS 163.208; or
- 5 (h) Intimidation in any degree under ORS 166.155 or 166.165.

6 **SECTION 21.** ORS 342.143 is amended to read:

7 342.143. (1) A teaching, personnel service or administrative license, or  
8 public charter school registration, may not be issued to any person until the  
9 person has attained the age of 18 years and has furnished satisfactory evi-  
10 dence of proper educational training.

11 (2) The Teacher Standards and Practices Commission may require an ap-  
12 plicant for a teaching, personnel service or administrative license or for  
13 registration as a public charter school teacher or administrator to furnish  
14 evidence satisfactory to the commission of good moral character, mental and  
15 physical health, and such other evidence as the commission may deem nec-  
16 essary to establish the applicant's fitness to serve as a teacher or adminis-  
17 trator.

18 (3) Without limiting the powers of the Teacher Standards and Practices  
19 Commission under subsection (2) of this section:

20 (a) A teaching, personnel service or administrative license, or a public  
21 charter school registration, may not be issued to any person who:

22 (A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185,  
23 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411,  
24 163.415, 163.425, 163.427, 163.432, 163.433, 163.435, 163.445, 163.465, 163.515,  
25 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part), 163.680  
26 (1993 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415,  
27 166.005, 166.087, 167.007, 167.008, 167.012, 167.017, 167.057, 167.062, 167.075,  
28 167.080, 167.090, 475.808, 475.810, 475.812, 475.818, 475.820, 475.822, 475.828,  
29 475.830, 475.832, 475.848, 475.852, 475.868, 475.872, 475.878, 475.880, 475.882,  
30 475.888, 475.890, 475.892, 475.904 or 475.906 **or section 3 of this 2019 Act.**

31 (B) Has been convicted under ORS 161.405 of an attempt to commit any

1 of the crimes listed in subparagraph (A) of this paragraph.

2 (C) Has been convicted in another jurisdiction of a crime that is sub-  
3 stantially equivalent, as defined by rule, to any of the crimes listed in sub-  
4 paragraphs (A) and (B) of this paragraph.

5 (D) Has had a teaching, personnel service or administrative license, or a  
6 public charter school registration, revoked in another jurisdiction for a rea-  
7 son that is substantially equivalent, as defined by rule, to a reason described  
8 in ORS 342.175 and the revocation is not subject to further appeal. A person  
9 whose right to apply for a license or registration is denied under this sub-  
10 paragraph may apply for reinstatement of the right as provided in ORS  
11 342.175 (4).

12 (b) The Teacher Standards and Practices Commission may refuse to issue  
13 a license or registration to any person who has been convicted of:

14 (A) A crime involving the illegal use, sale or possession of controlled  
15 substances; or

16 (B) A crime described in ORS 475B.010 to 475B.545.

17 (4) In denying the issuance of a license or registration under this section,  
18 the commission shall follow the procedure set forth in ORS 342.176 and  
19 342.177.

20 **SECTION 22.** ORS 419A.260 is amended to read:

21 419A.260. (1) As used in this section and ORS 419A.262:

22 (a) "Contact" means any instance in which a person's act or behavior, or  
23 alleged act or behavior, which could result in a juvenile court's assumption  
24 of jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or 419C.005 comes to  
25 the attention of an agency specified in paragraph (d) of this subsection.

26 (b) "Expunction" means:

27 (A) The removal and destruction or sealing of a judgment or order related  
28 to a contact and all records and references; and

29 (B) Where a record is kept by the Department of Human Services or the  
30 Oregon Youth Authority, either the sealing of such record by the department  
31 or the Oregon Youth Authority or, in a multiperson file, the affixing to the

1 front of the file, by the department or the youth authority, a stamp or  
2 statement identifying the name of the individual, the date of expunction and  
3 instruction that no further reference shall be made to the material that is  
4 subject to the expunction order except upon an order of a court of competent  
5 jurisdiction.

6 (c) "Person" includes a person under 18 years of age.

7 (d) "Record" includes a fingerprint or photograph file, report, exhibit or  
8 other material which contains information relating to a person's contact  
9 with any law enforcement agency, juvenile court or juvenile department, the  
10 Psychiatric Security Review Board, the Department of Human Services or  
11 the Oregon Health Authority and is kept manually, through the use of elec-  
12 tronic data processing equipment, or by any other means by a law enforce-  
13 ment or public investigative agency, a juvenile court or juvenile department  
14 or an agency of the State of Oregon. "Record" does not include:

15 (A) A transcript of a student's Youth Corrections Education Program  
16 academic record;

17 (B) Material on file with a public agency which is necessary for obtaining  
18 federal financial participation regarding financial assistance or services on  
19 behalf of a person who has had a contact;

20 (C) Records kept or disseminated by the Department of Transportation,  
21 State Marine Board and State Fish and Wildlife Commission pursuant to  
22 juvenile or adult order or recommendation;

23 (D) Police and court records related to an order of waiver where the  
24 matter is still pending in the adult court or on appeal therefrom, or to any  
25 disposition as an adult pursuant to such order;

26 (E) Records related to a support obligation;

27 (F) Medical records other than those related to a finding of responsible  
28 except for insanity under ORS 419C.411;

29 (G) Records of a proposed or adjudicated termination of parental rights  
30 and adoptions;

31 (H) Any law enforcement record of a person who currently does not

1 qualify for expunction or of current investigations or cases waived to the  
2 adult court;

3 (I) Records and case reports of the Oregon Supreme Court and the Oregon  
4 Court of Appeals;

5 (J) Any records in cases under ORS 419C.005 in which a juvenile court  
6 found a person to be within the jurisdiction of the court based upon the  
7 person's commission of an act which if done by an adult would constitute  
8 one of the following offenses:

9 (i) Aggravated murder under ORS 163.095;

10 (ii) Murder **in any degree** under ORS 163.115 **or section 3 of this 2019**  
11 **Act**;

12 (iii) Attempt, solicitation or conspiracy to commit murder **in any degree**  
13 **or aggravated murder**;

14 (iv) Manslaughter in the first degree under ORS 163.118;

15 (v) Manslaughter in the second degree under ORS 163.125;

16 (vi) Criminally negligent homicide under ORS 163.145;

17 (vii) Assault in the first degree under ORS 163.185;

18 (viii) Criminal mistreatment in the first degree under ORS 163.205;

19 (ix) Kidnapping in the first degree under ORS 163.235;

20 (x) Rape in the third degree under ORS 163.355;

21 (xi) Rape in the second degree under ORS 163.365;

22 (xii) Rape in the first degree under ORS 163.375;

23 (xiii) Sodomy in the third degree under ORS 163.385;

24 (xiv) Sodomy in the second degree under ORS 163.395;

25 (xv) Sodomy in the first degree under ORS 163.405;

26 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;

27 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;

28 (xviii) Sexual abuse in the third degree under ORS 163.415;

29 (xix) Sexual abuse in the second degree under ORS 163.425;

30 (xx) Sexual abuse in the first degree under ORS 163.427;

31 (xxi) Promoting prostitution under ORS 167.012;

1 (xxii) Compelling prostitution under ORS 167.017;  
2 (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;  
3 (xxiv) Aggravated vehicular homicide under ORS 163.149; or

4 (xxv) An attempt to commit a crime listed in this subparagraph other  
5 than manslaughter in the second degree and criminally negligent homicide;

6 (K) Blood samples, buccal samples and other physical evidence and iden-  
7 tification information obtained, stored or maintained by the Department of  
8 State Police under authority of ORS 137.076, 181A.155 or 419C.473; or

9 (L) Records maintained in the Law Enforcement Data System under ORS  
10 163A.035.

11 (e) "Termination" means:

12 (A) For a person who is the subject of a record kept by a juvenile court  
13 or juvenile department, the final disposition of a case by informal means, by  
14 a decision not to place the person on probation or make the person a ward  
15 of the court after the person has been found to be within the court's juris-  
16 diction or by a discontinuance of probation, of the court's wardship or of the  
17 jurisdiction of the Psychiatric Security Review Board, the Oregon Health  
18 Authority or the Department of Human Services.

19 (B) For a person who is the subject of a record kept by a law enforcement  
20 or public investigative agency, a juvenile court or juvenile department or an  
21 agency of the State of Oregon, the final disposition of the person's most re-  
22 cent contact with a law enforcement agency.

23 (2) The juvenile court or juvenile department shall make reasonable effort  
24 to provide written notice to a child who is within the court's jurisdiction  
25 under ORS 419B.100 (1)(a) to (c) and (f) or to a youth who is within the  
26 court's jurisdiction under ORS 419C.005, and to the child's or youth's parent,  
27 of the procedures for expunction of a record, the right to counsel under this  
28 chapter, the legal effect of an expunction order and the procedures for  
29 seeking relief from the duty to report as a sex offender provided under ORS  
30 163A.130, at the following times:

31 (a) At any dispositional hearing or at the time of entering into a formal



1 accountability agreement;

2 (b) At the time of termination;

3 (c) Upon notice to the subject of an expunction pending pursuant to ap-  
4 plication of a juvenile department or motion on a juvenile court; and

5 (d) At the time of notice of execution of an expunction order.

6 **SECTION 23.** ORS 419C.349 is amended to read:

7 419C.349. The juvenile court, after a hearing except as otherwise provided  
8 in ORS 419C.364 or 419C.370, may waive a youth to a circuit, justice or mu-  
9 nicipal court of competent jurisdiction for prosecution as an adult if:

10 (1) The youth is 15 years of age or older at the time of the commission  
11 of the alleged offense;

12 (2) The youth, except as otherwise provided in ORS 419C.364 and 419C.370,  
13 is alleged to have committed a criminal offense constituting:

14 (a) Murder under ORS 163.115 **or section 3 of this 2019 Act** or any ag-  
15 gravated form thereof;

16 (b) A Class A or Class B felony;

17 (c) Any of the following Class C felonies:

18 (A) Escape in the second degree under ORS 162.155;

19 (B) Assault in the third degree under ORS 163.165;

20 (C) Coercion under ORS 163.275 (1)(a);

21 (D) Arson in the second degree under ORS 164.315; or

22 (E) Robbery in the third degree under ORS 164.395;

23 (d) Any Class C felony in which the youth used or threatened to use a  
24 firearm; or

25 (e) Any other felony or any misdemeanor if the youth and the state stip-  
26 ulate to the waiver;

27 (3) The youth at the time of the alleged offense was of sufficient sophis-  
28 tication and maturity to appreciate the nature and quality of the conduct  
29 involved; and

30 (4) The juvenile court, after considering the following criteria, determines  
31 by a preponderance of the evidence that retaining jurisdiction will not serve

1 the best interests of the youth and of society and therefore is not justified:

2 (a) The amenability of the youth to treatment and rehabilitation given the  
3 techniques, facilities and personnel for rehabilitation available to the juve-  
4 nile court and to the criminal court which would have jurisdiction after  
5 transfer;

6 (b) The protection required by the community, given the seriousness of  
7 the offense alleged;

8 (c) The aggressive, violent, premeditated or willful manner in which the  
9 offense was alleged to have been committed;

10 (d) The previous history of the youth, including:

11 (A) Prior treatment efforts and out-of-home placements; and

12 (B) The physical, emotional and mental health of the youth;

13 (e) The youth's prior record of acts which would be crimes if committed  
14 by an adult;

15 (f) The gravity of the loss, damage or injury caused or attempted during  
16 the offense;

17 (g) The prosecutive merit of the case against the youth; and

18 (h) The desirability of disposing of all cases in one trial if there were  
19 adult co-offenders.

20 **SECTION 24.** ORS 419C.352 is amended to read:

21 419C.352. The juvenile court, after a hearing, except as provided in ORS  
22 419C.364 or 419C.370, may waive a youth under 15 years of age at the time  
23 the act was committed to circuit court for prosecution as an adult if:

24 (1) The youth is represented by counsel during the waiver proceedings;

25 (2) The juvenile court makes the findings required under ORS 419C.349

26 (3) and (4); and

27 (3) The youth is alleged to have committed an act or acts that if com-  
28 mitted by an adult would constitute one or more of the following crimes:

29 (a) Murder or any aggravated form thereof under ORS 163.095 or 163.115  
30 **or section 3 of this 2019 Act;**

31 (b) Rape in the first degree under ORS 163.375 (1)(a);

1 (c) Sodomy in the first degree under ORS 163.405 (1)(a); or

2 (d) Unlawful sexual penetration in the first degree under ORS 163.411  
3 (1)(a).

4 **SECTION 25.** ORS 421.121 is amended to read:

5 421.121. (1) Except as provided in ORS 137.635, 137.700, 137.707, 163.105  
6 and 163.115 **and section 3 of this 2019 Act**, each inmate sentenced to the  
7 custody of the Department of Corrections for felonies committed on or after  
8 November 1, 1989, is eligible for a reduction in the term of incarceration for:

9 (a) Appropriate institutional behavior, as defined by rule of the Depart-  
10 ment of Corrections; and

11 (b) Participation in the adult basic skills development program described  
12 in ORS 421.084.

13 (2) The maximum amount of time credits earned for appropriate institu-  
14 tional behavior or for participation in the adult basic skills development  
15 program described in ORS 421.084 may not exceed 20 percent of the total  
16 term of incarceration in a Department of Corrections institution.

17 (3) The time credits may not be used to shorten the term of actual prison  
18 confinement to less than six months.

19 (4) The department shall adopt rules pursuant to the rulemaking pro-  
20 visions of ORS chapter 183 to establish a process for granting, retracting and  
21 restoring the time credits earned by the offender as allowed in subsections  
22 (1) to (3) of this section.

23 **SECTION 26.** ORS 419C.501 is amended to read:

24 419C.501. (1) The court shall fix the duration of any disposition made  
25 pursuant to this chapter and the duration may be for an indefinite period.  
26 Any placement in the legal custody of the Department of Human Services  
27 or the Oregon Youth Authority under ORS 419C.478 or placement under the  
28 jurisdiction of the Psychiatric Security Review Board under ORS 419C.529  
29 shall be for an indefinite period. However, the period of institutionalization  
30 or commitment may not exceed:

31 (a) The period of time specified in the statute defining the crime for an

1 act that would constitute an unclassified misdemeanor if committed by an  
2 adult;

3 (b) Thirty days for an act that would constitute a Class C misdemeanor  
4 if committed by an adult;

5 (c) Six months for an act that would constitute a Class B misdemeanor  
6 if committed by an adult;

7 (d) Three hundred sixty-four days for an act that would constitute a Class  
8 A misdemeanor if committed by an adult;

9 (e) Five years for an act that would constitute a Class C felony if com-  
10 mitted by an adult;

11 (f) Ten years for an act that would constitute a Class B felony if com-  
12 mitted by an adult;

13 (g) Twenty years for an act that would constitute a Class A felony if  
14 committed by an adult; and

15 (h) Life for a young person who was found to have committed an act that,  
16 if committed by an adult would constitute murder or any aggravated form  
17 of murder under ORS 163.095 or 163.115 **or section 3 of this 2019 Act.**

18 (2) Except as provided in subsection (1)(h) of this section, the period of  
19 any disposition may not extend beyond the date on which the young person  
20 or youth offender becomes 25 years of age.

21 **SECTION 27.** ORS 443.004 is amended to read:

22 443.004. (1) The Department of Human Services or the Oregon Health  
23 Authority shall complete a criminal records check under ORS 181A.195 on:

24 (a) An employee of a residential facility or an adult foster home;

25 (b) Any individual who is paid directly or indirectly with public funds  
26 who has or will have contact with a recipient of support services or a resi-  
27 dent of an adult foster home or a residential facility; and

28 (c) A home care worker registering with the Home Care Commission or  
29 renewing a registration with the Home Care Commission.

30 (2)(a) A home health agency shall conduct a criminal background check  
31 before hiring or contracting with an individual and before allowing an indi-

1 vidual to volunteer to provide services on behalf of the home health agency,  
2 if the individual will have direct contact with a patient of the home health  
3 agency.

4 (b) An in-home care agency shall conduct a criminal background check  
5 before hiring or contracting with an individual and before allowing an indi-  
6 vidual to volunteer to provide services on behalf of the in-home care agency,  
7 if the individual will have direct contact with a client of the in-home care  
8 agency.

9 (c) The authority shall prescribe by rule the process for conducting a  
10 criminal background check.

11 (3) Public funds may not be used to support, in whole or in part, the  
12 employment in any capacity having contact with a recipient of support ser-  
13 vices or a resident of a residential facility or an adult foster home, of an  
14 individual, other than a mental health or substance abuse treatment pro-  
15 vider, who has been convicted:

16 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145,  
17 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235,  
18 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.547,  
19 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,  
20 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032,  
21 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 3 of**  
22 **this 2019 Act;**

23 (b) Notwithstanding paragraph (a) of this subsection, of a crime described  
24 in ORS 163.465, 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date  
25 of conviction for which was within the five years immediately preceding  
26 employment in any capacity of an individual, other than a mental health or  
27 substance abuse treatment provider, having contact with a recipient of sup-  
28 port services, a resident of a residential facility or a resident of an adult  
29 foster home, when the recipient or resident is 65 years of age or older;

30 (c) Of a crime listed in ORS 163A.005;

31 (d) In the last 10 years, of a crime involving the delivery or manufacture

1 of a controlled substance;

2 (e) Of an attempt, conspiracy or solicitation to commit a crime described  
3 in paragraphs (a) to (d) of this subsection; or

4 (f) Of a crime in another jurisdiction that is substantially equivalent, as  
5 defined by rule, to a crime described in paragraphs (a) to (e) of this sub-  
6 section.

7 (4) If the criminal background check conducted by a home health agency  
8 or in-home care agency under subsection (2) of this section reveals that the  
9 individual who is subject to the criminal background check has been con-  
10 victed of any of the crimes described in subsection (3) of this section, the  
11 home health agency or in-home care agency may not employ the individual.

12 (5) Public funds may not be used to support, in whole or in part, the  
13 employment, in any capacity having contact with a recipient of support ser-  
14 vices or a resident of a residential facility or an adult foster home, of a  
15 mental health or substance abuse treatment provider who has been convicted  
16 of committing, or convicted of an attempt, conspiracy or solicitation to  
17 commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411  
18 or 163.427 **or section 3 of this 2019 Act.**

19 (6) Upon the request of a mental health or substance abuse treatment  
20 provider, the department or authority shall maintain a record of the results  
21 of any fitness determination made under ORS 181A.195 (10). The department  
22 or authority may disclose the record only to a person the provider specif-  
23 ically authorizes, by a written release, to receive the information.

24 (7) If the department or authority has a record of substantiated abuse  
25 committed by an employee or potential employee of a home health agency,  
26 in-home care agency, adult foster home or residential facility, regardless of  
27 whether criminal charges were filed, the department or authority shall no-  
28 tify, in writing, the employer and the employee or potential employee.

29 (8) As used in this section:

30 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

31 (b) "Home care worker" has the meaning given that term in ORS 410.600.

1 (c) "Home health agency" has the meaning given that term in ORS  
2 443.014.

3 (d) "In-home care agency" has the meaning given that term in ORS  
4 443.305.

5 (e) "Mental health or substance abuse treatment provider" means:

6 (A) A peer support specialist;

7 (B) An employee of a residential treatment facility or a residential treat-  
8 ment home that is licensed under ORS 443.415 to provide treatment for in-  
9 dividuals with alcohol or drug dependence;

10 (C) An individual who provides treatment or services for persons with  
11 substance use disorders; or

12 (D) An individual who provides mental health treatment or services.

13 (f) "Peer support specialist" has the meaning given that term in ORS  
14 414.025.

15 (g) "Residential facility" has the meaning given that term in ORS 443.400.

16 **SECTION 28.** ORS 443.004, as amended by section 24, chapter 75, Oregon  
17 Laws 2018, is amended to read:

18 443.004. (1) The Department of Human Services or the Oregon Health  
19 Authority shall complete a criminal records check under ORS 181A.195 on:

20 (a) An employee of a residential facility or an adult foster home;

21 (b) Any individual who is paid directly or indirectly with public funds  
22 who has or will have contact with a recipient of support services or a resi-  
23 dent of an adult foster home or a residential facility; and

24 (c) A home care worker or personal support worker registering with the  
25 Home Care Commission or renewing a registration with the Home Care  
26 Commission.

27 (2)(a) A home health agency shall conduct a criminal background check  
28 before hiring or contracting with an individual and before allowing an indi-  
29 vidual to volunteer to provide services on behalf of the home health agency,  
30 if the individual will have direct contact with a patient of the home health  
31 agency.

1 (b) An in-home care agency shall conduct a criminal background check  
2 before hiring or contracting with an individual and before allowing an indi-  
3 vidual to volunteer to provide services on behalf of the in-home care agency,  
4 if the individual will have direct contact with a client of the in-home care  
5 agency.

6 (c) The authority shall prescribe by rule the process for conducting a  
7 criminal background check.

8 (3) Public funds may not be used to support, in whole or in part, the  
9 employment in any capacity having contact with a recipient of support ser-  
10 vices or a resident of a residential facility or an adult foster home, of an  
11 individual, other than a mental health or substance abuse treatment pro-  
12 vider, who has been convicted:

13 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145,  
14 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235,  
15 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.547,  
16 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,  
17 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032,  
18 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 3 of**  
19 **this 2019 Act;**

20 (b) Notwithstanding paragraph (a) of this subsection, of a crime described  
21 in ORS 163.465, 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date  
22 of conviction for which was within the five years immediately preceding  
23 employment in any capacity of an individual, other than a mental health or  
24 substance abuse treatment provider, having contact with a recipient of sup-  
25 port services, a resident of a residential facility or a resident of an adult  
26 foster home, when the recipient or resident is 65 years of age or older;

27 (c) Of a crime listed in ORS 163A.005;

28 (d) In the last 10 years, of a crime involving the delivery or manufacture  
29 of a controlled substance;

30 (e) Of an attempt, conspiracy or solicitation to commit a crime described  
31 in paragraphs (a) to (d) of this subsection; or



1 (f) Of a crime in another jurisdiction that is substantially equivalent, as  
2 defined by rule, to a crime described in paragraphs (a) to (e) of this sub-  
3 section.

4 (4) If the criminal background check conducted by a home health agency  
5 or in-home care agency under subsection (2) of this section reveals that the  
6 individual who is subject to the criminal background check has been con-  
7 victed of any of the crimes described in subsection (3) of this section, the  
8 home health agency or in-home care agency may not employ the individual.

9 (5) Public funds may not be used to support, in whole or in part, the  
10 employment, in any capacity having contact with a recipient of support ser-  
11 vices or a resident of a residential facility or an adult foster home, of a  
12 mental health or substance abuse treatment provider who has been convicted  
13 of committing, or convicted of an attempt, conspiracy or solicitation to  
14 commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411  
15 or 163.427 **or section 3 of this 2019 Act.**

16 (6) Upon the request of a mental health or substance abuse treatment  
17 provider, the department or authority shall maintain a record of the results  
18 of any fitness determination made under ORS 181A.195 (10). The department  
19 or authority may disclose the record only to a person the provider specif-  
20 ically authorizes, by a written release, to receive the information.

21 (7) If the department or authority has a record of substantiated abuse  
22 committed by an employee or potential employee of a home health agency,  
23 in-home care agency, adult foster home or residential facility, regardless of  
24 whether criminal charges were filed, the department or authority shall no-  
25 tify, in writing, the employer and the employee or potential employee.

26 (8) As used in this section:

27 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

28 (b) "Home care worker" has the meaning given that term in ORS 410.600.

29 (c) "Home health agency" has the meaning given that term in ORS  
30 443.014.

31 (d) "In-home care agency" has the meaning given that term in ORS

1 443.305.

2 (e) “Mental health or substance abuse treatment provider” means:

3 (A) A peer support specialist;

4 (B) An employee of a residential treatment facility or a residential treat-  
5 ment home that is licensed under ORS 443.415 to provide treatment for in-  
6 dividuals with alcohol or drug dependence;

7 (C) An individual who provides treatment or services for persons with  
8 substance use disorders; or

9 (D) An individual who provides mental health treatment or services.

10 (f) “Peer support specialist” has the meaning given that term in ORS  
11 414.025.

12 (g) “Personal support worker” has the meaning given that term in ORS  
13 410.600.

14 (h) “Residential facility” has the meaning given that term in ORS 443.400.

15 **SECTION 29.** ORS 671.610 is amended to read:

16 671.610. (1) In addition to any civil penalty assessed under ORS 671.997,  
17 the State Landscape Contractors Board may suspend, revoke or refuse to is-  
18 sue or renew the license of a landscape construction professional or land-  
19 scape contracting business that does any of the following:

20 (a) Obtains or attempts to obtain a license under ORS 671.510 to 671.760  
21 by fraud or material misrepresentation.

22 (b) Makes a material misrepresentation about the quality of any material  
23 or service the person provides.

24 (c) Performs defective work.

25 (d) Furnishes defective materials.

26 (e) Makes misleading statements when advertising services or materials.

27 (f) Violates a provision of ORS 671.510 to 671.760.

28 (g) Fails to have a replacement bond, letter of credit or deposit on file  
29 at the time of a termination, cancellation, reduction or withdrawal of the  
30 bond, letter of credit or deposit required by ORS 671.690.

31 (h) Fails to maintain public liability, personal injury and property damage

1 insurance as required by ORS 671.565 throughout a licensing period.

2 (i) Fails to comply with ORS 671.527 or 671.562.

3 (j) Fails to provide evidence of workers' compensation coverage as de-  
4 scribed in ORS 671.565.

5 (k) Violates a voluntary compliance agreement entered into under ORS  
6 336.184 and 646.605 to 646.652.

7 (L) Performs work for which a permit is required under the state building  
8 code without obtaining the required permit, if the work results in the filing  
9 of a claim with the board.

10 (m) Violates a rule or order of the board.

11 (n) Refuses to comply with a subpoena issued by the board.

12 (o) Fails to pay in full any amount owed to a claimant under a final order  
13 of the board or an arbitration award, or under a judgment rendered in this  
14 or any other state.

15 (p) Does not make payment, including any interest due, for labor or ma-  
16 terials contracted for by the person pursuant to a contract for a public im-  
17 provement within 90 days after the date the person receives payment from  
18 a public contracting agency or, if the person is a subcontractor, from the  
19 contractor.

20 (q) Engages in conduct as a landscape construction professional or land-  
21 scape contracting business that is dishonest or fraudulent or that the board  
22 finds injurious to the welfare of the public.

23 (r) Fails to comply with the requirements of ORS 652.120.

24 (s) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235,  
25 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415,  
26 163.425, 163.427, 164.055, 164.075, 164.325 or 164.415 **or section 3 of this 2019**  
27 **Act**, provided that the facts supporting the conviction and all intervening  
28 circumstances make the determination to suspend, revoke or refuse to issue  
29 or renew the license consistent with ORS 670.280.

30 (2) The board may suspend or refuse to renew the license of a landscape  
31 construction professional or landscape contracting business without prior

1 hearing if, after investigating and setting forth in writing the facts support-  
2 ing the action, the board determines that continued activity by the landscape  
3 construction professional or landscape contracting business poses an immi-  
4 nent threat of serious harm to the public welfare. Facts sufficient to support  
5 a suspension or refusal to renew under this subsection include, but are not  
6 limited to:

7 (a) The lack of a surety bond, letter of credit or deposit required under  
8 ORS 671.690;

9 (b) The lack of public liability, personal injury or property damage in-  
10 surance required under ORS 671.565;

11 (c) The lack of workers' compensation insurance that is required of the  
12 licensee under ORS 671.562;

13 (d) The hiring of employees while licensed as exempt under ORS 671.525;

14 (e) Conduct as a landscape construction professional or a landscape con-  
15 tracting business that is dishonest;

16 (f) Operation of a landscape contracting business that does not employ  
17 at least one licensed landscape construction professional; or

18 (g) The failure to notify the board of any unpaid court judgment, arbi-  
19 tration award or administrative agency final order as required by ORS  
20 671.563.

21 (3) A person whose license is suspended or refused renewal under sub-  
22 section (2) of this section may request a hearing within 90 days after re-  
23 ceiving the notice of the suspension or refusal to renew. Except as provided  
24 in this subsection, the board shall give a contested case hearing requested  
25 under this subsection priority over other hearings and schedule the hearing  
26 for the earliest practicable date. If a citation is issued to the person and the  
27 order of suspension or refusal to renew will terminate by its terms if a court  
28 renders a final judgment regarding the citation in favor of the person, the  
29 person may request that the board hold the requested contested case hearing  
30 in abeyance until after the court has rendered a final judgment.

31 (4) A person whose license is revoked under this section is not eligible

1 to apply for a license under ORS 671.510 to 671.760 until two years after the  
2 effective date of the revocation.

3 (5) The board may suspend, revoke or refuse to reissue the license of a  
4 landscape contracting business, and may impose a civil penalty, all as pro-  
5 vided under ORS 671.997 (4), if the board determines, after notice and op-  
6 portunity for a hearing, that the landscape contracting business was working  
7 with other landscape contracting businesses on the same task and work site  
8 where one of the landscape contracting businesses is licensed as an exempt  
9 independent contractor under ORS 671.525 (2)(b) and the total number of  
10 landscape contracting businesses working on the task exceeded:

- 11 (a) Two sole proprietors;
- 12 (b) One partnership;
- 13 (c) One corporation; or
- 14 (d) One limited liability company.

15 (6) The board shall provide by rule a process and criteria that must be  
16 met for restoration of a license that has not been permanently revoked.

17 **SECTION 30. (1) Section 3 of this 2019 Act and the amendments to**  
18 **ORS 40.355, 133.705, 136.450, 137.635, 137.700, 137.707, 144.079, 144.085,**  
19 **144.110, 161.005, 161.535, 163.095, 163.098, 163.103, 163.115, 163.135, 163.150,**  
20 **163.707, 342.143, 419A.260, 419C.349, 419C.352, 419C.501, 421.121, 443.004 and**  
21 **671.610 by sections 1 and 4 to 29 of this 2019 Act apply to crimes com-**  
22 **mitted before, on or after the effective date of this 2019 Act that are**  
23 **the subject of sentencing proceedings occurring on or after the effec-**  
24 **tive date of this 2019 Act.**

25 **SECTION 31. This 2019 Act takes effect on the 91st day after the**  
26 **date on which the 2019 regular session of the Eightieth Legislative**  
27 **Assembly adjourns sine die.**

28