

House Bill 2825

Sponsored by Representative WILLIAMS (Presession 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**.

Requires sentencing court to consider as mitigation evidence defendant was subjected to domestic abuse that was significant factor in criminal behavior. Provides that such evidence constitutes substantial and compelling reasons justifying downward departure sentence. Authorizes court to impose lesser sentence even if sentence is mandatory or otherwise required by law.

Creates procedure by which person currently serving sentence may petition court for resentencing if person was subjected to abuse that was significant factor in criminal behavior.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to sentencing mitigation; creating new provisions; amending ORS 137.700, 137.707, 137.717,
3 138.105, 138.115, 144.397, 161.620, 420.240, 421.121 and 421.168; prescribing an effective date; and
4 providing for criminal sentence reduction that requires approval by a two-thirds majority.

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

SENTENCING MITIGATION FINDINGS

6
7
8
9 **SECTION 1. (1) At sentencing, in determining mitigation the court shall consider**
10 **whether:**

11 **(a) The defendant was subjected to physical, sexual or psychological abuse by an intimate**
12 **partner or a family or household member;**

13 **(b) The abuse was a significant contributing factor to the defendant's criminal behavior;**
14 **and**

15 **(c) Sentencing the defendant to a presumptive or mandatory sentence would be unduly**
16 **harsh in light of the circumstances of the crime, the circumstances of the defendant and the**
17 **abuse the defendant suffered.**

18 **(2) If court finds that the three circumstances described in subsection (1) of this section**
19 **have been established by the defendant by a preponderance of the evidence, the finding shall**
20 **constitute substantial and compelling reasons justifying a downward dispositional or dura-**
21 **tional departure under the rules of the Oregon Criminal Justice Commission.**

22 **(3) The Oregon Criminal Justice Commission shall adopt rules in accordance with this**
23 **section.**

24 **(4) As used in this section, "family or household member" has the meaning given that**
25 **term in ORS 135.230.**

26 **SECTION 2. ORS 137.700 is amended to read:**

27 137.700. (1)(a) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses
28 listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995,

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

10 **(b) Notwithstanding any other provision of this section, when a person is convicted of**
11 **one of the offenses listed in subsection (2)(a)(C) to (S), (b) or (c) of this section and the court**
12 **finds substantial and compelling reasons justifying a lesser sentence under section 1 of this**
13 **2021 Act, the court is not obligated to sentence the defendant to the sentence specified in**
14 **subsection (2) of this section, and may instead impose any sentence in accordance with the**
15 **rules of the Oregon Criminal Justice Commission. If the court imposes a sentence under this**
16 **paragraph, unless the court orders otherwise under ORS 137.750, the person is eligible for a**
17 **reduction in sentence under ORS 421.121 and any form of temporary leave from custody,**
18 **work release or program of conditional or supervised release.**

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



- 23 (a)(A) Murder in the second
24 degree, as defined in
25 ORS 163.115.....300 months
- 26 (B) Murder in the first
27 degree, as defined
28 in ORS 163.107.....360 months
- 29 (C) Attempt or conspiracy
30 to commit aggravated
31 murder, as defined
32 in ORS 163.095.....120 months
- 33 (D) Attempt or conspiracy
34 to commit murder
35 in any degree.90 months
- 36 (E) Manslaughter in the
37 first degree, as defined
38 in ORS 163.118.....120 months
- 39 (F) Manslaughter in the
40 second degree, as defined
41 in ORS 163.125.....75 months
- 42 (G) Assault in the first
43 degree, as defined in
44 ORS 163.185.....90 months
- 45 (H) Assault in the second

- 1 degree, as defined in
- 2 ORS 163.175.....70 months
- 3 (I) Except as provided in
- 4 paragraph (b)(G) of
- 5 this subsection,
- 6 kidnapping in the first
- 7 degree, as defined
- 8 in ORS 163.235.....90 months
- 9 (J) Kidnapping in the second
- 10 degree, as defined in
- 11 ORS 163.225.....70 months
- 12 (K) Rape in the first degree,
- 13 as defined in ORS 163.375
- 14 (1)(a), (c) or (d).....100 months
- 15 (L) Rape in the second degree,
- 16 as defined in
- 17 ORS 163.365.....75 months
- 18 (M) Sodomy in the first degree,
- 19 as defined in ORS 163.405
- 20 (1)(a), (c) or (d).....100 months
- 21 (N) Sodomy in the second
- 22 degree, as defined in
- 23 ORS 163.395.....75 months
- 24 (O) Unlawful sexual penetration
- 25 in the first degree, as
- 26 defined in ORS 163.411
- 27 (1)(a) or (c).....100 months
- 28 (P) Unlawful sexual penetration
- 29 in the second degree, as
- 30 defined in ORS 163.408.....75 months
- 31 (Q) Sexual abuse in the first
- 32 degree, as defined in
- 33 ORS 163.427.....75 months
- 34 (R) Robbery in the first degree,
- 35 as defined in
- 36 ORS 164.415.....90 months
- 37 (S) Robbery in the second
- 38 degree, as defined in
- 39 ORS 164.405.....70 months
- 40 (b)(A) Arson in the first degree,
- 41 as defined in ORS 164.325,
- 42 when the offense represented
- 43 a threat of serious
- 44 physical injury.90 months
- 45 (B) Using a child in a display

- 1 of sexually explicit
- 2 conduct, as defined in
- 3 ORS 163.670.....70 months
- 4 (C) Compelling prostitution,
- 5 as defined in
- 6 ORS 167.017.....70 months
- 7 (D) Rape in the first degree,
- 8 as defined in
- 9 ORS 163.375 (1)(b).300 months
- 10 (E) Sodomy in the first degree,
- 11 as defined in
- 12 ORS 163.405 (1)(b).300 months
- 13 (F) Unlawful sexual penetration
- 14 in the first degree, as
- 15 defined in
- 16 ORS 163.411 (1)(b).300 months
- 17 (G) Kidnapping in the first
- 18 degree, as defined in
- 19 ORS 163.235, when the
- 20 offense is committed in
- 21 furtherance of the commission
- 22 or attempted commission of an
- 23 offense listed in subparagraph
- 24 (D), (E) or (F) of
- 25 this paragraph.....300 months
- 26 (c) Aggravated vehicular
- 27 homicide, as defined in
- 28 ORS 163.149.....240 months

30

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

32 137.707. (1)(a) When a person waived under ORS 419C.349 (1)(a) is convicted of an offense listed

33 in subsection (4) of this section, the court shall impose at least the presumptive term of

34 imprisonment provided for the offense in subsection (4) of this section. The court may impose a

35 greater presumptive term if otherwise permitted by law, but may not impose a lesser term. The

36 person is not, during the service of the term of imprisonment, eligible for release on post-prison

37 supervision or any form of temporary leave from custody. The person is not eligible for any re-

38 duction in the minimum sentence for any reason under ORS 421.121 or any other provision of law.

39 The person is eligible for a hearing and conditional release under ORS 420A.203 and 420A.206.

40 **(b) Notwithstanding any other provision of this section, when a person is convicted of**

41 **one of the offenses listed in subsection (4)(a)(C) to (S), (b) or (c) of this section and the court**

42 **finds substantial and compelling reasons justifying a lesser sentence under section 1 of this**

43 **2021 Act, the court is not obligated to sentence the defendant to the sentence specified in**

44 **subsection (4) of this section, and may instead impose any sentence in accordance with the**

45 **rules of the Oregon Criminal Justice Commission. If the court imposes a sentence under this**

1 **paragraph, unless the court orders otherwise under ORS 137.750, the person is eligible for a**
2 **reduction in sentence under ORS 421.121 and any form of temporary leave from custody,**
3 **work release or program of conditional or supervised release.**

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

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

10 (4) The offenses to which this section applies and the presumptive sentences are:

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- 13 (a)(A) Murder in the second degree, as defined in
14 ORS 163.115.....300 months
 - 15 (B) Murder in the first
16 degree, as defined
17 in ORS 163.107.....360 months
 - 18 (C) Attempt or conspiracy
19 to commit aggravated
20 murder, as defined
21 in ORS 163.095.....120 months
 - 22 (D) Attempt or conspiracy
23 to commit murder
24 in any degree.....90 months
 - 25 (E) Manslaughter in the
26 first degree, as defined
27 in ORS 163.118.....120 months
 - 28 (F) Manslaughter in the
29 second degree, as defined
30 in ORS 163.125.....75 months
 - 31 (G) Assault in the first
32 degree, as defined
33 in ORS 163.185.....90 months
 - 34 (H) Assault in the second
35 degree, as defined
36 in ORS 163.175.....70 months
 - 37 (I) Kidnapping in the first
38 degree, as defined in
39 ORS 163.235.....90 months
 - 40 (J) Kidnapping in the second
41 degree, as defined in
42 ORS 163.225.....70 months
 - 43 (K) Rape in the first degree,
44 as defined in ORS 163.375....100 months
 - 45 (L) Rape in the second

1 degree, as defined in
 2 ORS 163.365.....75 months
 3 (M) Sodomy in the first
 4 degree, as defined in
 5 ORS 163.405.....100 months
 6 (N) Sodomy in the second
 7 degree, as defined in
 8 ORS 163.395.....75 months
 9 (O) Unlawful sexual
 10 penetration in the first
 11 degree, as defined
 12 in ORS 163.411.....100 months
 13 (P) Unlawful sexual
 14 penetration in the
 15 second degree, as
 16 defined in ORS 163.408.75 months
 17 (Q) Sexual abuse in the first
 18 degree, as defined in
 19 ORS 163.427.....75 months
 20 (R) Robbery in the first
 21 degree, as defined in
 22 ORS 164.415.....90 months
 23 (S) Robbery in the second
 24 degree, as defined in
 25 ORS 164.405.....70 months
 26 (b)(A) Arson in the first degree,
 27 as defined in
 28 ORS 164.325, when
 29 the offense represented
 30 a threat of serious
 31 physical injury.90 months
 32 (B) Using a child in a display
 33 of sexually explicit
 34 conduct, as defined in
 35 ORS 163.670.....70 months
 36 (C) Compelling prostitution,
 37 as defined in ORS 167.017
 38 (1)(a), (b) or (d).....70 months
 39 (c) Aggravated vehicular
 40 homicide, as defined in
 41 ORS 163.149.....240 months
 42

43
 44 (5) If a person charged with an offense under this section is found guilty of a lesser included
 45 offense and the lesser included offense is:

1 (a) An offense listed in subsection (4) of this section, the court shall sentence the person as
 2 provided in subsections (1) and (2) of this section.

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

4 (A) But constitutes an offense for which waiver is authorized under ORS 419C.349 (1)(b), the
 5 court, upon motion of the district attorney, shall hold a hearing to determine whether to retain ju-
 6 risdiction or to transfer the case to juvenile court for disposition. In determining whether to retain
 7 jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains
 8 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court
 9 does not retain jurisdiction, the court shall:

10 (i) Order that a presentence report be prepared;

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

13 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 14 419C.067 and 419C.411; and

15 (iv) Enter an order providing that all court records of the case are subject to the same limita-
 16 tions on inspection, copying and disclosure of records, reports and materials as those set forth under
 17 ORS 419A.255.

18 (B) And is not an offense for which waiver is authorized under ORS 419C.349 (1)(b), the court
 19 may not sentence the person. The court shall:

20 (i) Order that a presentence report be prepared;

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

23 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 24 419C.067 and 419C.411; and

25 (iv) Enter an order providing that all court records of the case are subject to the same limita-
 26 tions on inspection, copying and disclosure of records, reports and materials as those set forth under
 27 ORS 419A.255.

28 (6) When a person is charged under this section, other offenses based on the same act or
 29 transaction shall be charged as separate counts in the same accusatory instrument and consolidated
 30 for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection
 31 (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by
 32 the joinder and consolidation of offenses, the court may order an election or separate trials of
 33 counts or provide whatever other relief justice requires.

34 (7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty
 35 of aggravated murder or an offense listed in subsection (4) of this section and one or more other
 36 offenses, the court shall impose the sentence for aggravated murder or the offense listed in sub-
 37 section (4) of this section as provided in subsections (1) and (2) of this section and shall impose
 38 sentences for the other offenses as otherwise provided by law.

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

1 the court does not retain jurisdiction, the court shall:

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

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

5 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
6 419C.067 and 419C.411; and

7 (D) Enter an order providing that all court records of the case are subject to the same limita-
8 tions on inspection, copying and disclosure of records, reports and materials as those set forth under
9 ORS 419A.255.

10 **SECTION 4.** ORS 137.717 is amended to read:

11 137.717. (1) When a court sentences a person convicted of:

12 (a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under
13 ORS 164.225 or aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months
14 of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
15 presumptive sentence, if the person has:

16 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
17 in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in
18 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated
19 identity theft under ORS 165.803;

20 (B) Two or more previous convictions for any combination of the crimes listed in subsection (2)
21 of this section; or

22 (C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime
23 of conviction was committed while the defendant was on supervision for the previous conviction or
24 less than three years after the date the defendant completed the period of supervision for the pre-
25 vious conviction.

26 (b) Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under
27 ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree
28 under ORS 164.365, computer crime under ORS 164.377, robbery in the third degree under ORS
29 164.395, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument
30 in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),
31 possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310,
32 the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal
33 Justice Commission prescribe a longer presumptive sentence, if the person has:

34 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
35 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery
36 in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in
37 the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in
38 stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

39 (B) Two or more previous convictions for any combination of the crimes listed in subsection (2)
40 of this section; or

41 (C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime
42 of conviction was committed while the defendant was on supervision for the previous conviction or
43 less than three years after the date the defendant completed the period of supervision for the pre-
44 vious conviction.

45 (c) Theft in the first degree under ORS 164.055 or identity theft under ORS 165.800, the

1 presumptive sentence is 13 months of incarceration, unless the rules of the Oregon Criminal Justice
 2 Commission prescribe a longer presumptive sentence, if the person has:

3 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
 4 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery
 5 in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession
 6 of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggra-
 7 vated identity theft under ORS 165.803; or

8 (B) Four or more previous convictions for any combination of crimes listed in subsection (2) of
 9 this section.

10 (2) The crimes to which subsection (1) of this section applies are:

- 11 (a) Theft in the second degree under ORS 164.045;
- 12 (b) Theft in the first degree under ORS 164.055;
- 13 (c) Aggravated theft in the first degree under ORS 164.057;
- 14 (d) Unauthorized use of a vehicle under ORS 164.135;
- 15 (e) Mail theft or receipt of stolen mail under ORS 164.162;
- 16 (f) Burglary in the second degree under ORS 164.215;
- 17 (g) Burglary in the first degree under ORS 164.225;
- 18 (h) Criminal mischief in the second degree under ORS 164.354;
- 19 (i) Criminal mischief in the first degree under ORS 164.365;
- 20 (j) Computer crime under ORS 164.377;
- 21 (k) Forgery in the second degree under ORS 165.007;
- 22 (L) Forgery in the first degree under ORS 165.013;
- 23 (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- 24 (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- 25 (o) Fraudulent use of a credit card under ORS 165.055;
- 26 (p) Identity theft under ORS 165.800;
- 27 (q) Possession of a stolen vehicle under ORS 819.300;
- 28 (r) Trafficking in stolen vehicles under ORS 819.310; and
- 29 (s) Any attempt to commit a crime listed in this subsection.

30 (3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall be in-
 31 creased by two months for each previous conviction the person has that:

32 (A) Was for any of the crimes listed in subsection (1) or (2) of this section; and

33 (B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or
 34 (b) of this section.

35 (b) Previous convictions may not increase a presumptive sentence described in subsection (1)(a)
 36 or (b) of this section by more than 12 months under this subsection.

37 (4) The court may impose a sentence other than the sentence provided by subsection (1) or (3)
 38 of this section if the court imposes:

39 (a) A longer term of incarceration that is otherwise required or authorized by law; or

40 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
 41 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
 42 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
 43 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
 44 subsection (1) or (3) of this section.

45 (5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under

1 subsection (4) of this section to a term of incarceration that exceeds the period of time described
 2 in ORS 161.605.

3 (6) The court shall sentence a person under this section to at least the presumptive sentence
 4 described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise, **the**
 5 **court finds substantial and compelling reasons justifying a downward departure under sec-**
 6 **tion 1 of this 2021 Act**, or the court finds that:

7 (a) The person was not on probation, parole or post-prison supervision for a crime listed in
 8 subsection (1) of this section at the time of the commission of the current crime of conviction;

9 (b) The person has not previously received a downward departure from a presumptive sentence
 10 for a crime listed in subsection (1) of this section;

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

12 (d) In consideration of the nature of the offense and the harm to the victim, a downward de-
 13 parture will:

14 (A) Increase public safety;

15 (B) Enhance the likelihood that the person will be rehabilitated; and

16 (C) Not unduly reduce the appropriate punishment.

17 (7) When the court imposes a sentence of probation for a conviction for theft in the first degree
 18 or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS
 19 144.087 may require the person to receive a high level of supervision for at least 12 months, and
 20 may extend the period of high-level supervision for all or part of the remaining probationary term.

21 (8)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have
 22 occurred upon the pronouncement of sentence in open court. However, when sentences are imposed
 23 for two or more convictions arising out of the same conduct or criminal episode, none of the con-
 24 victions is considered to have occurred prior to any of the other convictions arising out of the same
 25 conduct or criminal episode.

26 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
 27 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open
 28 court of the suspended imposition of a sentence.

29 (9) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

30 (10) As used in this section:

31 (a) "Downward departure" means a downward dispositional departure or a downward durational
 32 departure under the rules of the Oregon Criminal Justice Commission.

33 (b) "Previous conviction" includes:

34 (A) Convictions occurring before, on or after July 1, 2003; and

35 (B) Convictions entered in any other state or federal court for comparable offenses.

36 **SECTION 5.** ORS 137.717, as amended by section 7, chapter 649, Oregon Laws 2013, and section
 37 6, chapter 673, Oregon Laws 2017, is amended to read:

38 137.717. (1) When a court sentences a person convicted of:

39 (a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under
 40 ORS 164.225, robbery in the third degree under ORS 164.395 or aggravated identity theft under ORS
 41 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon
 42 Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

43 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
 44 in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in
 45 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated

1 identity theft under ORS 165.803;

2 (B) Two or more previous convictions for any combination of the crimes listed in subsection (2)
3 of this section; or

4 (C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime
5 of conviction was committed while the defendant was on supervision for the previous conviction or
6 less than three years after the date the defendant completed the period of supervision for the pre-
7 vious conviction.

8 (b) Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under
9 ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree
10 under ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS
11 165.013, criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent
12 use of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under ORS 819.300 or
13 trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18 months of
14 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
15 presumptive sentence, if the person has:

16 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
17 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery
18 in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in
19 the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in
20 stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

21 (B) Two or more previous convictions for any combination of the crimes listed in subsection (2)
22 of this section; or

23 (C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime
24 of conviction was committed while the defendant was on supervision for the previous conviction or
25 less than three years after the date the defendant completed the period of supervision for the pre-
26 vious conviction.

27 (c) Theft in the first degree under ORS 164.055 or identity theft under ORS 165.800, the
28 presumptive sentence is 13 months of incarceration, unless the rules of the Oregon Criminal Justice
29 Commission prescribe a longer presumptive sentence, if the person has:

30 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
31 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery
32 in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession
33 of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggra-
34 vated identity theft under ORS 165.803; or

35 (B) Four or more previous convictions for any combination of crimes listed in subsection (2) of
36 this section.

37 (2) The crimes to which subsection (1) of this section applies are:

38 (a) Theft in the second degree under ORS 164.045;

39 (b) Theft in the first degree under ORS 164.055;

40 (c) Aggravated theft in the first degree under ORS 164.057;

41 (d) Unauthorized use of a vehicle under ORS 164.135;

42 (e) Mail theft or receipt of stolen mail under ORS 164.162;

43 (f) Burglary in the second degree under ORS 164.215;

44 (g) Burglary in the first degree under ORS 164.225;

45 (h) Criminal mischief in the second degree under ORS 164.354;

- 1 (i) Criminal mischief in the first degree under ORS 164.365;
- 2 (j) Computer crime under ORS 164.377;
- 3 (k) Forgery in the second degree under ORS 165.007;
- 4 (L) Forgery in the first degree under ORS 165.013;
- 5 (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- 6 (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- 7 (o) Fraudulent use of a credit card under ORS 165.055;
- 8 (p) Identity theft under ORS 165.800;
- 9 (q) Possession of a stolen vehicle under ORS 819.300;
- 10 (r) Trafficking in stolen vehicles under ORS 819.310; and
- 11 (s) Any attempt to commit a crime listed in this subsection.

12 (3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall be in-
 13 creased by two months for each previous conviction the person has that:

- 14 (A) Was for any of the crimes listed in subsection (1) or (2) of this section; and
- 15 (B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or
 16 (b) of this section.

17 (b) Previous convictions may not increase a presumptive sentence described in subsection (1)(a)
 18 or (b) of this section by more than 12 months under this subsection.

19 (4) The court may impose a sentence other than the sentence provided by subsection (1) or (3)
 20 of this section if the court imposes:

- 21 (a) A longer term of incarceration that is otherwise required or authorized by law; or
- 22 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
 23 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
 24 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
 25 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
 26 subsection (1) or (3) of this section.

27 (5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under
 28 subsection (4) of this section to a term of incarceration that exceeds the period of time described
 29 in ORS 161.605.

30 (6) The court shall sentence a person under this section to at least the presumptive sentence
 31 described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise, **the**
 32 **court finds substantial and compelling reasons justifying a downward departure under sec-**
 33 **tion 1 of this 2021 Act**, or the court finds that:

- 34 (a) The person was not on probation, parole or post-prison supervision for a crime listed in
 35 subsection (1) of this section at the time of the commission of the current crime of conviction;
- 36 (b) The person has not previously received a downward departure from a presumptive sentence
 37 for a crime listed in subsection (1) of this section;
- 38 (c) The harm or loss caused by the crime is not greater than usual for that type of crime; and
- 39 (d) In consideration of the nature of the offense and the harm to the victim, a downward de-
 40 parture will:

- 41 (A) Increase public safety;
- 42 (B) Enhance the likelihood that the person will be rehabilitated; and
- 43 (C) Not unduly reduce the appropriate punishment.

44 (7) When the court imposes a sentence of probation for a conviction for theft in the first degree
 45 or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS

1 144.087 may require the person to receive a high level of supervision for at least 12 months, and
 2 may extend the period of high-level supervision for all or part of the remaining probationary term.

3 (8)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have
 4 occurred upon the pronouncement of sentence in open court. However, when sentences are imposed
 5 for two or more convictions arising out of the same conduct or criminal episode, none of the con-
 6 victions is considered to have occurred prior to any of the other convictions arising out of the same
 7 conduct or criminal episode.

8 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
 9 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open
 10 court of the suspended imposition of a sentence.

11 (9) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

12 (10) As used in this section:

13 (a) "Downward departure" means a downward dispositional departure or a downward durational
 14 departure under the rules of the Oregon Criminal Justice Commission.

15 (b) "Previous conviction" includes:

16 (A) Convictions occurring before, on or after July 1, 2003; and

17 (B) Convictions entered in any other state or federal court for comparable offenses.

18
 19 **PROCEDURE FOR PERSONS CURRENTLY IN CUSTODY**

20
 21 **SECTION 6. (1) A person serving a sentence of imprisonment after conviction of a felony**
 22 **is eligible to be resentenced under this section if:**

23 (a) **The person was sentenced prior to the effective date of this 2021 Act;**

24 (b) **At the time the crime was committed, the person was subjected to physical, sexual**
 25 **or psychological abuse by an intimate partner or a family or household member;**

26 (c) **The abuse was a significant contributing factor to the person's criminal behavior; and**

27 (d) **The sentence the person received is unduly harsh in light of the circumstances of the**
 28 **crime, the circumstances of the defendant and the abuse the person suffered.**

29 (2)(a) **A person described in subsection (1) of this section may file a petition for resen-**
 30 **tencing in the county in which the person was originally convicted and sentenced.**

31 (b) **The petition shall include:**

32 (A) **The specific counts for which the person is requesting resentencing; and**

33 (B) **A factual statement explaining how the person meets the eligibility requirements**
 34 **described in subsection (1) of this section.**

35 (3)(a) **Upon filing the petition, the person shall serve a copy of the petition on the district**
 36 **attorney.**

37 (b) **Upon receipt of the petition, the district attorney shall make reasonable efforts to**
 38 **inform the victim:**

39 (A) **That the person has petitioned the court for a resentencing;**

40 (B) **Of the victim's rights implicated by the resentencing; and**

41 (C) **That the victim has the right to appear at the resentencing and be heard.**

42 (4)(a) **Upon receiving the petition, the sentencing court shall determine whether the facts**
 43 **stated in the petition, if established in court by a preponderance of evidence and uncontested,**
 44 **are sufficient to support a finding that the person meets the eligibility requirements de-**
 45 **scribed in subsection (1) of this section.**

1 (b) If the court determines that the facts stated in the petition are sufficient, the court
 2 shall set a resentencing hearing within 60 days of the date the petition is filed with the court,
 3 unless the court finds good cause to hold the hearing at a later date.

4 (c) If the court determines that the facts stated in the petition are insufficient, the court
 5 shall enter an order denying the petition and shall cause a copy of the order to be provided
 6 to the person.

7 (5)(a) When the court sets a resentencing hearing under subsection (4) of this section,
 8 the court shall appoint counsel for the person and notify the person, the person's counsel,
 9 the Department of Corrections and the district attorney of the hearing date. Upon receipt
 10 of the notice, the district attorney shall make reasonable efforts to inform the victim of:

11 (A) The hearing date; and

12 (B) The victim's rights implicated in the hearing.

13 (b) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall
 14 provide for the representation of a person for whom counsel is appointed under this sub-
 15 section.

16 (6)(a) At the hearing, the person has the burden of proving by a preponderance of the
 17 evidence that:

18 (A) At the time the crime was committed, the person was subjected to physical, sexual
 19 or psychological abuse by an intimate partner or a family or household member;

20 (B) The abuse was a significant contributing factor to the person's criminal behavior; and

21 (C) The sentence the person received is unduly harsh in light of the circumstances of the
 22 crime, the circumstances of the defendant and the abuse the person suffered.

23 (b) The district attorney may introduce evidence at the hearing.

24 (c) Upon the conclusion of the hearing, if the court finds that the person has met the
 25 burden of proof, the court shall find that there exists substantial and compelling reasons
 26 justifying a downward durational or dispositional departure from any presumptive or man-
 27 datory sentence, and shall resentence the defendant to an appropriate sentence under the
 28 rules of the Oregon Criminal Justice Commission.

29 (d) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply to a hearing conducted under
 30 this section.

31 (e) The sentencing court has jurisdiction to modify its judgment and resentence the de-
 32 fendant as provided in this subsection.

33 (7) Unless the court orders otherwise, a person shall appear at a hearing described in
 34 subsection (6) of this section by simultaneous electronic transmission as that term is defined
 35 in ORS 131.045.

36 (8) A person whose petition is denied under subsection (4) of this section may refile a
 37 petition under this section only once.

38 (9) As used in this section:

39 (a) "Family or household member" has the meaning given that term in ORS 135.230.

40 (b) "Reasonable efforts to inform the victim" has the meaning given that phrase in ORS
 41 147.500.

42 (c) "Victim" has the meaning given that term in ORS 147.500.

43
 44 **CONFORMING AMENDMENTS**
 45

SECTION 7. ORS 138.105 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Constitute substantial and compelling reasons for departure.

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

(A) In ranking the crime seriousness classification of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

(B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 (1)(a) or

1 137.707 (1)(a).

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

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

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

13 (c) As used in this subsection, “judgment” means any appealable judgment or order.

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

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

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

20 138.115. (1) On appeal by the state, the appellate court has authority to review the judgment or
21 order being appealed, subject to the provisions of this section.

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

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

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

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

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

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

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

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

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

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

45 (b) If the trial court imposed a sentence that departs from the presumptive sentence prescribed

1 by the rules of the Oregon Criminal Justice Commission, the appellate court's authority to review
 2 is limited to whether the trial court's findings of fact and reasons justifying a departure from the
 3 sentence prescribed by the rules of the Oregon Criminal Justice Commission:

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

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

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

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

11 (B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 (1)(a) or
 12 137.707 (1)(a).

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

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

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

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

25 **SECTION 9.** ORS 144.397 is amended to read:

26 144.397. (1)(a) A person convicted of an offense or offenses committed when the person was un-
 27 der 18 years of age, who is serving a sentence of imprisonment for the offense or offenses, is eligible
 28 for release on parole or post-prison supervision as provided in this section after the person has
 29 served 15 years of imprisonment.

30 (b) Nothing in this section is intended to prevent a person from being released prior to serving
 31 15 years of imprisonment under any other provision of law.

32 (c) As used in this subsection, "served 15 years of imprisonment" means that 15 years have
 33 passed since the person began serving the sentence, including pretrial incarceration but not in-
 34 cluding any reduction in sentence under ORS 421.121 or any other statute.

35 (2) This section applies notwithstanding ORS 144.110 or the fact that the person was:

36 (a) Sentenced to a minimum sentence under ORS 163.105, 163.107, 163.115 or 163.155.

37 (b) Sentenced to a mandatory minimum sentence under ORS 137.700 (1)(a), 137.707 (1)(a) or
 38 137.717, a determinate sentence under ORS 137.635 or a sentence required by any other provision
 39 of law.

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

41 (3) When a person eligible for release on parole or post-prison supervision as described in sub-
 42 section (1) of this section has served 15 years of imprisonment, the State Board of Parole and Post-
 43 Prison Supervision shall hold a hearing. The hearing must provide the person a meaningful
 44 opportunity to be released on parole or post-prison supervision.

45 (4) The board may require the person, before holding a hearing described in this section, to be

1 examined by a psychiatrist or psychologist with expertise in adolescent development. Within 60 days
 2 of the evaluation, the examining psychiatrist or psychologist shall file a written report of the
 3 findings and conclusions of the examination with the board. A certified copy of the report shall be
 4 provided to the person and the person's attorney.

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

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

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

11 (c) The person's family and community circumstances at the time of the offense, including any
 12 history of abuse, trauma and involvement in the juvenile dependency system.

13 (d) The person's subsequent emotional growth and increased maturity during the person's
 14 imprisonment.

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

17 (f) A mental health diagnosis.

18 (g) Any other mitigating factors or circumstances presented by the person.

19 (6) Under no circumstances may the board consider the age of the person as an aggravating
 20 factor.

21 (7) If the board finds that, based on the consideration of the age and immaturity of the person
 22 at the time of the offense and the person's behavior thereafter, the person has demonstrated matu-
 23 rity and rehabilitation, the board shall release the person as follows:

24 (a) For a person sentenced under ORS 163.105, 163.107, 163.115 or 163.155, the board shall set
 25 a release date that is not more than 60 days from the date of the hearing and, notwithstanding
 26 section 28, chapter 790, Oregon Laws 1989, the person shall be released on parole in accordance
 27 with ORS 144.125, 144.260 and 144.270.

28 (b) A person sentenced to a term of imprisonment under a provision of law other than ORS
 29 163.105, 163.107, 163.115 or 163.155 shall be released on post-prison supervision in accordance with
 30 ORS 144.096 and 144.098 within 60 days of the date of the hearing.

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

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

36 (10) The person may waive a hearing under this section. Notwithstanding waiver of the hearing,
 37 the board shall hold a hearing under this section upon the person's written request.

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

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

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

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

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

45 **SECTION 10.** ORS 161.620 is amended to read:

1 161.620. Notwithstanding any other provision of law, a sentence imposed upon any person
 2 waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not include any sentence of death
 3 or life imprisonment without the possibility of release or parole nor imposition of any mandatory
 4 minimum sentence except that a mandatory minimum sentence under:

- 5 (1) ORS 137.707 (1)(a) shall be imposed, except as provided in ORS 137.712;
- 6 (2) ORS 163.105 (1)(c) shall be imposed; and
- 7 (3) ORS 161.610 may be imposed.

8 **SECTION 11.** ORS 420.240 is amended to read:

9 420.240. (1) The Oregon Youth Authority may establish and administer a work release program
 10 in which persons who are committed to the custody of the Department of Corrections and placed in
 11 the physical custody of the youth authority under ORS 137.124 or other statute may be authorized
 12 to leave assigned quarters for the purpose of:

- 13 (a) Participating in private, gainful employment;
- 14 (b) Participating in a work program approved by the youth authority, including work with public
 15 or private agencies or persons, with or without compensation;
- 16 (c) Obtaining in this state additional education, including but not limited to vocational, technical
 17 and general education;
- 18 (d) Participating in alcohol or drug treatment programs;
- 19 (e) Participating in mental health programs;
- 20 (f) Specific treatment to develop independent living skills; or
- 21 (g) Other purposes established by the youth authority by rule.

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

24 (3) The provisions of this section do not apply to persons sentenced under ORS 137.635, 137.700
 25 (1)(a) or 137.707 (1)(a) or any other provision of law that prohibits eligibility for any form of tem-
 26 porary leave from custody.

27 **SECTION 12.** ORS 421.121 is amended to read:

28 421.121. (1) Except as provided in ORS 137.635, 137.700 (1)(a), 137.707 (1)(a), 163.105, 163.107 and
 29 163.115, each adult in custody sentenced to the custody of the Department of Corrections for felonies
 30 committed on or after November 1, 1989, is eligible for a reduction in the term of incarceration for:

- 31 (a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and
- 32 (b) Participation in the adult basic skills development program described in ORS 421.084.

33 (2) The maximum amount of time credits earned for appropriate institutional behavior or for
 34 participation in the adult basic skills development program described in ORS 421.084 may not exceed
 35 20 percent of the total term of incarceration in a Department of Corrections institution.

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

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

41 **SECTION 13.** ORS 421.168 is amended to read:

42 421.168. (1) The Department of Corrections shall establish a short-term transitional leave pro-
 43 gram. The program shall provide adults in custody with an opportunity to secure appropriate tran-
 44 sitional support when necessary for successful reintegration into the community prior to the adult's
 45 discharge to post-prison supervision.

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

6 (3) If the transition plan for the adult in custody is approved by the department and is an es-
7 sential part of successful reintegration into the community, the department may grant a transitional
8 leave no more than 120 days before the discharge date of the adult in custody.

9 (4) An adult in custody is not eligible for transitional leave before having served six months of
10 prison incarceration.

11 (5) The department shall adopt rules to carry out the provisions of this section. The rules must
12 include a set of release conditions for adults in custody released on transitional leave status. An
13 adult in custody on transitional leave status is subject to immediate return to prison for any vio-
14 lation of the conditions of release.

15 (6) The provisions of this section do not apply to adults in custody whose sentences were im-
16 posed under ORS 137.635, 137.690, 137.700 (1)(a), 137.707 (1)(a), 164.061, 475.907, 475.925, 475.930 or
17 813.011 or under a provision of law that prohibits release on any form of temporary leave from
18 custody.

19
20 **MISCELLANEOUS**

21
22 **SECTION 14. Section 6 of this 2021 Act is repealed on January 1, 2024.**

23 **SECTION 15. (1) Section 1 of this 2021 Act and the amendments to ORS 137.700, 137.707,**
24 **137.717, 138.105, 138.115, 144.397, 161.620, 420.240, 421.121 and 421.168 by sections 2 to 5 and 7**
25 **to 13 of this 2021 Act apply to sentences imposed on or after the effective date of this 2021**
26 **Act, including resentencings under section 6 of this 2021 Act.**

27 **(2) Section 6 of this 2021 Act applies to sentences originally imposed before the effective**
28 **date of this 2021 Act.**

29 **SECTION 16. The unit captions used in this 2021 Act are provided only for the conven-**
30 **ience of the reader and do not become part of the statutory law of this state or express any**
31 **legislative intent in the enactment of this 2021 Act.**

32 **SECTION 17. This 2021 Act takes effect on the 91st day after the date on which the 2021**
33 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**