

SB 1005-A14
(LC 1484)
6/12/19 (JLM/ps)

Requested by JOINT COMMITTEE ON WAYS AND MEANS (at the request of Subcommittee on
Public Safety)

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 1005**

1 On page 1 of the printed A-engrossed bill, line 2, after “amending” insert
2 “ORS 144.110 and 419C.349 and”.

3 In line 3, after “2014” insert “, sections 25, 31 and 32, chapter _____,
4 Oregon Laws 2019 (Enrolled Senate Bill 1008), and section 3,
5 chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1013); repealing
6 section 6, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008)”.

7 On page 4, after line 31, insert:

8 **“SECTION 9.** If both Senate Bill 1008 and Senate Bill 1013 become law,
9 section 3, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1013), is
10 amended to read:

11 **“Sec. 3.** (1) ‘Murder in the first degree’ means murder in the second de-
12 gree as defined in ORS 163.115 which is committed under, or accompanied
13 by, any of the following circumstances:

14 “(a) The defendant committed the murder pursuant to an agreement that
15 the defendant receive money or other thing of value for committing the
16 murder.

17 “(b) The defendant solicited another to commit the murder and paid or
18 agreed to pay the person money or other thing of value for committing the
19 murder.

20 “(c) The defendant committed murder after having been convicted previ-
21 ously in any jurisdiction of any homicide, the elements of which constitute

1 the crime of aggravated murder as defined in ORS 163.095, murder in the first
2 degree under this section, murder in the second degree as defined in ORS
3 163.115 or manslaughter in the first degree as defined in ORS 163.118.

4 “(d) There was more than one murder victim in the same criminal episode
5 as defined in ORS 131.505.

6 “(e) The homicide occurred in the course of or as a result of intentional
7 maiming or torture of the victim.

8 “(f) The victim of the intentional homicide was a person under the age
9 of 14 years.

10 “(g) The victim was one of the following and the murder was related to
11 the performance of the victim’s official duties in the justice system:

12 “(A) A police officer as defined in ORS 181A.355;

13 “(B) A correctional, parole and probation officer or other person charged
14 with the duty of custody, control or supervision of convicted persons;

15 “(C) A member of the Oregon State Police;

16 “(D) A judicial officer as defined in ORS 1.210;

17 “(E) A juror or witness in a criminal proceeding;

18 “(F) An employee or officer of a court of justice;

19 “(G) A member of the State Board of Parole and Post-Prison Supervision;

20 or

21 “(H) A regulatory specialist.

22 “(h) The defendant was confined in a state, county or municipal penal or
23 correctional facility or was otherwise in custody when the murder occurred.

24 “(i) The defendant committed murder by means of an explosive as defined
25 in ORS 164.055.

26 “(j) Notwithstanding ORS 163.115 (1)(b), the defendant personally and in-
27 tentionally committed the homicide under the circumstances set forth in ORS
28 163.115 (1)(b).

29 “(k) The murder was committed in an effort to conceal the commission
30 of a crime, or to conceal the identity of the perpetrator of a crime.

1 “(L) The murder was committed after the defendant had escaped from a
2 state, county or municipal penal or correctional facility and before the de-
3 fendant had been returned to the custody of the facility.

4 “(2)(a) Except as otherwise provided in ORS 163.155 and paragraph (b) of
5 this subsection, the court shall sentence a person convicted of murder in the
6 first degree, who was at least 15 years of age at the time of committing the
7 murder, to life imprisonment. The court shall order that the defendant be
8 confined for a minimum of 30 years without possibility of parole[,] **or** release
9 to post-prison supervision **except as provided in section 25, chapter**
10 **——, Oregon Laws 2019 (Enrolled Senate Bill 1008), and without the**
11 **possibility of** release on work release or any form of temporary leave or
12 employment at a forest or work camp.

13 “(b) The court may sentence the person to life imprisonment without the
14 possibility of parole if the person was at least 18 years of age at the time
15 of committing the murder. The court shall state on the record the reasons
16 for imposing the sentence. A person sentenced to life imprisonment without
17 the possibility of release or parole under this paragraph shall not have that
18 sentence suspended, deferred or commuted by any judicial officer, and the
19 State Board of Parole and Post-Prison Supervision may not parole the pris-
20 oner nor reduce the period of confinement in any manner whatsoever. The
21 Department of Corrections or any executive official may not permit the
22 prisoner to participate in any sort of release or furlough program.

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

30 “(A) The burden of proving by a preponderance of the evidence the like-

1 likelihood of rehabilitation within a reasonable period of time;

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

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

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

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

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

26 “**SECTION 10.** If both Senate Bill 1008 and Senate Bill 1013 become law,
27 section 31, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008), is
28 amended to read:

29 “**Sec. 31.** (1) Sections 24 and 25 [*of this 2019 Act*], **chapter _____,**
30 **Oregon Laws 2019 (Enrolled Senate Bill 1008),** and the amendments to

1 ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620,
2 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321,
3 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361,
4 420.011, 420.081 and 420A.203 **and section 3, chapter _____, Oregon Laws**
5 **2019 (Enrolled Senate Bill 1013)**, by sections 1 to 23 and 26 to 29 [*of this*
6 *2019 Act*], **chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008),**
7 **and sections 9 and 13 of this 2019 Act** become operative on January 1, 2020.

8 “(2) The State Board of Parole and Post-Prison Supervision, the Oregon
9 Youth Authority, the Department of Corrections and the Judicial Depart-
10 ment may take any action before the operative date specified in subsection
11 (1) of this section that is necessary to enable the board, authority or de-
12 partment to exercise, on and after the operative date specified in subsection
13 (1) of this section, all of the duties, functions and powers conferred on the
14 board, authority or department by sections 24 and 25 [*of this 2019 Act*],
15 **chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008)**, and the
16 amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610,
17 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321,
18 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361,
19 420.011, 420.081 and 420A.203 **and section 3, chapter _____, Oregon Laws**
20 **2019 (Enrolled Senate Bill 1013)**, by sections 1 to 23 and 26 to 29 [*of this*
21 *2019 Act*], **chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008),**
22 **and sections 9 and 13 of this 2019 Act.**

23 “**SECTION 11.** If both Senate Bill 1008 and Senate Bill 1013 become law,
24 section 32, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008), is
25 amended to read:

26 “**Sec. 32. (1)** Sections 24 and 25 [*of this 2019 Act*], **chapter _____,**
27 **Oregon Laws 2019 (Enrolled Senate Bill 1008)**, and the amendments to
28 ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620,
29 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321,
30 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361,

1 420.011, 420.081 and 420A.203 and section 3, chapter _____, Oregon Laws
2 2019 (Enrolled Senate Bill 1013), by sections 1 to 23 and 26 to 29 [*of this*
3 *2019 Act*], chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008),
4 and sections 9 and 13 of this 2019 Act apply to sentences imposed on or
5 after January 1, 2020.

6 “(2) Notwithstanding subsection (1) of this section, sections 24 and
7 25, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008), and
8 the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185,
9 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317,
10 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355,
11 419C.358, 419C.361, 420.011, 420.081 and 420A.203 and section 3, chapter
12 _____, Oregon Laws 2019 (Enrolled Senate Bill 1013), by sections 1 to
13 23 and 26 to 29, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill
14 1008), and sections 9 and 13 of this 2019 Act do not apply to persons
15 who were originally sentenced before January 1, 2020, and who are
16 subsequently resentenced on or after January 1, 2020, as the result of
17 an appellate decision or a post-conviction relief proceeding or for any
18 other reason.

19 “SECTION 12. If both Senate Bill 1008 and Senate Bill 1013 become law,
20 section 25, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008), is
21 amended to read:

22 “**Sec. 25.** (1)(a) A person convicted of an offense or offenses committed
23 when the person was under 18 years of age, who is serving a sentence of
24 imprisonment for the offense or offenses, is eligible for release on parole or
25 post-prison supervision as provided in this section after the person has
26 served 15 years of imprisonment.

27 “(b) Nothing in this section is intended to prevent a person from being
28 released prior to serving 15 years of imprisonment under any other provision
29 of law.

30 “(c) As used in this subsection, ‘served 15 years of imprisonment’ means

1 that 15 years have passed since the person began serving the sentence, in-
2 cluding pretrial incarceration but not including any reduction in sentence
3 under ORS 421.121 or any other statute.

4 “(2) This section applies notwithstanding **ORS 144.110** or the fact that the
5 person was:

6 “(a) Sentenced to a minimum sentence under ORS 163.105, 163.115 or
7 163.155 or **section 3, chapter _____, Oregon Laws 2019 (Enrolled Senate**
8 **Bill 1013)**.

9 “(b) Sentenced to a mandatory minimum sentence under ORS 137.700,
10 137.707 or 137.717, a determinate sentence under ORS 137.635 or a sentence
11 required by any other provision of law.

12 “(c) Sentenced to two or more consecutive sentences under ORS 137.123.

13 “(3) When a person eligible for release on parole or post-prison super-
14 vision as described in subsection (1) of this section has served 15 years of
15 imprisonment, the State Board of Parole and Post-Prison Supervision shall
16 hold a hearing. The hearing must provide the person a meaningful opportu-
17 nity to be released on parole or post-prison supervision.

18 “(4) The board may require the person, before holding a hearing described
19 in this section, to be examined by a psychiatrist or psychologist with exper-
20 tise in adolescent development. Within 60 days of the evaluation, the exam-
21 ining psychiatrist or psychologist shall file a written report of the findings
22 and conclusions of the examination with the board. A certified copy of the
23 report shall be provided to the person and the person’s attorney.

24 “(5) During a hearing under this section, the board shall consider and
25 give substantial weight to the fact that a person under 18 years of age is
26 incapable of the same reasoning and impulse control as an adult and the
27 diminished culpability of minors as compared to that of adults. The board
28 shall also consider the following circumstances, if relevant to the specific
29 person and offense:

30 “(a) The age and immaturity of the person at the time of the offense.

1 “(b) Whether and to what extent an adult was involved in the offense.

2 “(c) The person’s family and community circumstances at the time of the
3 offense, including any history of abuse, trauma and involvement in the ju-
4 venile dependency system.

5 “(d) The person’s subsequent emotional growth and increased maturity
6 during the person’s imprisonment.

7 “(e) The person’s participation in rehabilitative and educational programs
8 while in custody if such programs have been made available to the person
9 and use of self-study for self-improvement.

10 “(f) A mental health diagnosis.

11 “(g) Any other mitigating factors or circumstances presented by the per-
12 son.

13 “(6) Under no circumstances may the board consider the age of the person
14 as an aggravating factor.

15 “(7) If the board finds that, based on the consideration of the age and
16 immaturity of the person at the time of the offense and the person’s behavior
17 thereafter, the person has demonstrated maturity and rehabilitation, the
18 board shall release the person as follows:

19 “(a) For a person sentenced under ORS 163.105, 163.115 or 163.155 **or**
20 **section 3, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill**
21 **1013)**, the board shall set a release date that is not more than 60 days from
22 the date of the hearing and, notwithstanding section 28, chapter 790, Oregon
23 Laws 1989, the person shall be released on parole in accordance with ORS
24 144.125, 144.260 and 144.270.

25 “(b) A person sentenced to a term of imprisonment under a provision of
26 law other than ORS 163.105, 163.115 or 163.155 **or section 3, chapter**
27 **_____, Oregon Laws 2019 (Enrolled Senate Bill 1013)**, shall be released
28 on post-prison supervision in accordance with ORS 144.096 and 144.098 within
29 60 days of the date of the hearing.

30 “(8) Unless the context requires otherwise, the provisions of ORS 144.260

1 to 144.380 apply to a person released on parole under subsection (7)(a) of this
2 section.

3 “(9) If the board determines that the person has not demonstrated matu-
4 rity and rehabilitation under subsection (7) of this section, the board may
5 postpone a subsequent hearing to a date that is at least two years but no
6 more than 10 years from the date of the hearing.

7 “(10) The person may waive a hearing under this section. Notwithstand-
8 ing waiver of the hearing, the board shall hold a hearing under this section
9 upon the person’s written request.

10 “(11) The board shall provide notice of the hearing to:

11 “(a) The district attorney of the county in which the person was con-
12 victed; and

13 “(b) The victim of any offense for which the person is serving a sentence,
14 if the victim requests to be notified and furnishes the board with a current
15 address.

16 “(12) A person has the right to counsel, including counsel appointed at
17 board expense, at a hearing under this section.

18 “(13) The board may adopt rules to carry out the provisions of this sec-
19 tion.

20 **“SECTION 13. If both Senate Bill 1008 and Senate Bill 1013 become**
21 **law, section 6, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill**
22 **1008) (amending ORS 419C.349), is repealed and ORS 419C.349, as**
23 **amended by section 23, chapter _____, Oregon Laws 2019 (Enrolled**
24 **Senate Bill 1013), is amended to read:**

25 “419C.349. (1) [*The juvenile court, after a hearing*] Except as otherwise
26 provided in ORS 419C.364 or 419C.370, [*may waive a youth to a circuit, justice*
27 *or municipal court of competent jurisdiction for prosecution as an adult if*] **the**
28 **juvenile court shall conduct a waiver hearing when:**

29 “[*(1) The youth is 15 years of age or older at the time of the commission*
30 *of the alleged offense;*]

1 “[2] *The youth, except as otherwise provided in ORS 419C.364 and*
2 *419C.370, is alleged to have committed a criminal offense constituting:*]

3 “(a) **The state files a motion requesting a waiver hearing in a case**
4 **in which a petition has been filed alleging that a youth has committed**
5 **an act when the youth was 15, 16 or 17 years of age that, if committed**
6 **by an adult, would constitute aggravated murder or an offense listed**
7 **in ORS 137.707; or**

8 “(b) **The state files a motion requesting a waiver hearing in a case**
9 **in which a petition has been filed alleging that a youth has committed**
10 **an act when the youth was 15, 16 or 17 years of age that, if committed**
11 **by an adult, would constitute:**

12 “[a] *Murder under ORS 163.115 or section 3 of this 2019 Act or any ag-*
13 *gravated form thereof;*]

14 “[b] (A) A Class A or Class B felony;

15 “[c] (B) Any of the following Class C felonies:

16 “[A] (i) Escape in the second degree under ORS 162.155;

17 “[B] (ii) Assault in the third degree under ORS 163.165;

18 “[C] (iii) Coercion under ORS 163.275 (1)(a);

19 “[D] (iv) Arson in the second degree under ORS 164.315; or

20 “[E] (v) Robbery in the third degree under ORS 164.395;

21 “[d] (C) Any Class C felony in which the youth used or threatened to
22 use a firearm; or

23 “[e] (D) Any other [*felony or any misdemeanor if the youth and the state*
24 *stipulate to the waiver;*] **crime that the state and the youth stipulate is**
25 **subject to waiver.**

26 “(2) **After the hearing, the juvenile court may waive the youth to**
27 **a circuit, justice or municipal court of competent jurisdiction if:**

28 “[3] (a) The youth at the time of the alleged offense was of sufficient
29 sophistication and maturity to appreciate the nature and quality of the con-
30 duct involved; and

1 “[4] (b) The juvenile court, after considering the following criteria, de-
2 termines by a preponderance of the evidence that retaining jurisdiction will
3 not serve the best interests of the youth and of society and therefore is not
4 justified:

5 “[a] (A) The amenability of the youth to treatment and rehabilitation
6 given the techniques, facilities and personnel for rehabilitation available to
7 the juvenile court and to the criminal court [which] **that** would have juris-
8 diction after transfer;

9 “[b] (B) The protection required by the community, given the serious-
10 ness of the offense alleged, **and whether the youth can be safely reha-
11 bilitated under the jurisdiction of the juvenile court;**

12 “[c] (C) The aggressive, violent, premeditated or willful manner in which
13 the offense was alleged to have been committed;

14 “[d] (D) The previous history of the youth, including:

15 “[A] (i) Prior treatment efforts and out-of-home placements; and

16 “[B] (ii) The physical, emotional and mental health of the youth;

17 “[e] (E) The youth’s prior record of acts [which] **that** would be crimes
18 if committed by an adult;

19 “[f] (F) The gravity of the loss, damage or injury caused or attempted
20 during the offense;

21 “[g] (G) The prosecutive merit of the case against the youth; and

22 “[h] (H) The desirability of disposing of all cases in one trial if there
23 were adult co-offenders.

24 **“(3) The victim of the alleged offense has the right to appear at a
25 hearing under this section and to provide the court with any infor-
26 mation reasonably related to the court’s determination.**

27 **“(4) The right to counsel, and the appointment of counsel under
28 ORS 419C.200, applies to a hearing under this section.**

29 **“(5) The state has the right to have at least one psychiatrist or li-
30 censed psychologist of its selection examine the youth concerning the**

1 **determination of whether to waive the youth under this section.**

2 **“SECTION 14.** If Senate Bill 1008 becomes law and Senate Bill 1013 does
3 not become law, section 32, chapter _____, Oregon Laws 2019 (Enrolled
4 Senate Bill 1008), is amended to read:

5 **“Sec. 32. (1)** Sections 24 and 25 [*of this 2019 Act*], **chapter _____,**
6 **Oregon Laws 2019 (Enrolled Senate Bill 1008),** and the amendments to
7 ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620,
8 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321,
9 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361,
10 420.011, 420.081 and 420A.203 by sections 1 to 23 and 26 to 29 [*of this 2019*
11 *Act*], **chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008),** apply
12 to sentences imposed on or after January 1, 2020.

13 **“(2) Notwithstanding subsection (1) of this section, sections 24 and**
14 **25, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008), and**
15 **the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185,**
16 **161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317,**
17 **339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355,**
18 **419C.358, 419C.361, 420.011, 420.081 and 420A.203 by sections 1 to 23 and**
19 **26 to 29, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1008),**
20 **do not apply to persons who were originally sentenced before January**
21 **1, 2020, and who are subsequently resentenced on or after January 1,**
22 **2020, as the result of an appellate decision or a post-conviction relief**
23 **proceeding or for any other reason.**

24 **“SECTION 15.** If Senate Bill 1013 becomes law, ORS 144.110, as amended
25 by section 14, chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 1013),
26 is amended to read:

27 “144.110. (1) In any felony case, the court may impose a minimum term
28 of imprisonment of up to one-half of the sentence it imposes.

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

30 “(a) The State Board of Parole and Post-Prison Supervision shall not re-

1 lease a prisoner on parole who has been sentenced under subsection (1) of
2 this section until the minimum term has been served, except upon affirmative
3 vote of a majority of three board members or, if the chairperson requires all
4 voting members to participate, a majority of all voting members.

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

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

8 “(B) Who has been convicted of murder in the first degree under the
9 provisions of section 3 [*of this 2019 Act*], **chapter _____, Oregon Laws 2019**
10 **(Enrolled Senate Bill 1013)**, except as provided in ORS 163.155 (6) to (8) or
11 section 3 [(2)(c) to (f)] **(3) [*of this 2019 Act*], chapter _____, Oregon Laws**
12 **2019 (Enrolled Senate Bill 1013)**; or

13 “(C) Who has been convicted of murder in the second degree under the
14 provisions of ORS 163.115, except as provided in ORS 163.115 (5)(c) to (f) or
15 163.155 (6) to (8).”

16 In line 32, delete “9” and insert “16”.

17 _____