

# Senate Bill 425

Sponsored by Senator FREDERICK (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Repeals statutes requiring imposition of mandatory minimum sentences for persons under 18 years of age at time of commission of crime. Prohibits imposition of specified mandatory minimum sentences for persons under 25 years of age at time of commission of crime.

Refers Act to people for their approval or rejection at next regular general election.

## A BILL FOR AN ACT

1  
2 Relating to mandatory minimum sentences for persons under 25 years of age; creating new pro-  
3 visions; amending ORS 133.400, 135.240, 137.124, 137.709, 137.712, 137.751, 138.105, 138.115,  
4 138.255, 144.101, 144.107, 151.216, 161.610, 163.105, 163.150, 163A.130, 163A.135, 339.317, 339.319,  
5 339.321, 419C.005, 419C.050, 419C.411, 420.011, 420.081, 420.240, 420A.203, 421.121 and 421.168 and  
6 section 1, chapter 830, Oregon Laws 2015; repealing ORS 137.705, 137.707 and 419C.067; and  
7 providing that this Act shall be referred to the people for their approval or rejection.

### Be It Enacted by the People of the State of Oregon:

8 **SECTION 1.** ORS 137.709 is amended to read:

9  
10 137.709. ORS 137.700 *[and 137.707 do]* **does** not apply to a person who is under *[15]* **25** years of  
11 age at the time the person commits a crime listed in ORS 137.700 *[or 137.707]*.

12 **SECTION 2.** ORS 133.400 is amended to read:

13 133.400. (1) A custodial interview conducted by a peace officer in a law enforcement facility  
14 shall be electronically recorded if the interview is conducted:

15 (a) In connection with an investigation into aggravated murder as defined in ORS 163.095 or a  
16 crime listed in ORS 137.700 *[or 137.707]*; or

17 (b) With a person under 18 years of age in connection with an investigation into a felony, or  
18 an allegation that the person being interviewed committed an act that, if committed by an adult,  
19 would constitute a felony.

20 (2) Subsection (1) of this section does not apply to:

21 (a) A statement made before a grand jury;

22 (b) A statement made on the record in open court;

23 (c) A custodial interview conducted in another state in compliance with the laws of that state;

24 (d) A custodial interview conducted by a federal law enforcement officer in compliance with the  
25 laws of the United States;

26 (e) A statement that was spontaneously volunteered and did not result from a custodial inter-  
27 view;

28 (f) A statement made during arrest processing in response to a routine question;

29 (g) A law enforcement agency that employs five or fewer peace officers;

30 (h) A custodial interview conducted in connection with an investigation carried out by a cor-

**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 rections officer, a youth corrections officer or a staff member of the Oregon State Hospital in the  
2 performance of the officer's or staff member's official duties of treatment, custody, control or  
3 supervision of individuals committed to or confined in a place of incarceration or detention; or

4 (i) A custodial interview for which the state demonstrates good cause for the failure to elec-  
5 tronically record the interview.

6 (3)(a) If the state offers an unrecorded statement made under the circumstances described in  
7 subsection (1)(a) of this section in a criminal proceeding alleging the commission of aggravated  
8 murder or a crime listed in ORS 137.700 [*or 137.707*], or under the circumstances described in sub-  
9 subsection (1)(b) of this section in a criminal proceeding alleging the commission of a felony, and the  
10 state is unable to demonstrate, by a preponderance of the evidence, that an exception described in  
11 subsection (2) of this section applies, upon the request of the defendant, the court shall instruct the  
12 jury regarding the legal requirement described in subsection (1) of this section and the superior re-  
13 liability of electronic recordings when compared with testimony about what was said and done.

14 (b) The court may not exclude the defendant's statement or dismiss criminal charges as a result  
15 of a violation of this section.

16 (c) If each of the statements made by the defendant that the state offers into evidence is re-  
17 corded, the court may not give a cautionary jury instruction regarding the content of the  
18 defendant's statements.

19 (4) If the state offers an unrecorded statement made under the circumstances described in sub-  
20 subsection (1)(b) of this section in a juvenile delinquency proceeding alleging the commission of an act  
21 that, if committed by an adult, would constitute a felony, and the state is unable to demonstrate,  
22 by a preponderance of the evidence, that an exception described in subsection (2) of this section  
23 applies, the court shall consider the superior reliability of electronic recordings when compared with  
24 testimony about what was said and done when determining the evidentiary value of the statement.

25 (5) A law enforcement agency that creates an electronic recording of a custodial interview shall  
26 preserve the recording until the defendant's conviction or youth's adjudication for the offense is  
27 final and all direct, post-conviction relief and habeas corpus appeals are exhausted, or until the  
28 prosecution of the offense is barred by law.

29 (6) The state shall provide an electronic copy of a defendant's or youth's custodial interview to  
30 a defendant or youth in accordance with ORS 135.805 to 135.873. Providing an electronic copy of the  
31 custodial interview to the defendant or youth constitutes compliance with ORS 135.815 (1)(b), and  
32 the state is not required to provide the defendant or youth with a transcript of the contents of the  
33 interview. Unless the court orders otherwise, the defendant's or youth's attorney may not copy,  
34 disseminate or republish the electronic copy of the custodial interview, except to provide a copy to  
35 an agent of the defendant's or youth's attorney for the limited purpose of case preparation.

36 (7) An electronic recording of a custodial interview, and any transcription of the recording, that  
37 is certified as containing a complete recording, or a complete transcription, of the entirety of the  
38 custodial interview, from the advisement of constitutional rights to the conclusion of the custodial  
39 interview, is admissible in any pretrial or post-trial hearing for the purpose of establishing the  
40 contents of a statement made in the recording and the identity of the person who made the state-  
41 ment, if the statement is otherwise admissible. A certification that complies with this subsection  
42 satisfies the requirements of ORS 40.505 and 132.320 for the recording or transcription. This sub-  
43 section does not prohibit a party from calling a witness to testify regarding the custodial interview.

44 (8) As used in this section:

45 (a) "Custodial interview" means an interview in which the person questioned is in custody and

1 is required to be advised of the person’s constitutional rights.

2 (b) “Good cause” includes, but is not limited to, situations in which:

3 (A) The defendant or youth refused, or expressed an unwillingness, to have the custodial inter-  
4 view electronically recorded;

5 (B) The failure to electronically record the custodial interview was the result of equipment  
6 failure and a replacement device was not immediately available;

7 (C) The person operating the recording equipment believed, in good faith, that the equipment  
8 was recording the custodial interview;

9 (D) Electronically recording the custodial interview would jeopardize the safety of any person  
10 or the identity of a confidential informant;

11 (E) Exigent circumstances prevented the recording of the custodial interview; or

12 (F) The peace officer conducting the custodial interview reasonably believed, at the time the  
13 custodial interview began, that the custodial interview:

14 (i) Was conducted in connection with a crime other than aggravated murder as defined in ORS  
15 163.095 or a crime listed in ORS 137.700 [*or 137.707*]; or

16 (ii) Was conducted in connection with a crime other than a felony, or an allegation that the  
17 person being interviewed committed an act that, if committed by an adult, would constitute a felony,  
18 if the person is under 18 years of age.

19 (c) “Law enforcement facility” means a courthouse, building or premises that is a place of op-  
20 eration for a municipal police department, county sheriff’s office or other law enforcement agency  
21 at which persons may be detained in connection with a juvenile delinquency petition or criminal  
22 charge.

23 (d) “Youth” means a person under 18 years of age who is suspected or alleged to have commit-  
24 ted an act that, if committed by an adult, would constitute a felony.

25 **SECTION 3.** ORS 135.240 is amended to read:

26 135.240. (1) Except as provided in subsections (2), (4) and (5) of this section, a defendant shall  
27 be released in accordance with ORS 135.230 to 135.290.

28 (2)(a) When the defendant is charged with murder, aggravated murder or treason, release shall  
29 be denied when the proof is evident or the presumption strong that the person is guilty.

30 (b) When the defendant is charged with murder or aggravated murder and the proof is not evi-  
31 dent nor the presumption strong that the defendant is guilty, the court shall determine the issue of  
32 release as provided in subsection (4) of this section. In determining the issue of release under sub-  
33 section (4) of this section, the court may consider any evidence used in making the determination  
34 required by this subsection.

35 (3) The magistrate may conduct such hearing as the magistrate considers necessary to determine  
36 whether, under subsection (2) of this section, the proof is evident or the presumption strong that the  
37 person is guilty.

38 (4)(a) Except as otherwise provided in subsection (5) of this section, when the defendant is  
39 charged with a violent felony, release shall be denied if the court finds:

40 (A) Except when the defendant is charged by indictment, that there is probable cause to believe  
41 that the defendant committed the crime; and

42 (B) By clear and convincing evidence, that there is a danger of physical injury or sexual  
43 victimization to the victim or members of the public by the defendant while on release.

44 (b) If the defendant wants to have a hearing on the issue of release, the defendant must request  
45 the hearing at the time of arraignment in circuit court. If the defendant requests a release hearing,

1 the court must hold the hearing within five days of the request.

2 (c) At the release hearing, unless the state stipulates to the setting of security or release, the  
3 court shall make the inquiry set forth in paragraph (a) of this subsection. The state has the burden  
4 of producing evidence at the release hearing subject to ORS 40.015 (4).

5 (d) The defendant may be represented by counsel and may present evidence on any relevant is-  
6 sue. However, the hearing may not be used for purposes of discovery.

7 (e) If the court determines that the defendant is eligible for release in accordance with this  
8 subsection, the court shall set security or other appropriate conditions of release.

9 (f) When a defendant who has been released violates a condition of release and the violation:

10 (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into  
11 custody and shall order the defendant held pending trial without release.

12 (B) Does not constitute a new criminal offense, the court may order the defendant to be taken  
13 back into custody, may order the defendant held pending trial and may set a security amount of not  
14 less than \$250,000.

15 (5)(a) Notwithstanding any other provision of law, the court shall set a security amount of not  
16 less than \$50,000 for a defendant charged with an offense listed in ORS 137.700 [*or 137.707*] unless  
17 the court determines that amount to be unconstitutionally excessive, and may not release the de-  
18 fendant on any form of release other than a security release if:

19 (A) The United States Constitution or the Oregon Constitution prohibits the denial of release  
20 under subsection (4) of this section;

21 (B) The court determines that the defendant is eligible for release under subsection (4) of this  
22 section; or

23 (C) The court finds that the offense is not a violent felony.

24 (b) In addition to the security amount described in paragraph (a) of this subsection, the court  
25 may impose any supervisory conditions deemed necessary for the protection of the victim and the  
26 community. When a defendant who has been released violates a condition of release and the vio-  
27 lation:

28 (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into  
29 custody, shall order the defendant held pending trial and shall set a security amount of not less than  
30 \$250,000.

31 (B) Does not constitute a new criminal offense, the court may order the defendant to be taken  
32 back into custody, may order the defendant held pending trial and may set a security amount of not  
33 less than \$250,000.

34 (6) For purposes of this section, "violent felony" means a felony offense in which there was an  
35 actual or threatened serious physical injury to the victim, or a felony sexual offense.

36 **SECTION 4.** ORS 137.124 is amended to read:

37 137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of  
38 incarceration that exceeds 12 months:

39 (a) The court shall not designate the correctional facility in which the defendant is to be con-  
40 fined but shall commit the defendant to the legal and physical custody of the Department of Cor-  
41 rections; and

42 (b) If the judgment provides that the term of incarceration be served consecutively to a term  
43 of incarceration of 12 months or less that was imposed in a previous proceeding by a court of this  
44 state upon conviction of a felony, the defendant shall serve any remaining part of the previously  
45 imposed term of incarceration in the legal and physical custody of the Department of Corrections.

1 (2)(a) If the court imposes a sentence upon conviction of a felony that includes a term of  
2 incarceration that is 12 months or less, the court shall commit the defendant to the legal and  
3 physical custody of the supervisory authority of the county in which the crime of conviction oc-  
4 curred.

5 (b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon  
6 conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall  
7 commit the defendant to the legal and physical custody of the Department of Corrections if the court  
8 orders that the term of incarceration be served consecutively to a term of incarceration that ex-  
9 ceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court  
10 of this state upon conviction of a felony.

11 (3) After assuming custody of the convicted person the Department of Corrections may transfer  
12 inmates from one correctional facility to another such facility for the purposes of diagnosis and  
13 study, rehabilitation and treatment, as best seems to fit the needs of the inmate and for the pro-  
14 tection and welfare of the community and the inmate.

15 (4) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall  
16 commit the defendant to the custody of the supervisory authority of the county in which the crime  
17 of conviction occurred.

18 *[(5)(a) When a person under 18 years of age at the time of committing the offense and under 20*  
19 *years of age at the time of sentencing is committed to the Department of Corrections under ORS*  
20 *137.707, the Department of Corrections shall transfer the physical custody of the person to the Oregon*  
21 *Youth Authority as provided in ORS 420.011 if:]*

22 *[(A) The person will complete the sentence imposed before the person attains 25 years of age;]*

23 *[(B) The Department of Corrections and the Oregon Youth Authority determine that, because of the*  
24 *person's age, immaturity, mental or emotional condition or risk of physical harm to the person, the*  
25 *person should not be incarcerated initially in a Department of Corrections institution; or]*

26 *[(C) The person is under 18 years of age at the time of sentencing and commitment.]*

27 *[(b) A person placed in the custody of the Oregon Youth Authority under this subsection who is*  
28 *at least 18 years of age shall be returned to the physical custody of the Department of Corrections*  
29 *whenever the Director of the Oregon Youth Authority, after consultation with the Department of Cor-*  
30 *rections, determines that the conditions or circumstances that warranted the transfer of custody under*  
31 *this subsection are no longer present.]*

32 *[(c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Cor-*  
33 *rections transfer the person described in this subsection directly to a youth correction facility for*  
34 *physical custody without first delivering the person to the Department of Corrections. As part of the*  
35 *agreement with the Department of Corrections, the sheriff may designate the county juvenile department*  
36 *or the Oregon Youth Authority to conduct the direct transfer described in this paragraph if the sheriff*  
37 *has entered into a written agreement with the county juvenile department, the Oregon Youth Authority,*  
38 *or both, to provide the direct transfer.]*

39 *[(6)(a)] (5)(a) When a person under 18 years of age at the time of committing the offense and*  
40 *under 20 years of age at the time of sentencing is committed to the legal and physical custody of*  
41 *the Department of Corrections or the supervisory authority of a county following waiver under ORS*  
42 *419C.349, 419C.352, 419C.364 or 419C.370 [or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or*  
43 *137.712], the Department of Corrections or the supervisory authority of a county shall transfer the*  
44 *person to the physical custody of the Oregon Youth Authority for placement as provided in ORS*  
45 *420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS*

1 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Depart-  
 2 ment of Corrections or the supervisory authority of a county transfer the person described in this  
 3 subsection directly to a youth correction facility for physical custody without first delivering the  
 4 person to the Department of Corrections or supervisory authority of the county. As part of the  
 5 agreement with the Department of Corrections or supervisory authority of the county, the sheriff  
 6 may designate the county juvenile department or the Oregon Youth Authority to conduct the direct  
 7 transfer described in this paragraph if the sheriff has entered into a written agreement with the  
 8 county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

9 (b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS  
 10 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment  
 11 in the county jail, the sheriff shall transfer the person to a youth correction facility for physical  
 12 custody as provided in ORS 420.011 (3).

13 [(7)] (6) If the Director of the Oregon Youth Authority concurs in the decision, the Department  
 14 of Corrections or the supervisory authority of a county shall transfer the physical custody of a  
 15 person committed to the Department of Corrections or the supervisory authority of the county under  
 16 subsection (1) or (2) of this section to the Oregon Youth Authority as provided in ORS 420.011 (2)  
 17 if:

18 (a) The person was at least 18 years of age but under 20 years of age at the time of committing  
 19 the felony for which the person is being sentenced to a term of incarceration;

20 (b) The person is under 20 years of age at the time of commitment to the Department of Cor-  
 21 rections or the supervisory authority of the county;

22 (c) The person has not been committed previously to the legal and physical custody of the De-  
 23 partment of Corrections or the supervisory authority of a county;

24 (d) The person has not been convicted and sentenced to a term of incarceration for the com-  
 25 mission of a felony in any other state;

26 (e) The person will complete the term of incarceration imposed before the person attains 25  
 27 years of age;

28 (f) The person is likely in the foreseeable future to benefit from the rehabilitative and treatment  
 29 programs administered by the Oregon Youth Authority;

30 (g) The person does not pose a substantial danger to Oregon Youth Authority staff or persons  
 31 in the custody of the Oregon Youth Authority; and

32 (h) At the time of the proposed transfer, no more than 50 persons are in the physical custody  
 33 of the Oregon Youth Authority under this subsection.

34 [(8)] (7) Notwithstanding the provisions of [subsections (5)(a)(A) or (7)] **subsection (6)** of this  
 35 section, the department or the supervisory authority of a county may not transfer the physical cus-  
 36 tody of the person under subsection [(5)(a)(A) or (7)] (6) of this section if the Director of the Oregon  
 37 Youth Authority, after consultation with the Department of Corrections or the supervisory authority  
 38 of a county, determines that, because of the person's age, mental or emotional condition or risk of  
 39 physical harm to other persons, the person should not be incarcerated in a youth correction facility.

40 [(9)] (8) Notwithstanding any other provision of this section, under no circumstances may a  
 41 person under 18 years of age be incarcerated in a Department of Corrections institution.

42 **SECTION 5.** ORS 137.712 is amended to read:

43 137.712. (1)(a) Notwithstanding ORS 137.700 [and 137.707], when a person is convicted of  
 44 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-  
 45 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the

1 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,  
2 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first  
3 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS  
4 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice  
5 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700  
6 [or 137.707] if the court, on the record at sentencing, makes the findings set forth in subsection (2)  
7 of this section and finds that a substantial and compelling reason under the rules of the Oregon  
8 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under  
9 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and  
10 any other statute.

11 (b) In order to make a dispositional departure under this section, the court must make the fol-  
12 lowing additional findings on the record:

13 (A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this  
14 subsection;

15 (B) A sentence of probation will be more effective than a prison term in reducing the risk of  
16 offender recidivism; and

17 (C) A sentence of probation will better serve to protect society.

18 (2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on  
19 the record by a preponderance of the evidence:

20 (a) If the conviction is for manslaughter in the second degree:

21 (A) That the victim was a dependent person as defined in ORS 163.205 who was at least 18 years  
22 of age;

23 (B) That the defendant is the mother or father of the victim;

24 (C) That the death of the victim was the result of an injury or illness that was not caused by  
25 the defendant;

26 (D) That the defendant treated the injury or illness solely by spiritual treatment in accordance  
27 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual  
28 treatment would bring about the victim's recovery from the injury or illness;

29 (E) That no other person previously under the defendant's care has died or sustained significant  
30 physical injury as a result of or despite the use of spiritual treatment, regardless of whether the  
31 spiritual treatment was used alone or in conjunction with medical care; and

32 (F) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
33 of this section or for criminal mistreatment in the second degree.

34 (b) If the conviction is for assault in the second degree:

35 (A) That the victim was not physically injured by means of a deadly weapon;

36 (B) That the victim did not suffer a significant physical injury; and

37 (C) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
38 of this section.

39 (c) If the conviction is for kidnapping in the second degree:

40 (A) That the victim was at least 12 years of age at the time the crime was committed; and

41 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
42 of this section.

43 (d) If the conviction is for robbery in the second degree:

44 (A) That the victim did not suffer a significant physical injury;

45 (B) That, if the defendant represented by words or conduct that the defendant was armed with

1 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-  
2 nificant physical injury;

3 (C) That, if the defendant represented by words or conduct that the defendant was armed with  
4 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical  
5 injury; and

6 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
7 of this section.

8 (e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual  
9 abuse in the first degree:

10 (A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the  
11 offense;

12 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of  
13 this section;

14 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile  
15 court for an act that would have been a felony sexual offense if the act had been committed by an  
16 adult;

17 (D) That the defendant was no more than five years older than the victim at the time of the  
18 offense;

19 (E) That the offense did not involve sexual contact with any minor other than the victim; and

20 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being  
21 under 18 years of age at the time of the offense.

22 (f) If the conviction is for unlawful sexual penetration in the second degree:

23 (A) That the victim was 12 years of age or older at the time of the offense;

24 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of  
25 this section;

26 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile  
27 court for an act that would have been a felony sexual offense if the act had been committed by an  
28 adult;

29 (D) That the defendant was no more than five years older than the victim at the time of the  
30 offense;

31 (E) That the offense did not involve sexual contact with any minor other than the victim;

32 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being  
33 under 18 years of age at the time of the offense; and

34 (G) That the object used to commit the unlawful sexual penetration was the hand or any part  
35 thereof of the defendant.

36 (3) In making the findings required by subsections (1) and (2) of this section, the court may  
37 consider any evidence presented at trial and may receive and consider any additional relevant in-  
38 formation offered by either party at sentencing.

39 (4) The crimes to which subsection (2)(a)(F), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section  
40 refer are:

41 (a) A crime listed in ORS 137.700 (2) [*or 137.707 (4)*];

42 (b) Escape in the first degree, as defined in ORS 162.165;

43 (c) Aggravated murder, as defined in ORS 163.095;

44 (d) Criminally negligent homicide, as defined in ORS 163.145;

45 (e) Assault in the third degree, as defined in ORS 163.165;



- 1 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);
- 2 (g) Rape in the third degree, as defined in ORS 163.355;
- 3 (h) Sodomy in the third degree, as defined in ORS 163.385;
- 4 (i) Sexual abuse in the second degree, as defined in ORS 163.425;
- 5 (j) Stalking, as defined in ORS 163.732;
- 6 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
- 7 felony under the rules of the Oregon Criminal Justice Commission;
- 8 (L) Arson in the first degree, as defined in ORS 164.325;
- 9 (m) Robbery in the third degree, as defined in ORS 164.395;
- 10 (n) Intimidation in the first degree, as defined in ORS 166.165;
- 11 (o) Promoting prostitution, as defined in ORS 167.012; and
- 12 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
- 13 of this subsection.

14 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section  
 15 violates a condition of probation by committing a new crime, the court shall revoke the probation  
 16 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-  
 17 tice Commission.

18 (6) As used in this section:

19 (a) “Conviction” includes, but is not limited to:

20 (A) A juvenile court adjudication finding a person within the court’s jurisdiction under ORS  
 21 419C.005, if the person was at least 15 years of age at the time the person committed the offense  
 22 that brought the person within the jurisdiction of the juvenile court. “Conviction” does not include  
 23 a juvenile court adjudication described in this subparagraph if the person successfully asserted the  
 24 defense set forth in ORS 419C.522.

25 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-  
 26 stitute a crime listed in subsection (4) of this section.

27 (b) “Previous conviction” means a conviction that was entered prior to imposing sentence on the  
 28 current crime provided that the prior conviction is based on a crime committed in a separate crim-  
 29 inal episode. “Previous conviction” does not include a conviction for a Class C felony, including an  
 30 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was  
 31 entered within the 10-year period immediately preceding the date on which the current crime was  
 32 committed.

33 (c) “Significant physical injury” means a physical injury that:

34 (A) Creates a risk of death that is not a remote risk;

35 (B) Causes a serious and temporary disfigurement;

36 (C) Causes a protracted disfigurement; or

37 (D) Causes a prolonged impairment of health or the function of any bodily organ.

38 **SECTION 6.** ORS 137.751, as amended by section 4a, chapter 22, Oregon Laws 2018, is amended  
 39 to read:

40 137.751. (1) When a court sentences a defendant to a term of incarceration that exceeds one  
 41 year, the defendant may request a determination of the defendant’s eligibility for release on post-  
 42 prison supervision under ORS 421.508 (4). The court shall order in the judgment that the Department  
 43 of Corrections may release the defendant on post-prison supervision under ORS 421.508 (4) only if,  
 44 after a hearing, the court finds that:

45 (a) The defendant meets the eligibility requirements of subsections (2) and (3) of this section;

1 (b) The defendant was not on probation, parole or post-prison supervision for an offense listed  
2 in ORS 137.712 (4) or 811.705 (3)(b) at the time of the commission of the current crime of conviction;

3 (c) The defendant has not previously been released on post-prison supervision under ORS 421.508  
4 (4);

5 (d) The harm or loss caused by the crime is not greater than usual for that type of crime;

6 (e) The crime was not part of an organized criminal operation; and

7 (f) After considering the nature of the offense and the harm to the victim, the defendant's suc-  
8 cessful completion of the program would:

9 (A) Increase public safety;

10 (B) Enhance the likelihood that the defendant would be rehabilitated; and

11 (C) Not unduly reduce the appropriate punishment.

12 (2) Except as provided in subsection (4) of this section, a defendant may not be released on  
13 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime under  
14 ORS 163.145, 163.165 (1)(a) or (b), 163.525 or 811.705 (3)(b).

15 (3) A defendant may not be released on post-prison supervision under ORS 421.508 (4) if the de-  
16 fendant is being sentenced for a crime listed in ORS 137.700[, 137.707] or 163.095 or a sex crime as  
17 defined in ORS 163A.005.

18 (4) Notwithstanding subsection (1) of this section, the parties may stipulate to a defendant's el-  
19 igibility for release on post-prison supervision under ORS 421.508 (4). If the court accepts the stip-  
20 ulation, the court does not need to make explicit findings regarding the factors described in  
21 subsection (1)(b) to (f) of this section. The parties may not stipulate to the defendant's release on  
22 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime de-  
23 scribed in subsection (3) of this section.

24 (5) If the court makes the findings described in subsection (1) of this section or accepts the  
25 stipulation of the parties under subsection (4) of this section, the court shall:

26 (a) Order on the record in open court as part of the sentence imposed that the defendant may  
27 be considered by the department for release on post-prison supervision under ORS 421.508 (4); and

28 (b) Include the order described in paragraph (a) of this subsection in the judgment.

29 (6) Subject to the requirements of this section, the court may order that the defendant serve a  
30 minimum period of incarceration before the defendant is released on post-prison supervision under  
31 ORS 421.508 (4). Nothing in this section authorizes the release of the defendant on post-prison  
32 supervision before the defendant has served the period of time described in ORS 421.508 (4)(b).

33 **SECTION 7.** ORS 138.105 is amended to read:

34 138.105. (1) On appeal by a defendant, the appellate court has authority to review the judgment  
35 or order being appealed, subject to the provisions of this section.

36 (2) The appellate court has authority to review only questions of law appearing on the record.

37 (3) Except as otherwise provided in this section, the appellate court has authority to review any  
38 intermediate decision of the trial court.

39 (4) On appeal from a judgment of conviction and sentence, the appellate court has authority to  
40 review:

41 (a) The denial of a motion for new trial based on juror misconduct or newly discovered evidence;  
42 and

43 (b) The denial of a motion in arrest of judgment.

44 (5) The appellate court has no authority to review the validity of the defendant's plea of guilty  
45 or no contest, or a conviction based on the defendant's plea of guilty or no contest, except that:

1 (a) The appellate court has authority to review the trial court's adverse determination of a  
2 pretrial motion reserved in a conditional plea of guilty or no contest under ORS 135.335.

3 (b) The appellate court has authority to review whether the trial court erred by not merging  
4 determinations of guilt of two or more offenses, unless the entry of separate convictions results from  
5 an agreement between the state and the defendant.

6 (6) On appeal from a judgment ordering payment of restitution but not specifying the amount  
7 of restitution, the appellate court has no authority to review the decision to award restitution.

8 (7) Except as otherwise provided in subsections (8) and (9) of this section, the appellate court  
9 has authority to review any sentence to determine whether the trial court failed to comply with  
10 requirements of law in imposing or failing to impose a sentence.

11 (8) Except as otherwise provided in subsection (9) of this section, for a sentence imposed on  
12 conviction of a felony committed on or after November 1, 1989:

13 (a) The appellate court has no authority to review:

14 (A) A sentence that is within the presumptive sentence prescribed by the rules of the Oregon  
15 Criminal Justice Commission.

16 (B) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe  
17 a presumptive sentence of imprisonment but allow a sentence of probation without departure.

18 (C) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission  
19 prescribe a presumptive sentence of imprisonment but allow a sentence of probation without depar-  
20 ture.

21 (b) If the trial court imposed a sentence that departs from the presumptive sentence prescribed  
22 by the rules of the Oregon Criminal Justice Commission, the appellate court's authority to review  
23 is limited to whether the trial court's findings of fact and reasons justifying a departure from the  
24 sentence prescribed by the rules of the Oregon Criminal Justice Commission:

25 (A) Are supported by the evidence in the record; and

26 (B) Constitute substantial and compelling reasons for departure.

27 (c) Notwithstanding paragraph (a) of this subsection, the appellate court has authority to review  
28 whether the sentencing court erred:

29 (A) In ranking the crime seriousness classification of the current crime or in determining the  
30 appropriate classification of a prior conviction or juvenile adjudication for criminal history pur-  
31 poses.

32 (B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 [*or*  
33 *137.707*].

34 (9) The appellate court has no authority to review any part of a sentence resulting from a  
35 stipulated sentencing agreement between the state and the defendant.

36 (10)(a) On appeal from a corrected or amended judgment that is entered before expiration of the  
37 applicable period under ORS 138.071 (1) or (2) during which the original judgment can be appealed,  
38 the appellate court has authority to review the judgment, including the corrections or amendments,  
39 as provided in this section.

40 (b) On appeal from a corrected or amended judgment that is entered after expiration of the ap-  
41 plicable period under ORS 138.071 (1) or (2) during which the original judgment was or could have  
42 been appealed, the appellate court has authority to review, as provided in this section, only the  
43 corrected or amended part of the judgment, any part of the judgment affected by the correction or  
44 amendment, or the trial court's decision under ORS 137.172 not to correct or amend the judgment.

45 (c) As used in this subsection, "judgment" means any appealable judgment or order.

1 (11)(a) On a defendant's cross-appeal under ORS 138.035 (5), the appellate court may, in its dis-  
2 cretion, limit review to any decision by the trial court that is inextricably linked, either factually  
3 or legally, to the state's appeal.

4 (b) The failure to file a cross-appeal under ORS 138.035 (5) does not waive a defendant's right  
5 to assign error to a particular ruling of the trial court on appeal from a judgment.

6 **SECTION 8.** ORS 138.115 is amended to read:

7 138.115. (1) On appeal by the state, the appellate court has authority to review the judgment or  
8 order being appealed, subject to the provisions of this section.

9 (2) The appellate court has authority to review only questions of law appearing on the record.

10 (3) Except as otherwise provided in this section, the appellate court has authority to review any  
11 intermediate decision involving the merits of, or necessarily affecting, the judgment or order from  
12 which the appeal is taken.

13 (4)(a) Except as provided in paragraph (b) of this subsection, on appeal from a judgment of  
14 conviction of any felony, the appellate court has authority to review only the sentence as provided  
15 by subsections (5) and (6) of this section.

16 (b) The appellate court has authority to review whether the trial court erred in merging deter-  
17 minations of guilt of two or more offenses, unless the merger of determinations of guilt resulted from  
18 an agreement between the state and the defendant.

19 (5) Except as otherwise provided in subsections (6) and (7) of this section, the appellate court  
20 has authority to review the sentence imposed on conviction of any felony to determine whether the  
21 trial court failed to comply with requirements of law in imposing or failing to impose a sentence.

22 (6) Except as otherwise provided in subsection (7) of this section, for a sentence imposed on  
23 conviction of a felony committed on or after November 1, 1989:

24 (a) The appellate court has no authority to review:

25 (A) A sentence that is within the presumptive sentence prescribed by the rules of the Oregon  
26 Criminal Justice Commission.

27 (B) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe  
28 a presumptive sentence of imprisonment but allow a sentence of probation without departure.

29 (C) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission  
30 prescribe a presumptive sentence of imprisonment but allow a sentence of probation without depar-  
31 ture.

32 (b) If the trial court imposed a sentence that departs from the presumptive sentence prescribed  
33 by the rules of the Oregon Criminal Justice Commission, the appellate court's authority to review  
34 is limited to whether the trial court's findings of fact and reasons justifying a departure from the  
35 sentence prescribed by the rules of the Oregon Criminal Justice Commission:

36 (A) Are supported by the evidence in the record; and

37 (B) Constitute substantial and compelling reasons for departure.

38 (c) Notwithstanding paragraph (a) of this subsection, the appellate court has authority to review  
39 whether the sentencing court erred:

40 (A) In ranking the crime seriousness classification of the current crime or in determining the  
41 appropriate classification of a prior conviction or juvenile adjudication for criminal history pur-  
42 poses.

43 (B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 [*or*  
44 *137.707*].

45 (7) The appellate court has no authority to review any part of a sentence resulting from a

1 stipulated sentencing agreement between the state and the defendant.

2 (8)(a) On appeal from a corrected or amended judgment that is entered before expiration of the  
3 applicable period under ORS 138.071 (1) or (2) during which the original judgment can be appealed,  
4 the appellate court has authority to review the judgment, including the corrections or amendments,  
5 as provided in this section.

6 (b) On appeal from a corrected or amended judgment that is entered after expiration of the ap-  
7 plicable period under ORS 138.071 (1) or (2) during which the original judgment was or could have  
8 been appealed, the appellate court has authority to review, as provided in this section, only the  
9 corrected or amended part of the judgment, any part of the judgment affected by the correction or  
10 amendment, or the trial court's decision under ORS 137.172 not to correct or amend the judgment.

11 (c) As used in this subsection, "judgment" means any appealable judgment or order.

12 **SECTION 9.** ORS 138.255 is amended to read:

13 138.255. (1) An appeal to the Court of Appeals may be certified to the Supreme Court, and the  
14 Supreme Court may accept or deny acceptance of the certified appeal, as provided in ORS 19.405.

15 (2) At any time before the State Court Administrator sends notice to the parties of the date of  
16 oral argument or, if the case is not orally argued, the date that the State Court Administrator de-  
17 livers the briefs to the Court of Appeals for decision, a party may request the Supreme Court to take  
18 and decide an appeal taken by the state under ORS 138.045 (1). In determining whether to accept  
19 an appeal under this subsection, the Supreme Court shall consider, in addition to other factors that  
20 the Supreme Court deems appropriate:

21 (a) Whether the defendant is charged with a Class A felony listed under ORS 137.700 [*or*  
22 *137.707*];

23 (b) The extent to which the case presents speedy trial concerns; and

24 (c) The extent to which the case presents a significant issue of law.

25 **SECTION 10.** ORS 144.101 is amended to read:

26 144.101. (1) The State Board of Parole and Post-Prison Supervision has jurisdiction over the  
27 imposition of conditions of post-prison supervision and sanctions for violations of those conditions  
28 for a person convicted of a felony if:

29 (a) The term of imprisonment imposed on the person is more than 12 months;

30 (b) The felony is classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid of  
31 the Oregon Criminal Justice Commission;

32 (c) The person is subject to a sentence under ORS 137.700 [*or 137.707*];

33 (d) The person is sentenced as a dangerous offender under ORS 161.725 and 161.737;

34 (e) The person is subject to a term of post-prison supervision under ORS 144.103;

35 (f) The person is committed to the custody of the Department of Corrections under ORS 137.124;

36 (g) The responsibility for correctional services for the person has reverted to the department  
37 under ORS 423.483; or

38 (h) No local supervisory authority is responsible for correctional services for the person under  
39 the laws of this state.

40 (2) Except as provided in subsection (1) of this section, a local supervisory authority has juris-  
41 diction over the imposition of conditions of post-prison supervision and sanctions for violations of  
42 those conditions for a person sentenced to a term of imprisonment of 12 months or less.

43 (3) If a local supervisory authority imposes conditions of post-prison supervision or sanctions for  
44 violations of those conditions, the person may request the board to review the conditions or sanc-  
45 tions. The board shall review the request and may, at its discretion, review the conditions and

1 sanctions, under rules adopted by the board.

2 (4) If a circuit court in a participating county, as defined in section 29, chapter 649, Oregon  
3 Laws 2013, enters an order admitting a person into a reentry court under section 29 (3), chapter 649,  
4 Oregon Laws 2013, the reentry court has concurrent jurisdiction over the imposition of sanctions  
5 for violations of the conditions of post-prison supervision.

6 (5) Nothing in this section affects the jurisdiction of the board over the imposition of conditions  
7 of parole and sanctions for violations of those conditions.

8 **SECTION 11.** ORS 144.101, as amended by section 34, chapter 649, Oregon Laws 2013, is  
9 amended to read:

10 144.101. (1) The State Board of Parole and Post-Prison Supervision has jurisdiction over the  
11 imposition of conditions of post-prison supervision and sanctions for violations of those conditions  
12 for a person convicted of a felony if:

13 (a) The term of imprisonment imposed on the person is more than 12 months;

14 (b) The felony is classified as crime category 8, 9, 10 or 11 of the sentencing guidelines grid of  
15 the Oregon Criminal Justice Commission;

16 (c) The person is subject to a sentence under ORS 137.700 [*or 137.707*];

17 (d) The person is sentenced as a dangerous offender under ORS 161.725 and 161.737;

18 (e) The person is subject to a term of post-prison supervision under ORS 144.103;

19 (f) The person is committed to the custody of the Department of Corrections under ORS 137.124;

20 (g) The responsibility for correctional services for the person has reverted to the department  
21 under ORS 423.483; or

22 (h) No local supervisory authority is responsible for correctional services for the person under  
23 the laws of this state.

24 (2) Except as provided in subsection (1) of this section, a local supervisory authority has juris-  
25 diction over the imposition of conditions of post-prison supervision and sanctions for violations of  
26 those conditions for a person sentenced to a term of imprisonment of 12 months or less.

27 (3) If a local supervisory authority imposes conditions of post-prison supervision or sanctions for  
28 violations of those conditions, the person may request the board to review the conditions or sanc-  
29 tions. The board shall review the request and may, at its discretion, review the conditions and  
30 sanctions, under rules adopted by the board.

31 (4) Nothing in this section affects the jurisdiction of the board over the imposition of conditions  
32 of parole and sanctions for violations of those conditions.

33 **SECTION 12.** ORS 144.107 is amended to read:

34 144.107. (1) The State Board of Parole and Post-Prison Supervision and the Department of Cor-  
35 rections, in consultation with local supervisory authorities, shall jointly adopt rules under this sec-  
36 tion to establish sanctions and procedures to impose sanctions for a violation of the conditions of  
37 post-prison supervision for a person serving a term of post-prison supervision subject to subsections  
38 (2) and (3) of this section.

39 (2) The rules adopted under subsection (1) of this section apply only to a person serving a term  
40 of post-prison supervision for a felony committed on or after July 14, 1997.

41 (3) In addition to the limitation under subsection (2) of this section, the rules adopted under  
42 subsection (1) of this section apply only to a person serving a term of post-prison supervision:

43 (a) That follows the completion of a sentence to a term of imprisonment that exceeds 12 months;

44 (b) That is imposed for a felony that is classified as crime category 8, 9, 10 or 11 of the sen-  
45 tencing guidelines grid of the Oregon Criminal Justice Commission;

1 (c) That is imposed as part of a sentence under ORS 137.700 [*or 137.707*];

2 (d) That is imposed as part of a sentence as a dangerous offender under ORS 161.725 and  
3 161.737; or

4 (e) That is subject to ORS 144.103.

5 (4) The board shall adopt rules under subsection (1) of this section that include, but need not  
6 be limited to, a sanction under ORS 144.108 of imprisonment in a correctional facility for a period  
7 that may exceed 12 months. The rules adopted by the board may not allow the imposition of more  
8 than 24 months of imprisonment as a sanction without a subsequent hearing to determine whether  
9 additional imprisonment is appropriate. A subsequent hearing must follow the same procedures as  
10 those used in an initial hearing under ORS 144.108.

11 (5) The rules adopted under subsection (1) of this section must provide that the total time served  
12 in Department of Corrections institutions by an offender who is sanctioned under the rules, includ-  
13 ing the time served on the initial sentence and all periods of incarceration served as sanctions in  
14 Department of Corrections institutions, may not exceed the greater of:

15 (a) The length of incarceration plus the length of post-prison supervision imposed by the court  
16 unless the offender was sentenced under ORS 137.765;

17 (b) A maximum term of imprisonment imposed by the court; or

18 (c) If the offender was sentenced under ORS 137.765, the length of the maximum statutory in-  
19 determinate sentence for the crime of conviction.

20 (6) As used in this section, "Department of Corrections institutions" has the same meaning given  
21 that term in ORS 421.005.

22 **SECTION 13.** ORS 151.216 is amended to read:

23 151.216. (1) The Public Defense Services Commission shall:

24 (a) Establish and maintain a public defense system that ensures the provision of public defense  
25 services in the most cost-efficient manner consistent with the Oregon Constitution, the United States  
26 Constitution and Oregon and national standards of justice.

27 (b) Establish an office of public defense services and appoint a public defense services executive  
28 director who serves at the pleasure of the commission.

29 (c) Submit the budget of the commission and the office of public defense services to the Legis-  
30 lative Assembly after the budget is submitted to the commission by the director and approved by the  
31 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall  
32 present the budget to the Legislative Assembly.

33 (d) Review and approve any public defense services contract negotiated by the director before  
34 the contract can become effective.

35 (e) Adopt a compensation plan, classification system and personnel plan for the office of public  
36 defense services that are commensurate with other state agencies.

37 (f) Adopt policies, procedures, standards and guidelines regarding:

38 (A) The determination of financial eligibility of persons entitled to be represented by appointed  
39 counsel at state expense;

40 (B) The appointment of counsel;

41 (C) The fair compensation of counsel appointed to represent a person financially eligible for  
42 appointed counsel at state expense;

43 (D) Appointed counsel compensation disputes;

44 (E) Any other costs associated with the representation of a person by appointed counsel in the  
45 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,

1 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,  
2 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any  
3 other provision of law that expressly provides for payment of such compensation, costs or expenses  
4 by the commission;

5 (F) Professional qualifications for counsel appointed to represent public defense clients;

6 (G) Performance for legal representation;

7 (H) The contracting of public defense services;

8 (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses  
9 only if in-state expert witnesses are not available or are more expensive than out-of-state expert  
10 witnesses; and

11 (J) Any other matters necessary to carry out the duties of the commission.

12 (g) Establish a peer review system for the approval of nonroutine fees and expenses incurred in  
13 cases involving aggravated murder and the crimes listed in ORS 137.700 [and 137.707]. The review  
14 shall be conducted by a panel of attorneys who practice in the area of criminal defense.

15 (h) Establish a complaint process that allows district attorneys, criminal defense counsel and the  
16 public to file complaints concerning the payment from public funds of nonroutine fees and expenses  
17 incurred in cases.

18 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services  
19 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-  
20 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court  
21 Administrator.

22 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any  
23 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-  
24 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review  
25 Board related to the exercise of the commission's administrative responsibilities under this section  
26 and transferred duties, functions and powers as they occur.

27 (3) The commission may accept gifts, grants or contributions from any source, whether public  
28 or private. However, the commission may not accept a gift, grant or contribution if acceptance  
29 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the  
30 Public Defense Services Account established by ORS 151.225 and expended for the purposes for  
31 which given or granted.

32 (4) The commission may not:

33 (a) Make any decision regarding the handling of any individual case;

34 (b) Have access to any case file; or

35 (c) Interfere with the director or any member of the staff of the director in carrying out pro-  
36 fessional duties involving the legal representation of public defense clients.

37 **SECTION 14.** ORS 161.610 is amended to read:

38 161.610. (1) As used in this section, "firearm" has the meaning given that term in ORS 166.210.

39 (2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant  
40 during the commission of a felony may be pleaded in the accusatory instrument and proved at trial  
41 as an element in aggravation of the crime as provided in this section. When a crime is so pleaded,  
42 the aggravated nature of the crime may be indicated by adding the words "with a firearm" to the  
43 title of the offense. The unaggravated crime shall be considered a lesser included offense.

44 (3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise pro-  
45 vided in subsection (6) of this section, if a defendant is convicted of a felony having as an element



1 the defendant's use or threatened use of a firearm during the commission of the crime, the court  
 2 shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section.  
 3 Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall  
 4 any person punishable under this section become eligible for work release, parole, temporary leave  
 5 or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent  
 6 to any reduction of imprisonment granted for good time served or time credits earned under ORS  
 7 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the  
 8 court.

9 (4) The minimum terms of imprisonment for felonies having as an element the defendant's use  
 10 or threatened use of a firearm in the commission of the crime shall be as follows:

11 (a) Except as provided in subsection (5) of this section, upon the first conviction for such felony,  
 12 five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun  
 13 or is equipped with a firearms silencer, the term of imprisonment shall be 10 years.

14 (b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of  
 15 this subsection or subsection (5) of this section, 10 years, except that if the firearm is a machine gun,  
 16 short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of  
 17 imprisonment shall be 20 years.

18 (c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of  
 19 this subsection, 30 years.

20 (5) If it is the first time that the defendant is subject to punishment under this section, rather  
 21 than impose the sentence otherwise required by subsection (4)(a) of this section, the court may:

22 (a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or  
 23 impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances jus-  
 24 tifying such lesser sentence and sets forth those circumstances in its statement on sentencing; or

25 (b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance  
 26 with the rules of the Oregon Criminal Justice Commission.

27 (6) When a defendant who is convicted of a felony having as an element the defendant's use or  
 28 threatened use of a firearm during the commission of the crime is a person who was waived from  
 29 juvenile court under ORS [137.707 (5)(b)(A),] 419C.349, 419C.352, 419C.364 or 419C.370, the court is  
 30 not required to impose a minimum term of imprisonment under this section.

31 **SECTION 15.** ORS 163.105 is amended to read:

32 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

33 (1)(a) [*Except as otherwise provided in ORS 137.707,*] When a defendant is convicted of aggra-  
 34 vated murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150,  
 35 to death, life imprisonment without the possibility of release or parole or life imprisonment.

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

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

44 (2) At any time after completion of a minimum period of confinement pursuant to subsection  
 45 (1)(c) of this section, the State Board of Parole and Post-Prison Supervision, upon the petition of a

1 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated  
2 within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be re-  
3 habilitated within a reasonable period of time. At the hearing, the prisoner has:

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

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

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

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

19 (4) If the board denies the relief sought in the petition, the board shall determine the date of the  
20 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS  
21 144.285.

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

25 **SECTION 16.** ORS 163.150 is amended to read:

26 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, ex-  
27 cept as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing  
28 proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described  
29 in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in  
30 ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial  
31 jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror,  
32 the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the  
33 name of one of the alternate jurors, who shall then become a member of the jury for the sentencing  
34 proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt.  
35 If the defendant has pleaded guilty, the sentencing proceeding shall be conducted before a jury  
36 impaneled for that purpose. In the proceeding, evidence may be presented as to any matter that the  
37 court deems relevant to sentence including, but not limited to, victim impact evidence relating to  
38 the personal characteristics of the victim or the impact of the crime on the victim's family and any  
39 aggravating or mitigating evidence relevant to the issue in paragraph (b)(D) of this subsection;  
40 however, neither the state nor the defendant shall be allowed to introduce repetitive evidence that  
41 has previously been offered and received during the trial on the issue of guilt. The court shall in-  
42 struct the jury that all evidence previously offered and received may be considered for purposes of  
43 the sentencing hearing. This paragraph shall not be construed to authorize the introduction of any  
44 evidence secured in violation of the Constitution of the United States or of the State of Oregon. The  
45 state and the defendant or the counsel of the defendant shall be permitted to present arguments for

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

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

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

7 (B) Whether there is a probability that the defendant would commit criminal acts of violence  
8 that would constitute a continuing threat to society;

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

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

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

17 (B) The court shall instruct the jury to answer the question in paragraph (b)(D) of this sub-  
18 section "no" if, after considering any aggravating evidence and any mitigating evidence concerning  
19 any aspect of the defendant's character or background, or any circumstances of the offense and any  
20 victim impact evidence as described in paragraph (a) of this subsection, one or more of the jurors  
21 believe that the defendant should not receive a death sentence.

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

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

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

29 (2)(a) Upon the conclusion of the presentation of the evidence, the court shall also instruct the  
30 jury that if it reaches a negative finding on any issue under subsection (1)(b) of this section, the trial  
31 court shall sentence the defendant to life imprisonment without the possibility of release or parole,  
32 as described in ORS 163.105 (1)(b), unless 10 or more members of the jury further find that there are  
33 sufficient mitigating circumstances to warrant life imprisonment, in which case the trial court shall  
34 sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

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

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

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

44 (B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sen-  
45 tenced to life imprisonment without the possibility of release or parole as described in ORS 163.105

1 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to  
 2 a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact.  
 3 The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the  
 4 procedure of subsection (1)(a) of this section, as modified by this subsection. In the proceeding,  
 5 evidence may be presented as to any matter that the court deems relevant to sentence, including,  
 6 but not limited to, victim impact evidence relating to the personal characteristics of the victim or  
 7 the impact of the crime on the victim's family.

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

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

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

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

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

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

33 (A) Death;

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

36 (C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS  
 37 163.105 (1)(c).

38 **SECTION 17.** ORS 163A.130 is amended to read:

39 163A.130. (1) A person required to report as a sex offender under ORS 163A.025 (1)(a), (b) or (c),  
 40 or required to report as a sex offender under the laws of another state as a result of an adjudication  
 41 in an Oregon juvenile court, may file a petition for an order relieving the person of the obligation  
 42 to report. The person must pay the filing fee established under ORS 21.135. If the person resides:

43 (a) In this state and is required to report under ORS 163A.025 (2) or (3), the petition must be  
 44 filed in the juvenile court in which the person was adjudicated for the act that requires reporting.

45 (b) In another state and is required to report under ORS 163A.025 (4), the petition must be filed

1 in the juvenile court in the county in which the person attends school or works.

2 (c) In another state and is required to report under the laws of the other state, the petition must  
3 be filed in the juvenile court in which the person was adjudicated for the act that requires reporting.

4 (2) If the act giving rise to the obligation to report would constitute:

5 (a) A Class A or Class B felony sex crime if committed by an adult, the petition may be filed  
6 no sooner than two years after the termination of juvenile court jurisdiction over the person or, if  
7 the person is placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than  
8 two years after the person is discharged from the jurisdiction of the board.

9 (b) A Class C felony sex crime if committed by an adult, the petition may be filed no sooner than  
10 30 days before the termination of juvenile court jurisdiction over the person or, if the person is  
11 placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than 30 days be-  
12 fore the person is discharged from the jurisdiction of the board.

13 (3)(a) The juvenile court in which a petition under this section is filed may transfer the matter  
14 to the juvenile court of the county that last supervised the person if the court determines that the  
15 convenience of the parties, the victim and witnesses require the transfer.

16 (b) The juvenile court has exclusive original jurisdiction in any proceeding under this section.

17 (c) The person, the district attorney and the juvenile department are parties to a hearing on a  
18 petition filed under this section.

19 (4) The person filing the petition has the burden of proving by clear and convincing evidence  
20 that the person is rehabilitated and does not pose a threat to the safety of the public. In determining  
21 whether the person has met the burden of proof, the juvenile court may consider but need not be  
22 limited to considering:

23 (a) The extent and impact of any physical or emotional injury to the victim;

24 (b) The nature of the act that subjected the person to the obligation of reporting as a sex  
25 offender;

26 (c) Whether the person used or threatened to use force in committing the act;

27 (d) Whether the act was premeditated;

28 (e) Whether the person took advantage of a position of authority or trust in committing the act;

29 (f) The age of any victim at the time of the act, the age difference between any victim and the  
30 person and the number of victims;

31 (g) The vulnerability of the victim;

32 (h) Other acts committed by the person that would be crimes if committed by an adult and  
33 criminal activities engaged in by the person before and after the adjudication;

34 (i) Statements, documents and recommendations by or on behalf of the victim or the parents of  
35 the victim;

36 (j) The person's willingness to accept personal responsibility for the act and personal account-  
37 ability for the consequences of the act;

38 (k) The person's ability and efforts to pay the victim's expenses for counseling and other  
39 trauma-related expenses or other efforts to mitigate the effects of the act;

40 (L) Whether the person has participated in and satisfactorily completed a sex offender treatment  
41 program or any other intervention, and if so the juvenile court may also consider:

42 (A) The availability, duration and extent of the treatment activities;

43 (B) Reports and recommendations from the providers of the treatment;

44 (C) The person's compliance with court, board or supervision requirements regarding treatment;  
45 and

- 1 (D) The quality and thoroughness of the treatment program;
- 2 (m) The person’s academic and employment history;
- 3 (n) The person’s use of drugs or alcohol before and after the adjudication;
- 4 (o) The person’s history of public or private indecency;
- 5 (p) The person’s compliance with and success in completing the terms of supervision;
- 6 (q) The results of psychological examinations of the person;
- 7 (r) The protection afforded the public by the continued existence of the records; and
- 8 (s) Any other relevant factors.

9 (5) In a hearing under this section, the juvenile court may receive testimony, reports and other  
 10 evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and  
 11 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this  
 12 section. As used in this subsection, “relevant evidence” has the meaning given that term in ORS  
 13 40.150.

14 (6) When a petition is filed under this section, the state has the right to have a psychosexual  
 15 evaluation of the person conducted. The state shall file notice with the juvenile court of its intention  
 16 to have the person evaluated. If the person objects to the evaluator chosen by the state, the juvenile  
 17 court for good cause shown may direct the state to select a different evaluator.

18 (7) As soon as practicable after a petition has been filed under this section, the district attorney  
 19 or juvenile department shall make a reasonable effort to notify the victim of the crime that the  
 20 person has filed a petition seeking relief under this section and, if the victim has requested, to in-  
 21 form the victim of the date, time and place of a hearing on the petition in advance of the hearing.

22 (8)(a) When a petition filed under this section is filed:

23 (A) While the person is under the jurisdiction of the juvenile court or the Psychiatric Security  
 24 Review Board or less than three years after the date the jurisdiction is terminated, the court shall  
 25 hold a hearing no sooner than 60 days and no later than 120 days after the date of filing.

26 (B) Three years or more after the date the juvenile court or board jurisdiction is terminated, the  
 27 court shall hold a hearing no sooner than 90 days and no later than 150 days after the date of filing.

28 (b) Notwithstanding paragraph (a) of this subsection, upon a showing of good cause, the court  
 29 may extend the period of time in which a hearing on the petition must be held.

30 (9)(a) When the person proves by clear and convincing evidence that the person is rehabilitated  
 31 and does not pose a threat to the safety of the public, the court shall grant the petition.

32 (b) Notwithstanding paragraph (a) of this subsection, the court may not grant a petition filed  
 33 under this section before the date the juvenile court or board jurisdiction over the person is termi-  
 34 nated.

35 (10) When a juvenile court enters an order relieving a person of the requirement to report under  
 36 ORS 163A.025, the person shall send a certified copy of the juvenile court order to the Department  
 37 of State Police.

38 *[(11) If a person commits an act that could be charged as a sex crime listed in ORS 137.707 and*  
 39 *the person is 15, 16 or 17 years of age at the time the act is committed, the state and the person may*  
 40 *stipulate that the person may not petition for relief under this section as part of an agreement that the*  
 41 *person be subject to the jurisdiction of the juvenile court rather than being prosecuted as an adult un-*  
 42 *der ORS 137.707.]*

43 *[(12)]* (11) When a petition is filed under subsection (2)(b) of this section before the termination  
 44 of juvenile court or board jurisdiction, if the person, or the parent or guardian of the person if the  
 45 person is less than 18 years of age, requests counsel and is without sufficient financial means to

1 employ suitable counsel to represent the person, for purposes of the petition described in this sec-  
 2 tion, the court shall appoint suitable counsel to represent the person. Appointment of counsel under  
 3 this subsection is subject to ORS 419C.200, 419C.203, 419C.206 and 419C.209.

4 **SECTION 18.** ORS 163A.135 is amended to read:

5 163A.135. (1) Except as provided in subsection [(7)] (6) of this section, a person required to re-  
 6 port under ORS 163A.025 (1)(d) may file a petition in the juvenile court for an order relieving the  
 7 person of the duty to report. The person must pay the filing fee established under ORS 21.135. If the  
 8 person resides:

9 (a) In this state and is required to report under ORS 163A.025 (2) or (3), the petition must be  
 10 filed in the juvenile court of the county in which the person resides.

11 (b) In another state and is required to report under ORS 163A.025 (4), the petition must be filed  
 12 in the juvenile court of the county in which the person attends school or works.

13 (2) If the act giving rise to the obligation to report would constitute:

14 (a) A Class A or Class B felony sex crime if committed in this state by an adult, the petition  
 15 may be filed no sooner than two years after the termination of the other United States court's ju-  
 16 risdiction over the person.

17 (b) A Class C felony sex crime if committed in this state by an adult, the petition may be filed  
 18 no sooner than 30 days before the termination of the other United States court's jurisdiction over  
 19 the person.

20 (3) The person filing the petition must submit with the petition all releases and waivers neces-  
 21 sary to allow the district attorney for the county in which the petition is filed to obtain the fol-  
 22 lowing documents from the jurisdiction in which the person was adjudicated for the act for which  
 23 reporting is required:

24 (a) The juvenile court petition;

25 (b) The dispositional report to the court;

26 (c) The order of adjudication or jurisdiction;

27 (d) Any other relevant court documents;

28 (e) The police report relating to the act for which reporting is required;

29 (f) The order terminating jurisdiction for the act for which reporting is required; and

30 (g) The evaluation and treatment records or reports of the person that are related to the act for  
 31 which reporting is required.

32 (4) A person filing a petition under this section has the burden of proving by clear and con-  
 33 vincing evidence that the person is rehabilitated and does not pose a threat to the safety of the  
 34 public.

35 (5) Unless the court finds good cause for a continuance, the court shall hold a hearing on the  
 36 petition no sooner than 90 days and no later than 150 days after the date the petition is filed.

37 *[(6) If a person who files a petition under this section is required to report as a sex offender for*  
 38 *having committed an act that if committed in this state could have subjected the person to prosecution*  
 39 *as an adult under ORS 137.707, the court may not grant the petition notwithstanding the fact that the*  
 40 *person has met the burden of proof established in subsection (4) of this section unless the court deter-*  
 41 *mines that to do so is in the interest of public safety.]*

42 [(7)] (6) This section does not apply to a person who is required to register as a sex offender for  
 43 life in the jurisdiction in which the offense occurred.

44 [(8)] (7) In a hearing under this section, the court may receive testimony, reports and other ev-  
 45 idence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310

1 to 40.585 if the evidence is relevant to the determination and findings required under this section.  
 2 As used in this subsection, “relevant evidence” has the meaning given that term in ORS 40.150.

3 [(9)] (8) If the court is satisfied by clear and convincing evidence that the person is rehabilitated  
 4 and that the person does not pose a threat to the safety of the public, the court shall enter an order  
 5 relieving the person of the duty to report. When the court enters an order under this subsection, the  
 6 person shall send a certified copy of the court order to the Department of State Police.

7 **SECTION 19.** ORS 339.317 is amended to read:

8 339.317. (1)(a) No later than five days after a person under 18 years of age [*is charged with a*  
 9 *crime under ORS 137.707 or*] is waived under ORS 419C.349, 419C.352 or 419C.364, the district at-  
 10 torney or city attorney, if the person is waived to municipal court or, in the case of a juvenile de-  
 11 partment that has agreed to be responsible for providing the notice required under this section, the  
 12 juvenile department shall give notice of the charge to the school administrator of the school at-  
 13 tended by the person or to the school administrator of the school district in which the person re-  
 14 sides. For purposes of this section, “school administrator” has the meaning given that term in ORS  
 15 419A.305.

16 (b) The district attorney, city attorney or juvenile department shall include in the notice the  
 17 following:

18 (A) The crime with which the person is charged;

19 (B) The name and date of birth of the person;

20 (C) The names and addresses of the person’s parents or guardians;

21 (D) The name and contact information of the attorney for the person, if known;

22 (E) The name and contact information of the individual to contact for further information about  
 23 the notice;

24 (F) Any conditions of release or terms of probation; and

25 (G) Any other conditions required by the court.

26 (2) A person who sends records under this section is not civilly or criminally liable for failing  
 27 to disclose the information under this section.

28 **SECTION 20.** ORS 339.319 is amended to read:

29 339.319. (1)(a) [*When a person under 18 years of age is convicted of a crime under ORS 137.707*  
 30 *or*] Following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 (1)(b), the agency super-  
 31 vising the person or, in the case of a juvenile department that has agreed to be responsible for  
 32 providing the notice required under this section, the juvenile department shall give notice of the  
 33 conviction within five days following sentencing to the school administrator of the school attended  
 34 by the person or to the school administrator of the school district in which the person resides. For  
 35 purposes of this section, “school administrator” has the meaning given that term in ORS 419A.305.

36 (b) The agency supervising the person or the juvenile department shall include in the notice:

37 (A) The name and date of birth of the person;

38 (B) The names and addresses of the person’s parents or guardians;

39 (C) The crime of conviction;

40 (D) The sentence imposed;

41 (E) The name and contact information of the attorney for the person, if known;

42 (F) The name and contact information of the individual to contact for further information about  
 43 the notice;

44 (G) Any conditions of release or terms of probation including, but not limited to, whether school  
 45 attendance is a condition of the release; and



1 (H) Any other conditions required by the court.

2 (2) An agency supervising a person or anyone employed by or acting on behalf of an agency  
3 supervising a person who sends records under this section is not civilly or criminally liable for  
4 failing to disclose the information under this section.

5 **SECTION 21.** ORS 339.321 is amended to read:

6 339.321. (1) No later than 15 days before the release or discharge of a person committed to the  
7 legal custody of the Department of Corrections or the supervisory authority of a county [*under ORS*  
8 *137.707 or*] following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370, the department  
9 or supervisory authority or, in the case of a juvenile department that has agreed to be responsible  
10 for providing the notice required under this section, the juvenile department shall notify the fol-  
11 lowing of the release or discharge if the person is under 21 years of age at the time of the release:

12 (a) Law enforcement agencies in the community in which the person is going to reside; and

13 (b) The school administrator of the school the person will attend or the school administrator of  
14 the school district in which the person will reside.

15 (2) The department, supervisory authority or the juvenile department shall include in the no-  
16 tification:

17 (a) The name and date of birth of the person;

18 (b) The date of release or discharge;

19 (c) The person's address;

20 (d) The names and addresses of the person's parents or guardians;

21 (e) The name and contact information of the attorney for the person, if known;

22 (f) The name and contact information of the individual to contact for further information about  
23 the notice;

24 (g) Any conditions of release or terms of probation including, but not limited to, the type of  
25 supervision under which the person is released and whether school attendance is a condition of re-  
26 lease; and

27 (h) Any other conditions required by the court.

28 (3) The department, supervisory authority or anyone employed by or acting on behalf of the  
29 department or supervisory authority who sends records under this section is not civilly or criminally  
30 liable for failing to disclose the information under this section.

31 (4) As used in this section, "school administrator" has the meaning given that term in ORS  
32 419A.305.

33 **SECTION 22.** ORS 419C.005 is amended to read:

34 419C.005. (1) [*Except as otherwise provided in ORS 137.707,*] The juvenile court has exclusive  
35 original jurisdiction in any case involving a person who is under 18 years of age and who has  
36 committed an act that is a violation, or that if done by an adult would constitute a violation, of a  
37 law or ordinance of the United States or a state, county or city.

38 (2) The provisions of subsection (1) of this section do not prevent a court of competent juris-  
39 diction from entertaining a civil action or suit involving a youth.

40 (3) The court does not have jurisdiction as provided in subsection (1) of this section after a mi-  
41 nor has been emancipated pursuant to ORS 419B.550 to 419B.558.

42 (4) The court's jurisdiction over a person under this section [*or ORS 419C.067*] continues until  
43 one of the following occurs:

44 (a) The court dismisses a petition filed under this chapter or waives the case under ORS  
45 419C.340. If jurisdiction is based on a previous adjudication, then dismissal or waiver of a later case

1 does not terminate jurisdiction under the previous case unless the court so orders.

2 (b) The court transfers jurisdiction of the case as provided in ORS 419C.053, 419C.056 and  
3 419C.059.

4 (c) The court enters an order terminating jurisdiction.

5 (d) The person becomes 25 years of age.

6 (e) The court places the person under the jurisdiction of the Psychiatric Security Review Board  
7 as provided in ORS 419C.529. If the court also has jurisdiction over the person based on a previous  
8 adjudication under this chapter or ORS chapter 419B, placing a person under the jurisdiction of the  
9 board in a later case does not terminate wardship under the previous case unless the court so or-  
10 ders.

11 **SECTION 23.** ORS 419C.050 is amended to read:

12 419C.050. [*Except as otherwise provided in ORS 137.707,*] If during the pendency of a proceeding  
13 involving an allegation of a crime in any court other than a juvenile court it is ascertained that the  
14 age of the person who is the subject of the proceeding is such that the matter is within the exclusive  
15 jurisdiction of the juvenile court, it is the duty of the court in which the proceeding is pending to  
16 transfer the proceeding to the juvenile court of the county in which the proceeding is pending. The  
17 clerk of the court transferring the proceeding shall notify the clerk of the juvenile court of the  
18 transfer.

19 **SECTION 24.** ORS 419C.411 is amended to read:

20 419C.411. (1) At the termination of the hearing or hearings in the proceeding [*or after entry of*  
21 *an order under ORS 419C.067*], the court shall enter an appropriate order directing the disposition  
22 to be made of the case.

23 (2) The court shall find a youth responsible except for insanity if:

24 (a) The youth asserted qualifying mental disorder as a defense as provided in ORS 419C.524; and

25 (b) The court determined by a preponderance of the evidence that, as a result of a qualifying  
26 mental disorder at the time the youth committed the act alleged in the petition, the youth lacked  
27 substantial capacity either to appreciate the nature and quality of the act or to conform the youth's  
28 conduct to the requirements of law.

29 (3) Except as otherwise provided in subsections (6) and (7) of this section, in determining the  
30 disposition of the case, the court shall consider each of the following:

31 (a) The gravity of the loss, damage or injury caused or attempted during, or as part of, the  
32 conduct that is the basis for jurisdiction under ORS 419C.005;

33 (b) Whether the manner in which the youth offender engaged in the conduct was aggressive,  
34 violent, premeditated or willful;

35 (c) Whether the youth offender was held in detention under ORS 419C.145 and, if so, the reasons  
36 for the detention;

37 (d) The immediate and future protection required by the victim, the victim's family and the  
38 community; and

39 (e) The youth offender's juvenile court record and response to the requirements and conditions  
40 imposed by previous juvenile court orders.

41 (4) In addition to the factors listed in subsection (3) of this section, the court may consider the  
42 following:

43 (a) Whether the youth offender has made any efforts toward reform or rehabilitation or making  
44 restitution;

45 (b) The youth offender's educational status and school attendance record;

1 (c) The youth offender’s past and present employment;

2 (d) The disposition proposed by the youth offender;

3 (e) The recommendations of the district attorney and the juvenile court counselor and the  
4 statements of the victim and the victim’s family;

5 (f) The youth offender’s mental, emotional and physical health and the results of the mental  
6 health or substance abuse treatment; and

7 (g) Any other relevant factors or circumstances raised by the parties.

8 (5) The court’s consideration of matters under this section may be addressed on appeal only if  
9 raised by a party at a dispositional hearing or by a motion to modify or set aside under ORS  
10 419C.610.

11 (6) When a youth is found responsible except for insanity, the court shall order a disposition  
12 under ORS 419C.529 if the court finds by a preponderance of the evidence that, at the time of dis-  
13 position, the youth:

14 (a) Has a serious mental condition; or

15 (b) Has a qualifying mental disorder other than a serious mental condition and presents a sub-  
16 stantial danger to others.

17 (7) When a youth is found responsible except for insanity and the court does not make a finding  
18 described in subsection (6) of this section, the court may:

19 (a) Enter an order finding the youth to be within the court’s jurisdiction under ORS 419B.100  
20 and make any disposition authorized by ORS chapter 419B;

21 (b) Initiate civil commitment proceedings; or

22 (c) Enter an order of discharge.

23 **SECTION 25.** ORS 420.011 is amended to read:

24 420.011. (1) Except as provided in subsections (2) and (3) of this section, admissions to the youth  
25 correction facilities are limited to youth offenders who are at least 12 but less than 19 years of age,  
26 found by the juvenile court to have committed an act that if committed by an adult would constitute  
27 aggravated murder, murder, a felony or a Class A misdemeanor and placed in the legal custody of  
28 the Oregon Youth Authority. A youth offender admitted to a youth correction facility may not be  
29 transferred by administrative process to any penal or correctional institution.

30 (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS  
31 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority  
32 or the director’s designee, persons who are committed to the Department of Corrections under ORS  
33 137.124 and meet the requirements of ORS 137.124 [(5) or (7)] (6) may be temporarily assigned to a  
34 youth correction facility as provided by ORS 137.124 [(5) or (7)] (6). A person assigned on such a  
35 temporary basis remains within the legal custody of the Department of Corrections and such reas-  
36 signment is subject to termination by the Director of the Oregon Youth Authority by referring the  
37 person back to the Department of Corrections as provided in paragraph (b) of this subsection.

38 (b) After a person is transferred to the physical custody of the youth authority under ORS  
39 137.124 [(5) or (7)] (6), the Director of the Oregon Youth Authority may refer the person back to the  
40 Department of Corrections for physical custody and placement if the director, after consulting with  
41 the Department of Corrections, determines that the person is at least 18 years of age and:

42 (A) Poses a substantial danger to youth authority staff or persons in the custody of the youth  
43 authority; or

44 (B) Is not likely, in the foreseeable future, to benefit from the rehabilitation and treatment pro-  
45 grams administered by the youth authority and is appropriate for placement in a Department of

1 Corrections institution.

2 (3) Any person under 18 years of age at the time of committing the crime and under 20 years  
3 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349, 419C.352,  
4 419C.364 or 419C.370 [*or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712*], is sentenced to  
5 a term of imprisonment in the custody of the Department of Corrections, and any person under 16  
6 years of age who after waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 [*or sentencing*  
7 *under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712*] is sentenced to a term of imprisonment in the  
8 county jail, shall be temporarily assigned to a youth correction facility by the Department of Cor-  
9 rections, or by the sheriff to whose custody the person has been committed, pursuant to ORS 137.124  
10 [(6)] (5). The director shall designate the appropriate youth correction facility or schools for such  
11 assignment. A person assigned to a youth correction facility under ORS 137.124 [(6)] (5) and this  
12 subsection remains within the legal custody of the Department of Corrections or sheriff to whose  
13 custody the person was committed. The assignment of such a person to the youth correction facility  
14 is subject, when the person is 18 years of age or older, to termination by the director by referring  
15 the person back to the Department of Corrections or the sheriff to serve the balance of the person's  
16 sentence. Assignment to a youth correction facility pursuant to ORS 137.124 [(6)] (5) and this sub-  
17 section, if not terminated earlier by the director, shall terminate upon the person's attaining the age  
18 specified in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may re-  
19 tain legal and physical custody of the person, and the person shall be referred to the Department  
20 of Corrections or the sheriff having legal custody of the person to serve the balance of the person's  
21 sentence.

22 (4) Whenever a person committed to the custody of the Department of Corrections is temporarily  
23 assigned to a youth correction facility pursuant to this section, the youth authority may provide  
24 programs and treatment for the person, and may adopt rules relating to conditions of confinement  
25 at the youth correction facility, as the youth authority determines are appropriate. However, the  
26 person remains subject to laws and rules of the State Board of Parole and Post-Prison Supervision  
27 relating to parole.

28 **SECTION 26.** ORS 420.081 is amended to read:

29 420.081. (1) The total population of youth offenders confined in the youth correction facilities  
30 may not exceed the design capacity of the facilities designated for close custody purposes by the  
31 Director of the Oregon Youth Authority. The total population limit shall include offenders in the  
32 youth correction facility who were waived by the juvenile court to be prosecuted as adults [*or who*  
33 *were prosecuted as adults under ORS 137.707*].

34 (2) The director by rule shall determine reasonable standards for care and treatment of youth  
35 offenders housed in youth correction facilities. Within the total limit established under subsection  
36 (1) of this section, the Director of the Oregon Youth Authority shall establish and impose a maxi-  
37 mum allowable population level for each youth correction facility. The maximum allowable popu-  
38 lation shall not exceed the design capacity for the facility and shall be further limited by the ability  
39 of the facility to meet the standard of care and treatment established by rule under this subsection,  
40 protect communities, hold youth offenders accountable for their behavior and improve the compe-  
41 tency of youth offenders to become responsible and productive members of their communities.

42 (3) The director by rule shall establish criteria upon which the decision to place a youth in a  
43 youth correction facility must be based, and which, in turn, shall be based upon behaviors and  
44 characteristics of youths otherwise eligible for commitment to a youth correction facility.

45 (4) After conferring with the juvenile court judges, the director shall develop and implement by

1 rule, a method of controlling admissions to the youth correction facilities so as not to exceed max-  
2 imum levels determined under subsections (1) and (2) of this section.

3 **SECTION 27.** ORS 420.240 is amended to read:

4 420.240. (1) The Oregon Youth Authority may establish and administer a work release program  
5 in which persons who are committed to the custody of the Department of Corrections and placed in  
6 the physical custody of the youth authority under ORS 137.124 or other statute may be authorized  
7 to leave assigned quarters for the purpose of:

8 (a) Participating in private, gainful employment;

9 (b) Participating in a work program approved by the youth authority, including work with public  
10 or private agencies or persons, with or without compensation;

11 (c) Obtaining in this state additional education, including but not limited to vocational, technical  
12 and general education;

13 (d) Participating in alcohol or drug treatment programs;

14 (e) Participating in mental health programs;

15 (f) Specific treatment to develop independent living skills; or

16 (g) Other purposes established by the youth authority by rule.

17 (2) After consulting with the Department of Corrections, the youth authority shall adopt rules  
18 to carry out the provisions of ORS 420.240 to 420.265.

19 (3) The provisions of this section do not apply to persons sentenced under ORS 137.635[,] **or**  
20 137.700 [*or 137.707*] or any other provision of law that prohibits eligibility for any form of temporary  
21 leave from custody.

22 **SECTION 28.** ORS 420A.203 is amended to read:

23 420A.203. (1)(a) This section and ORS 420A.206 apply only to persons who were under 18 years  
24 of age at the time of the commission of the offense for which the persons were sentenced to a term  
25 of imprisonment, who committed the offense on or after June 30, 1995, and who were[:]

26 [(A)] sentenced to a term of imprisonment of at least 24 months following waiver under ORS  
27 419C.349, 419C.352, 419C.364 or 419C.370.[:; *or*]

28 [(B) *Sentenced to a term of imprisonment of at least 24 months under ORS 137.707 (5)(b)(A) or*  
29 *(7)(b).*]

30 [(b)] When a person described in [*paragraph (a) of*] this subsection has served one-half of the  
31 sentence imposed, the sentencing court shall determine what further commitment or disposition is  
32 appropriate as provided in this section.

33 (b) As used in this subsection and subsection (2) of this section, "sentence imposed" means the  
34 total period of mandatory incarceration imposed for all convictions resulting from a single prose-  
35 cution or criminal proceeding not including any reduction in the sentence under ORS 421.121 or any  
36 other statute.

37 (2)(a) No more than 120 days and not less than 60 days before the date on which a person has  
38 served one-half of the sentence imposed, the Oregon Youth Authority or the Department of Cor-  
39 rections, whichever has physical custody of the person, shall file in the sentencing court a notice  
40 and request that the court set a time and place for the hearing required under this section. The  
41 youth authority or department shall serve the person with a copy of the notice and request for  
42 hearing on or before the date of filing.

43 (b) Upon receiving the notice and request for a hearing under paragraph (a) of this subsection,  
44 the sentencing court shall schedule a hearing for a date not more than 30 days after the date on  
45 which the person will have served one-half of the sentence imposed or such later date as is agreed

1 upon by the parties.

2 (c) The court shall notify the following of the time and place of the hearing:

3 (A) The person and the person's parents;

4 (B) The records supervisor of the correctional institution in which the person is incarcerated;  
5 and

6 (C) The district attorney who prosecuted the case.

7 (d) The court shall make reasonable efforts to notify the following of the time and place of the  
8 hearing:

9 (A) The victim and the victim's parents or legal guardian; and

10 (B) Any other person who has filed a written request with the court to be notified of any hear-  
11 ing concerning the transfer, discharge or release of the person.

12 (3) In a hearing under this section:

13 (a) The person and the state are parties to the proceeding.

14 (b) The person has the right to appear with counsel. If the person requests that the court ap-  
15 point counsel and the court determines that the person is financially eligible for appointed counsel  
16 at state expense, the court shall order that counsel be appointed.

17 (c) The district attorney represents the state.

18 (d) The court shall determine admissibility of evidence as if the hearing were a sentencing pro-  
19 ceeding.

20 (e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the  
21 Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within  
22 a reasonable time before the hearing, as determined by the court, the person must be given the op-  
23 portunity to examine all reports and other documents concerning the person that the state, the  
24 Oregon Youth Authority or the Department of Corrections intends to submit for consideration by  
25 the court at the hearing.

26 (f) Except as otherwise provided by law or by order of the court based on good cause, the person  
27 must be given access to the records maintained in the person's case by the Oregon Youth Authority  
28 and the Department of Corrections.

29 (g) The person may examine all of the witnesses called by the state, may subpoena and call  
30 witnesses to testify on the person's behalf and may present evidence and argument. The court may  
31 permit witnesses to appear by telephone or other two-way electronic communication device.

32 (h) The hearing must be recorded.

33 (i) The hearing and the record of the hearing are open to the public.

34 (j) The question to be decided is which of the dispositions provided in subsection (4) of this  
35 section should be ordered in the case.

36 (k) The person has the burden of proving by clear and convincing evidence that the person has  
37 been rehabilitated and reformed, and if conditionally released, the person would not be a threat to  
38 the safety of the victim, the victim's family or the community and that the person would comply with  
39 the release conditions.

40 (4)(a) At the conclusion of the hearing and after considering and making findings regarding each  
41 of the factors in paragraph (b) of this subsection, the court shall order one of the following dispo-  
42 sitions:

43 (A) Order that the person serve the entire remainder of the sentence of imprisonment imposed,  
44 taking into account any reduction in the sentence under ORS 421.121 or any other statute, with the  
45 person's physical custody determined under ORS 137.124, 420.011 and 420A.200.

1 (B) Order that the person be conditionally released under ORS 420A.206 at such time as the  
 2 court may order, if the court finds that the person:

- 3 (i) Has been rehabilitated and reformed;
- 4 (ii) Is not a threat to the safety of the victim, the victim's family or the community; and
- 5 (iii) Will comply with the conditions of release.

6 (b) In making the determination under this section, the court shall consider:

7 (A) The experiences and character of the person before and after commitment to the Oregon  
 8 Youth Authority or the Department of Corrections;

9 (B) The person's juvenile and criminal records;

10 (C) The person's mental, emotional and physical health;

11 (D) The gravity of the loss, damage or injury caused or attempted, during or as part of the  
 12 criminal act for which the person was convicted and sentenced;

13 (E) The manner in which the person committed the criminal act for which the person was con-  
 14 victed and sentenced;

15 (F) The person's efforts, participation and progress in rehabilitation programs since the person's  
 16 conviction;

17 (G) The results of any mental health or substance abuse treatment;

18 (H) Whether the person demonstrates accountability and responsibility for past and future con-  
 19 duct;

20 (I) Whether the person has made and will continue to make restitution to the victim and the  
 21 community;

22 (J) Whether the person will comply with and benefit from all conditions that will be imposed if  
 23 the person is conditionally released;

24 (K) The safety of the victim, the victim's family and the community;

25 (L) The recommendations of the district attorney, the Oregon Youth Authority and the Depart-  
 26 ment of Corrections; and

27 (M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Au-  
 28 thority, the Department of Corrections or the person.

29 (5) The court shall provide copies of its disposition order under subsection (4) of this section to  
 30 the parties, to the records supervisor of the correctional institution in which the person is  
 31 incarcerated and to the manager of the institution-based records office of the Department of Cor-  
 32 rections.

33 (6) The person or the state may appeal an order entered under this section. On appeal, the ap-  
 34 pellate court's review is limited to claims that:

35 (a) The disposition is not authorized under this section;

36 (b) The court failed to comply with the requirements of this section in imposing the disposition;

37 or

38 (c) The findings of the court are not supported by substantial evidence in the record.

39 **SECTION 29.** ORS 421.121 is amended to read:

40 421.121. (1) Except as provided in ORS 137.635, 137.700, [137.707,] 163.105 and 163.115, each in-  
 41 mate sentenced to the custody of the Department of Corrections for felonies committed on or after  
 42 November 1, 1989, is eligible for a reduction in the term of incarceration for:

43 (a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and

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

45 (2) The maximum amount of time credits earned for appropriate institutional behavior or for

1 participation in the adult basic skills development program described in ORS 421.084 may not exceed  
2 20 percent of the total term of incarceration in a Department of Corrections institution.

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

5 (4) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183  
6 to establish a process for granting, retracting and restoring the time credits earned by the offender  
7 as allowed in subsections (1) to (3) of this section.

8 **SECTION 30.** ORS 421.168 is amended to read:

9 421.168. (1) The Department of Corrections shall establish a short-term transitional leave pro-  
10 gram. The program shall provide inmates with an opportunity to secure appropriate transitional  
11 support when necessary for successful reintegration into the community prior to the inmate's dis-  
12 charge to post-prison supervision.

13 (2) The Department of Corrections shall identify each inmate who is eligible for the short-term  
14 transitional leave program and shall, in conjunction with the supervisory authority for the county  
15 to which the inmate will be released, assist each eligible inmate in preparing a transition plan and  
16 in identifying and applying for an employment, educational or other transitional opportunity in the  
17 community.

18 (3) If the inmate's transition plan is approved by the department and is an essential part of the  
19 inmate's successful reintegration into the community, the department may grant a transitional leave  
20 no more than 120 days prior to the inmate's discharge date.

21 (4) An inmate is not eligible for transitional leave before having served six months of prison  
22 incarceration.

23 (5) The department shall adopt rules to carry out the provisions of this section. The rules must  
24 include a set of release conditions for inmates released on transitional leave status. An inmate on  
25 transitional leave status is subject to immediate return to prison for any violation of the conditions  
26 of release.

27 (6) The provisions of this section do not apply to inmates whose sentences were imposed under  
28 ORS 137.635, 137.690, 137.700, [137.707,] 164.061, 475.907, 475.925, 475.930 or 813.011 or under a pro-  
29 vision of law that prohibits release on any form of temporary leave from custody.

30 **SECTION 31.** Section 1, chapter 830, Oregon Laws 2015, as amended by section 2, chapter 673,  
31 Oregon Laws 2017, is amended to read:

32 **Sec. 1.** (1) The Department of Corrections, in partnership with the circuit court and county  
33 community corrections agencies of participating counties and the Department of Human Services,  
34 shall establish the Family Sentencing Alternative Pilot Program.

35 (2) A defendant is eligible for the Family Sentencing Alternative Pilot Program if:

36 (a) The defendant's presumptive sentence under the sentencing guidelines of the Oregon Crimi-  
37 nal Justice Commission is a term of imprisonment in the legal and physical custody of the Depart-  
38 ment of Corrections of at least one year;

39 (b) The defendant is not currently being sentenced for:

40 (A) A person felony as defined in the rules of the Oregon Criminal Justice Commission;

41 (B) A sex crime as defined in ORS 163A.005; or

42 (C) An offense requiring a specified sentence under ORS 137.635, 137.700, [137.707,] 164.061,  
43 475.907, 475.925, 475.930 or 813.011; and

44 (c) The defendant is pregnant at the time of sentencing, or is the parent or legal guardian of a  
45 minor child and at the time of the offense or sentencing had physical custody of the child.



1 (3)(a) If the defendant meets the eligibility requirements described in subsection (2) of this sec-  
 2 tion and is eligible for a downward dispositional departure under the rules of the Oregon Criminal  
 3 Justice Commission, the court may order that the defendant sign a release authorizing the Depart-  
 4 ment of Human Services to provide the community corrections agency with written confirmation of,  
 5 and consultation concerning, any open or current juvenile dependency proceeding or any prior sub-  
 6 stantiated allegation of abuse or neglect involving the defendant and a minor child.

7 (b) The court may consider eligibility in the Family Sentencing Alternative Pilot Program as a  
 8 mitigating factor when determining whether to sentence the defendant to probation, with a re-  
 9 quirement that the defendant participate in the program as a condition of probation, as a downward  
 10 dispositional departure under the rules of the commission.

11 (4) After receipt of the information described in subsection (3) of this section, the community  
 12 corrections agency, in consultation with the Department of Human Services, shall determine if the  
 13 Family Sentencing Alternative Pilot Program is an appropriate program for the defendant and, if the  
 14 program is appropriate and the defendant is sentenced to a term of probation, require participation  
 15 in the program for the first 12 months of the probationary sentence. In addition to the conditions  
 16 of probation ordered under ORS 137.540, the defendant may be required to comply with any addi-  
 17 tional conditions related to the program, including but not limited to:

18 (a) Geographical restrictions, including house arrest and electronic surveillance;

19 (b) Participation in vocational training; and

20 (c) Completion of:

21 (A) Parenting skills classes;

22 (B) Drug or alcohol treatment;

23 (C) Mental health treatment; or

24 (D) Life skills classes.

25 (5) The Department of Human Services and community corrections agencies shall cooperate with  
 26 the Department of Corrections in implementing the Family Sentencing Alternative Pilot Program  
 27 described in this section.

28 (6) The Department of Human Services and the Department of Corrections shall jointly submit  
 29 a report concerning the Family Sentencing Alternative Pilot Program, which must include program  
 30 outcomes and data related to the efficacy of the program, and which may include recommendations  
 31 for legislation in the manner provided by ORS 192.245, to the interim committees of the Legislative  
 32 Assembly related to the judiciary no later than January 1 of each year.

33 (7) The Department of Corrections shall establish a process for selecting counties to participate  
 34 in the Family Sentencing Alternative Pilot Program.

35 (8) The Department of Corrections and the Department of Human Services may adopt rules to  
 36 carry out the provisions of this section.

37 **SECTION 32. ORS 137.705, 137.707 and 419C.067 are repealed.**

38 **SECTION 33. The amendments to ORS 133.400, 135.240, 137.124, 137.709, 137.712, 137.751,  
 39 138.105, 138.115, 138.255, 144.101, 144.107, 151.216, 161.610, 163.105, 163.150, 163A.130, 163A.135,  
 40 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.411, 420.011, 420.081, 420.240, 420A.203, 421.121  
 41 and 421.168 and section 1, chapter 830, Oregon Laws 2015, by sections 1 to 31 of this 2019 Act,  
 42 and the repeal of ORS 137.705, 137.707 and 419C.067 by section 32 of this 2019 Act, apply to  
 43 offenses alleged to have been committed on or after the effective date of this 2019 Act.**

44 **SECTION 34. This 2019 Act shall be submitted to the people for their approval or re-  
 45 jection at the next regular general election held throughout this state.**

