

Requested by Representative WILLIAMS

**PROPOSED AMENDMENTS TO
HOUSE BILL 2825**

1 On page 1 of the printed bill, line 2, after “ORS” insert “137.635,
2 137.690,”.

3 In line 3, delete “144.397,” and insert “144.110,” and after “161.620,” insert
4 “163.107, 163.115, 163.155,” and delete “and 421.168” and insert “, 421.168 and
5 475.930”.

6 Delete lines 6 through 28 and delete pages 2 through 20 and insert:

7

8 **“SENTENCING MITIGATION FINDINGS**

9

10 **“SECTION 1. (1) At sentencing, in determining mitigation the court**
11 **shall consider whether:**

12 **“(a) The defendant was subjected to physical, sexual or psycholog-**
13 **ical abuse by an intimate partner or a family or household member;**

14 **“(b) The abuse was a contributing factor to the defendant’s criminal**
15 **behavior; and**

16 **“(c) Sentencing the defendant to a presumptive or mandatory sen-**
17 **tence would be unduly harsh in light of the circumstances of the**
18 **crime, the circumstances of the defendant and the abuse the defendant**
19 **suffered.**

20 **“(2) If court finds that the three circumstances described in sub-**
21 **section (1) of this section have been established by the defendant by**

1 a preponderance of the evidence, the finding shall constitute substan-
2 tial and compelling reasons justifying a downward dispositional de-
3 parture or a downward durational departure under the rules of the
4 Oregon Criminal Justice Commission.

5 “(3) The Oregon Criminal Justice Commission shall adopt rules in
6 accordance with this section.

7 “(4) As used in this section, ‘family or household member’ has the
8 meaning given that term in ORS 135.230.

9 “SECTION 2. ORS 137.635 is amended to read:

10 “137.635. (1) When, in the case of a felony described in subsection (2) of
11 this section, a court sentences a convicted defendant who has previously
12 been convicted of any felony designated in subsection (2) of this section, the
13 sentence shall not be an indeterminate sentence to which the defendant
14 otherwise would be subject under ORS 137.120, but, unless it imposes a death
15 penalty under ORS 163.105, the court shall impose a determinate sentence,
16 the length of which the court shall determine, to the custody of the Depart-
17 ment of Corrections. Any mandatory minimum sentence otherwise provided
18 by law shall apply. The sentence shall not exceed the maximum sentence
19 otherwise provided by law in such cases. The convicted defendant who is
20 subject to this section shall not be eligible for probation. The convicted de-
21 fendant shall serve the entire sentence imposed by the court and shall not,
22 during the service of such a sentence, be eligible for parole or any form of
23 temporary leave from custody. The person shall not be eligible for any re-
24 duction in sentence pursuant to ORS 421.120 or for any reduction in term
25 of incarceration pursuant to ORS 421.121.

26 “(2) Felonies to which subsection (1) of this section applies include and
27 are limited to:

28 “(a) Murder in any degree, as defined in ORS 163.107 or 163.115, and any
29 aggravated form thereof.

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

1 “(c) Assault in the first degree, as defined in ORS 163.185.
2 “(d) Kidnapping in the first degree, as defined in ORS 163.235.
3 “(e) Rape in the first degree, as defined in ORS 163.375.
4 “(f) Sodomy in the first degree, as defined in ORS 163.405.
5 “(g) Unlawful sexual penetration in the first degree, as defined in ORS
6 163.411.

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

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

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

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

12 “(4) **Notwithstanding any other provision of this section, when a**
13 **person is convicted of one of the offenses listed in subsection (2) of this**
14 **section and the court finds substantial and compelling reasons justi-**
15 **fying a lesser sentence under section 1 of this 2021 Act, the court is**
16 **not obligated to impose the sentence described in subsection (1) of this**
17 **section and may instead impose any sentence in accordance with the**
18 **rules of the Oregon Criminal Justice Commission. If the court imposes**
19 **a sentence under this subsection, unless the court orders otherwise**
20 **under ORS 137.750, the person is eligible for a reduction in sentence**
21 **under ORS 421.121 and any form of temporary leave from custody,**
22 **work release or program of conditional or supervised release.**

23 “**SECTION 2a.** ORS 137.690 is amended to read:

24 “137.690. [a.] (1) **Except as provided in subsection (2) of this section,**
25 **any person who is convicted of a major felony sex crime, who has one [(or**
26 **more)] or more previous [conviction of] convictions for a major felony sex**
27 **crime, shall be imprisoned for a mandatory minimum term of 25 years.**

28 “(2) **When a person is convicted as described in subsection (1) of this**
29 **section and the court finds substantial and compelling reasons justi-**
30 **fying a lesser sentence under section 1 of this 2021 Act, the court is**

1 **not obligated to impose the sentence described in subsection (1) of this**
2 **section and may instead impose any sentence in accordance with the**
3 **rules of the Oregon Criminal Justice Commission. If the court imposes**
4 **a sentence under this subsection, unless the court orders otherwise**
5 **under ORS 137.750, the person is eligible for a reduction in sentence**
6 **under ORS 421.121 and any form of temporary leave from custody,**
7 **work release or program of conditional or supervised release.**

8 “[b.] (3) **As used in this section:**

9 “(a) ‘Major felony sex crime’ means rape in the first degree [(ORS
10 163.375)] **under ORS 163.375**, sodomy in the first degree [(ORS 163.405)]
11 **under ORS 163.405**, unlawful sexual penetration in the first degree [(ORS
12 163.411),] **under ORS 163.411** or using a child in a display of sexually ex-
13 plicit conduct [(ORS 163.670)] **under ORS 163.670.**

14 “[c.] (b) ‘Previous conviction’ includes a conviction for the statutory
15 counterpart of a major felony sex crime in any jurisdiction, and includes a
16 conviction in the same sentencing proceeding if the conviction is for a sep-
17 arate criminal episode as defined in ORS 131.505.

18 “**SECTION 3.** ORS 137.700 is amended to read:

19 “137.700. (1)(a) Notwithstanding ORS 161.605, when a person is convicted
20 of one of the offenses listed in subsection (2)(a) of this section and the of-
21 fense was committed on or after April 1, 1995, or of one of the offenses listed
22 in subsection (2)(b) of this section and the offense was committed on or after
23 October 4, 1997, or of the offense described in subsection (2)(c) of this section
24 and the offense was committed on or after January 1, 2008, the court shall
25 impose, and the person shall serve, at least the entire term of imprisonment
26 listed in subsection (2) of this section. The person is not, during the service
27 of the term of imprisonment, eligible for release on post-prison supervision
28 or any form of temporary leave from custody. The person is not eligible for
29 any reduction in[, or based on,] the minimum sentence for any reason what-
30 soever under ORS 421.121 or any other statute. The court may impose a

1 greater sentence if otherwise permitted by law, but may not impose a lower
2 sentence than the sentence specified in subsection (2) of this section.

3 **“(b) Notwithstanding any other provision of this section, when a**
4 **person is convicted of one of the offenses listed in subsection (2) of this**
5 **section and the court finds substantial and compelling reasons justi-**
6 **fying a lesser sentence under section 1 of this 2021 Act, the court is**
7 **not obligated to sentence the defendant to the sentence specified in**
8 **subsection (2) of this section and may instead impose any sentence in**
9 **accordance with the rules of the Oregon Criminal Justice Commission.**
10 **If the court imposes a sentence under this paragraph, unless the court**
11 **orders otherwise under ORS 137.750, the person is eligible for a re-**
12 **duction in sentence under ORS 421.121 and any form of temporary**
13 **leave from custody, work release or program of conditional or super-**
14 **vised release.**

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

- 17 “ _____
- 18 (a)(A) Murder in the second
19 degree, as defined in
20 ORS 163.115.....300 months
 - 21 (B) Murder in the first
22 degree, as defined
23 in ORS 163.107.....360 months
 - 24 (C) Attempt or conspiracy
25 to commit aggravated
26 murder, as defined
27 in ORS 163.095.....120 months
 - 28 (D) Attempt or conspiracy
29 to commit murder
30 in any degree.90 months

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

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

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

24 “ _____

25 **“SECTION 4.** ORS 137.707 is amended to read:
26 “137.707. (1)(a) When a person waived under ORS 419C.349 (1)(a) is con-
27 victed of an offense listed in subsection (4) of this section, the court shall
28 impose at least the presumptive term of imprisonment provided for the of-
29 fense in subsection (4) of this section. The court may impose a greater
30 presumptive term if otherwise permitted by law, but may not impose a lesser

1 term. The person is not, during the service of the term of imprisonment, el-
2 igible for release on post-prison supervision or any form of temporary leave
3 from custody. The person is not eligible for any reduction in the minimum
4 sentence for any reason under ORS 421.121 or any other provision of law.
5 The person is eligible for a hearing and conditional release under ORS
6 420A.203 and 420A.206.

7 **“(b) Notwithstanding any other provision of this section, when a**
8 **person is convicted of one of the offenses listed in subsection (4) of this**
9 **section and the court finds substantial and compelling reasons justi-**
10 **fying a lesser sentence under section 1 of this 2021 Act, the court is**
11 **not obligated to sentence the defendant to the sentence specified in**
12 **subsection (4) of this section and may instead impose any sentence in**
13 **accordance with the rules of the Oregon Criminal Justice Commission.**
14 **If the court imposes a sentence under this paragraph, unless the court**
15 **orders otherwise under ORS 137.750, the person is eligible for a re-**
16 **duction in sentence under ORS 421.121 and any form of temporary**
17 **leave from custody, work release or program of conditional or super-**
18 **vised release.**

19 “(2) ORS 138.052, 163.105 and 163.150 apply to sentencing a person prose-
20 cuted under this section and convicted of aggravated murder under ORS
21 163.095 except that a person who was under 18 years of age at the time the
22 offense was committed is not subject to a sentence of death or life
23 imprisonment without the possibility of release or parole.

24 “(3) The court shall commit the person to the legal and physical custody
25 of the Department of Corrections.

26 “(4) The offenses to which this section applies and the presumptive sen-
27 tences are:

- 28 “ _____
29 (a)(A) Murder in the second degree, as defined in
30 ORS 163.115.....300 months

- 1 (B) Murder in the first
- 2 degree, as defined
- 3 in ORS 163.107.....360 months
- 4 (C) Attempt or conspiracy
- 5 to commit aggravated
- 6 murder, as defined
- 7 in ORS 163.095.....120 months
- 8 (D) Attempt or conspiracy
- 9 to commit murder
- 10 in any degree.....90 months
- 11 (E) Manslaughter in the
- 12 first degree, as defined
- 13 in ORS 163.118.....120 months
- 14 (F) Manslaughter in the
- 15 second degree, as defined
- 16 in ORS 163.125.....75 months
- 17 (G) Assault in the first
- 18 degree, as defined
- 19 in ORS 163.185.....90 months
- 20 (H) Assault in the second
- 21 degree, as defined
- 22 in ORS 163.175.....70 months
- 23 (I) Kidnapping in the first
- 24 degree, as defined in
- 25 ORS 163.235.....90 months
- 26 (J) Kidnapping in the second
- 27 degree, as defined in
- 28 ORS 163.225.....70 months
- 29 (K) Rape in the first degree,
- 30 as defined in ORS 163.375....100 months

- 1 (L) Rape in the second
- 2 degree, as defined in
- 3 ORS 163.365.....75 months
- 4 (M) Sodomy in the first
- 5 degree, as defined in
- 6 ORS 163.405.....100 months
- 7 (N) Sodomy in the second
- 8 degree, as defined in
- 9 ORS 163.395.....75 months
- 10 (O) Unlawful sexual
- 11 penetration in the first
- 12 degree, as defined
- 13 in ORS 163.411.....100 months
- 14 (P) Unlawful sexual
- 15 penetration in the
- 16 second degree, as
- 17 defined in ORS 163.408.75 months
- 18 (Q) Sexual abuse in the first
- 19 degree, as defined in
- 20 ORS 163.427.....75 months
- 21 (R) Robbery in the first
- 22 degree, as defined in
- 23 ORS 164.415.....90 months
- 24 (S) Robbery in the second
- 25 degree, as defined in
- 26 ORS 164.405.....70 months
- 27 (b)(A) Arson in the first degree,
- 28 as defined in
- 29 ORS 164.325, when
- 30 the offense represented

- 1 a threat of serious
- 2 physical injury.90 months
- 3 (B) Using a child in a display
- 4 of sexually explicit
- 5 conduct, as defined in
- 6 ORS 163.670.70 months
- 7 (C) Compelling prostitution,
- 8 as defined in ORS 167.017
- 9 (1)(a), (b) or (d).70 months
- 10 (c) Aggravated vehicular
- 11 homicide, as defined in
- 12 ORS 163.149.240 months

13 “ _____

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

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

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

19 “(A) But constitutes an offense for which waiver is authorized under ORS
 20 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a
 21 hearing to determine whether to retain jurisdiction or to transfer the case
 22 to juvenile court for disposition. In determining whether to retain jurisdic-
 23 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the
 24 court retains jurisdiction, the court shall sentence the person as an adult
 25 under sentencing guidelines. If the court does not retain jurisdiction, the
 26 court shall:

27 “(i) Order that a presentence report be prepared;

28 “(ii) Set forth in a memorandum any observations and recommendations
 29 that the court deems appropriate;

30 “(iii) Enter an order transferring the case to the juvenile court for dis-

1 position under ORS 419C.067 and 419C.411; and

2 “(iv) Enter an order providing that all court records of the case are sub-
3 ject to the same limitations on inspection, copying and disclosure of records,
4 reports and materials as those set forth under ORS 419A.255.

5 “(B) And is not an offense for which waiver is authorized under ORS
6 419C.349 (1)(b), the court may not sentence the person. The court shall:

7 “(i) Order that a presentence report be prepared;

8 “(ii) Set forth in a memorandum any observations and recommendations
9 that the court deems appropriate;

10 “(iii) Enter an order transferring the case to the juvenile court for dis-
11 position under ORS 419C.067 and 419C.411; and

12 “(iv) Enter an order providing that all court records of the case are sub-
13 ject to the same limitations on inspection, copying and disclosure of records,
14 reports and materials as those set forth under ORS 419A.255.

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

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

29 “(b) If a person charged and tried as provided in subsection (6) of this
30 section is not found guilty of aggravated murder or an offense listed in

1 subsection (4) of this section, but is found guilty of one of the other charges
2 that constitutes an offense for which waiver is authorized under ORS
3 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a
4 hearing to determine whether to retain jurisdiction or to transfer the case
5 to juvenile court for disposition. In determining whether to retain jurisdic-
6 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the
7 court retains jurisdiction, the court shall sentence the person as an adult
8 under sentencing guidelines. If the court does not retain jurisdiction, the
9 court shall:

10 “(A) Order that a presentence report be prepared;

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

13 “(C) Enter an order transferring the case to the juvenile court for dispo-
14 sition under ORS 419C.067 and 419C.411; and

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

18 **“SECTION 5.** ORS 137.717 is amended to read:

19 “137.717. (1) When a court sentences a person convicted of:

20 “(a) Aggravated theft in the first degree under ORS 164.057, burglary in
21 the first degree under ORS 164.225 or aggravated identity theft under ORS
22 165.803, the presumptive sentence is 24 months of incarceration, unless the
23 rules of the Oregon Criminal Justice Commission prescribe a longer
24 presumptive sentence, if the person has:

25 “(A) A previous conviction for aggravated theft in the first degree under
26 ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the
27 third degree under ORS 164.395, robbery in the second degree under ORS
28 164.405, robbery in the first degree under ORS 164.415 or aggravated identity
29 theft under ORS 165.803;

30 “(B) Two or more previous convictions for any combination of the crimes

1 listed in subsection (2) of this section; or

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

7 “(b) Unauthorized use of a vehicle under ORS 164.135, mail theft or re-
8 ceipt of stolen mail under ORS 164.162, burglary in the second degree under
9 ORS 164.215, criminal mischief in the first degree under ORS 164.365, com-
10 puter crime under ORS 164.377, robbery in the third degree under ORS
11 164.395, forgery in the first degree under ORS 165.013, criminal possession
12 of a forged instrument in the first degree under ORS 165.022, fraudulent use
13 of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under
14 ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the
15 presumptive sentence is 18 months of incarceration, unless the rules of the
16 Oregon Criminal Justice Commission prescribe a longer presumptive sen-
17 tence, if the person has:

18 “(A) A previous conviction for aggravated theft in the first degree under
19 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in
20 the first degree under ORS 164.225, robbery in the third degree under ORS
21 164.395, robbery in the second degree under ORS 164.405, robbery in the first
22 degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300,
23 trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft
24 under ORS 165.803;

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

27 “(C) A previous conviction for a crime listed in subsection (2) of this
28 section, if the current crime of conviction was committed while the defendant
29 was on supervision for the previous conviction or less than three years after
30 the date the defendant completed the period of supervision for the previous

1 conviction.

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

6 “(A) A previous conviction for aggravated theft in the first degree under
7 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in
8 the first degree under ORS 164.225, robbery in the second degree under ORS
9 164.405, robbery in the first degree under ORS 164.415, possession of a stolen
10 vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310
11 or aggravated identity theft under ORS 165.803; or

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

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

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

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

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

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

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

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

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

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

23 “(i) Criminal mischief in the first degree under ORS 164.365;

24 “(j) Computer crime under ORS 164.377;

25 “(k) Forgery in the second degree under ORS 165.007;

26 “(L) Forgery in the first degree under ORS 165.013;

27 “(m) Criminal possession of a forged instrument in the second degree un-
28 der ORS 165.017;

29 “(n) Criminal possession of a forged instrument in the first degree under
30 ORS 165.022;

1 “(o) Fraudulent use of a credit card under ORS 165.055;
2 “(p) Identity theft under ORS 165.800;
3 “(q) Possession of a stolen vehicle under ORS 819.300;
4 “(r) Trafficking in stolen vehicles under ORS 819.310; and
5 “(s) Any attempt to commit a crime listed in this subsection.
6 “(3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this
7 section shall be increased by two months for each previous conviction the
8 person has that:
9 “(A) Was for any of the crimes listed in subsection (1) or (2) of this sec-
10 tion; and
11 “(B) Was not used as a predicate for the presumptive sentence described
12 in subsection (1)(a) or (b) of this section.
13 “(b) Previous convictions may not increase a presumptive sentence de-
14 scribed in subsection (1)(a) or (b) of this section by more than 12 months
15 under this subsection.
16 “(4) The court may impose a sentence other than the sentence provided
17 by subsection (1) or (3) of this section if the court imposes:
18 “(a) A longer term of incarceration that is otherwise required or author-
19 ized by law; or
20 “(b) A departure sentence authorized by the rules of the Oregon Criminal
21 Justice Commission based upon findings of substantial and compelling rea-
22 sons. Unless the law or the rules of the Oregon Criminal Justice Commission
23 allow for imposition of a longer sentence, the maximum departure allowed
24 for a person sentenced under this subsection is double the presumptive sen-
25 tence provided in subsection (1) or (3) of this section.
26 “(5) Notwithstanding subsection (4)(b) of this section, the court may not
27 sentence a person under subsection (4) of this section to a term of incarcer-
28 ation that exceeds the period of time described in ORS 161.605.
29 “(6) The court shall sentence a person under this section to at least the
30 presumptive sentence described in subsection (1)(a) or (b) or (3) of this sec-

1 tion, unless the parties stipulate otherwise, **the court finds substantial**
2 **and compelling reasons justifying a downward departure under section**
3 **1 of this 2021 Act**, or the court finds that:

4 “(a) The person was not on probation, parole or post-prison supervision
5 for a crime listed in subsection (1) of this section at the time of the com-
6 mission of the current crime of conviction;

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

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

11 “(d) In consideration of the nature of the offense and the harm to the
12 victim, a downward departure will:

13 “(A) Increase public safety;

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

15 “(C) Not unduly reduce the appropriate punishment.

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

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

28 “(b) For a crime committed prior to November 1, 1989, a conviction is
29 considered to have occurred upon the pronouncement in open court of a
30 sentence or upon the pronouncement in open court of the suspended imposi-

1 tion of a sentence.

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

4 “(10) As used in this section:

5 “(a) ‘Downward departure’ means a downward dispositional departure or
6 a downward durational departure under the rules of the Oregon Criminal
7 Justice Commission.

8 “(b) ‘Previous conviction’ includes:

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

10 “(B) Convictions entered in any other state or federal court for compa-
11 rable offenses.

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

14 “137.717. (1) When a court sentences a person convicted of:

15 “(a) Aggravated theft in the first degree under ORS 164.057, burglary in
16 the first degree under ORS 164.225, robbery in the third degree under ORS
17 164.395 or aggravated identity theft under ORS 165.803, the presumptive
18 sentence is 24 months of incarceration, unless the rules of the Oregon
19 Criminal Justice Commission prescribe a longer presumptive sentence, if the
20 person has:

21 “(A) A previous conviction for aggravated theft in the first degree under
22 ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the
23 third degree under ORS 164.395, robbery in the second degree under ORS
24 164.405, robbery in the first degree under ORS 164.415 or aggravated identity
25 theft under ORS 165.803;

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

28 “(C) A previous conviction for a crime listed in subsection (2) of this
29 section, if the current crime of conviction was committed while the defendant
30 was on supervision for the previous conviction or less than three years after

1 the date the defendant completed the period of supervision for the previous
2 conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(i) Criminal mischief in the first degree under ORS 164.365;

19 “(j) Computer crime under ORS 164.377;

20 “(k) Forgery in the second degree under ORS 165.007;

21 “(L) Forgery in the first degree under ORS 165.013;

22 “(m) Criminal possession of a forged instrument in the second degree un-
23 der ORS 165.017;

24 “(n) Criminal possession of a forged instrument in the first degree under
25 ORS 165.022;

26 “(o) Fraudulent use of a credit card under ORS 165.055;

27 “(p) Identity theft under ORS 165.800;

28 “(q) Possession of a stolen vehicle under ORS 819.300;

29 “(r) Trafficking in stolen vehicles under ORS 819.310; and

30 “(s) Any attempt to commit a crime listed in this subsection.

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

4 “(A) Was for any of the crimes listed in subsection (1) or (2) of this sec-
5 tion; and

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

8 “(b) Previous convictions may not increase a presumptive sentence de-
9 scribed in subsection (1)(a) or (b) of this section by more than 12 months
10 under this subsection.

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

13 “(a) A longer term of incarceration that is otherwise required or author-
14 ized by law; or

15 “(b) A departure sentence authorized by the rules of the Oregon Criminal
16 Justice Commission based upon findings of substantial and compelling rea-
17 sons. Unless the law or the rules of the Oregon Criminal Justice Commission
18 allow for imposition of a longer sentence, the maximum departure allowed
19 for a person sentenced under this subsection is double the presumptive sen-
20 tence provided in subsection (1) or (3) of this section.

21 “(5) Notwithstanding subsection (4)(b) of this section, the court may not
22 sentence a person under subsection (4) of this section to a term of incarcer-
23 ation that exceeds the period of time described in ORS 161.605.

24 “(6) The court shall sentence a person under this section to at least the
25 presumptive sentence described in subsection (1)(a) or (b) or (3) of this sec-
26 tion, unless the parties stipulate otherwise, **the court finds substantial**
27 **and compelling reasons justifying a downward departure under section**
28 **1 of this 2021 Act**, or the court finds that:

29 “(a) The person was not on probation, parole or post-prison supervision
30 for a crime listed in subsection (1) of this section at the time of the com-

1 mission of the current crime of conviction;

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

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

6 “(d) In consideration of the nature of the offense and the harm to the
7 victim, a downward departure will:

8 “(A) Increase public safety;

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

10 “(C) Not unduly reduce the appropriate punishment.

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

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

23 “(b) For a crime committed prior to November 1, 1989, a conviction is
24 considered to have occurred upon the pronouncement in open court of a
25 sentence or upon the pronouncement in open court of the suspended imposi-
26 tion of a sentence.

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

29 “(10) As used in this section:

30 “(a) ‘Downward departure’ means a downward dispositional departure or

1 a downward durational departure under the rules of the Oregon Criminal
2 Justice Commission.

3 “(b) ‘Previous conviction’ includes:

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

5 “(B) Convictions entered in any other state or federal court for compa-
6 rable offenses.

7 **“SECTION 7.** ORS 163.107 is amended to read:

8 “163.107. (1) ‘Murder in the first degree’ means murder in the second de-
9 gree as defined in ORS 163.115 which is committed under, or accompanied
10 by, any of the following circumstances:

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

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

17 “(c) The defendant committed murder after having been convicted previ-
18 ously in any jurisdiction of any homicide, the elements of which constitute
19 the crime of aggravated murder as defined in ORS 163.095, murder in the first
20 degree under this section, murder in the second degree as defined in ORS
21 163.115 or manslaughter in the first degree as defined in ORS 163.118.

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

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

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

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

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

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

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

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

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

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

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

8 or

9 “(H) A regulatory specialist.

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

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

14 “(j) Notwithstanding ORS 163.115 (1)(b), the defendant personally and in-
15 tentionally committed the homicide under the circumstances set forth in ORS
16 163.115 (1)(b).

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

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

22 “(2)(a) Except as otherwise provided in ORS 163.155 and [*paragraph (b)*]
23 **paragraphs (b) and (c)** of this subsection, the court shall sentence a person
24 convicted of murder in the first degree, who was at least 15 years of age at
25 the time of committing the murder, to life imprisonment. The court shall
26 order that the defendant be confined for a minimum of 30 years without
27 possibility of parole or release to post-prison supervision except as provided
28 in ORS 144.397, and without the possibility of release on work release or any
29 form of temporary leave or employment at a forest or work camp.

30 “(b) The court may sentence the person to life imprisonment without the

1 possibility of parole if the person was at least 18 years of age at the time
2 of committing the murder. The court shall state on the record the reasons
3 for imposing the sentence. A person sentenced to life imprisonment without
4 the possibility of release or parole under this paragraph shall not have that
5 sentence suspended, deferred or commuted by any judicial officer, and the
6 State Board of Parole and Post-Prison Supervision may not parole the pris-
7 oner nor reduce the period of confinement in any manner whatsoever. The
8 Department of Corrections or any executive official may not permit the
9 prisoner to participate in any sort of release or furlough program.

10 **“(c) If the court finds substantial and compelling reasons justifying**
11 **a lesser sentence under section 1 of this 2021 Act, the court is not ob-**
12 **ligated to sentence the defendant to the sentence specified in para-**
13 **graphs (a) and (b) of this subsection and may instead impose any**
14 **sentence in accordance with the rules of the Oregon Criminal Justice**
15 **Commission.**

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

23 “(A) The burden of proving by a preponderance of the evidence the like-
24 lihood of rehabilitation within a reasonable period of time;

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

28 “(C) The right to a subpoena upon a showing of the general relevance and
29 reasonable scope of the evidence sought, provided that any subpoena issued
30 on behalf of the prisoner must be issued by the State Board of Parole and

1 Post-Prison Supervision pursuant to rules adopted by the board.

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

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

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

19 **“SECTION 8.** ORS 163.115 is amended to read:

20 “163.115. (1) Except as provided in ORS 163.095, 163.118 and 163.125,
21 criminal homicide constitutes murder in the second degree:

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

25 “(b) When it is committed by a person, acting either alone or with one
26 or more persons, who commits or attempts to commit any of the following
27 crimes and in the course of and in furtherance of the crime the person is
28 committing or attempting to commit, or during the immediate flight there-
29 from, the person, or another participant if there be any, causes the death of
30 a person other than one of the participants:

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

2 “(B) Criminal mischief in the first degree by means of an explosive as

3 defined in ORS 164.365;

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

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

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

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

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

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

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

11 “(J) Assault in the first degree, as defined in ORS 163.185, and the victim

12 is under 14 years of age, or assault in the second degree, as defined in ORS

13 163.175 (1)(a) or (b), and the victim is under 14 years of age; or

14 “(c) By abuse when a person, recklessly under circumstances manifesting

15 extreme indifference to the value of human life, causes the death of a child

16 under 14 years of age or a dependent person, as defined in ORS 163.205, and:

17 “(A) The person has previously engaged in a pattern or practice of assault

18 or torture of the victim or another child under 14 years of age or a dependent

19 person; or

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

21 “(2) An accusatory instrument alleging murder by abuse under subsection

22 (1)(c) of this section need not allege specific incidents of assault or torture.

23 “(3) It is an affirmative defense to a charge of violating subsection (1)(b)

24 of this section that the defendant:

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

26 “(b) Did not commit the homicidal act or in any way solicit, request,

27 command, importune, cause or aid in the commission thereof;

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

29 “(d) Had no reasonable ground to believe that any other participant was

30 armed with a dangerous or deadly weapon; and

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

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

8 “(5) Except as otherwise provided in ORS 144.397 and 163.155 **and sub-**
9 **section (6) of this section:**

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

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

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

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

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

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

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

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

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

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

21 **“(6) If the court finds substantial and compelling reasons justifying**
22 **a lesser sentence under section 1 of this 2021 Act, the court is not ob-**
23 **ligated to sentence the defendant to the sentence specified in sub-**
24 **section (5) of this section and may instead impose any sentence in**
25 **accordance with the rules of the Oregon Criminal Justice Commission.**

26 “[~~(6)~~] (7) As used in this section:

27 “(a) ‘Assault’ means the intentional, knowing or reckless causation of
28 physical injury to another person. ‘Assault’ does not include the causation
29 of physical injury in a motor vehicle accident that occurs by reason of the
30 reckless conduct of a defendant.

1 “(b) ‘Neglect or maltreatment’ means a violation of ORS 163.535, 163.545
2 or 163.547 or a failure to provide adequate food, clothing, shelter or medical
3 care that is likely to endanger the health or welfare of a child under 14 years
4 of age or a dependent person. This paragraph is not intended to replace or
5 affect the duty or standard of care required under ORS chapter 677.

6 “(c) ‘Pattern or practice’ means one or more previous episodes.

7 “(d) ‘Torture’ means the intentional infliction of intense physical pain
8 upon an unwilling victim as a separate objective apart from any other pur-
9 pose.

10 **“SECTION 9.** ORS 163.155 is amended to read:

11 “163.155. (1) **Except as provided in subsection (3) of this section,** when
12 a defendant, who was at least 15 years of age at the time of committing the
13 murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a)
14 and the defendant knew that the victim was pregnant, the defendant shall
15 be sentenced to life imprisonment without the possibility of release or parole
16 if the person was at least 18 years of age at the time of committing the of-
17 fense or to life imprisonment. The court shall conduct a sentencing pro-
18 ceeding to determine whether the defendant shall be sentenced to life
19 imprisonment without the possibility of release or parole as described in
20 subsection [(4)] **(5)** of this section, **sentenced** [*or*] to life imprisonment as
21 described in subsection [(5)] **(6)** of this section **or sentenced under sub-**
22 **section (3) of this section.** If the defendant waives all rights to a jury
23 sentencing proceeding, the court shall conduct the sentencing proceeding as
24 the trier of fact. The procedure for the sentencing proceeding, whether before
25 a court or a jury, shall follow the procedure of ORS 163.150 (1)(a), as modi-
26 fied by this section.

27 “(2) Following the presentation of evidence and argument under sub-
28 section (1) of this section, the court shall instruct the jury that the trial
29 court shall sentence the defendant to life imprisonment without the possi-
30 bility of release or parole as described in subsection [(4)] **(5)** of this section,

1 unless **the court sentences the person under subsection (3) of this sec-**
2 **tion, or unless,** after considering all of the evidence submitted, 10 or more
3 members of the jury find there are sufficient mitigating circumstances to
4 warrant life imprisonment with the possibility of release or parole as de-
5 scribed in subsection [(5)] **(6)** of this section. If 10 or more members of the
6 jury do not find there are sufficient mitigating circumstances to warrant life
7 imprisonment with the possibility of release or parole, the trial court shall
8 sentence the defendant to life imprisonment without the possibility of release
9 or parole as described in subsection [(4)] **(5)** of this section, **unless the**
10 **court sentences the defendant under subsection (3) of this section.** If
11 10 or more members of the jury find there are sufficient mitigating circum-
12 stances to warrant life imprisonment with the possibility of release or parole,
13 the trial court shall sentence the defendant to life imprisonment as described
14 in subsection [(5)] **(6)** of this section, **unless the court sentences the de-**
15 **fendant under subsection (3) of this section.**

16 “**(3) Notwithstanding any jury finding under subsection (2) of this**
17 **section, if the court finds substantial and compelling reasons justify-**
18 **ing a lesser sentence under section 1 of this 2021 Act, the court is not**
19 **obligated to sentence the defendant to any sentence otherwise required**
20 **by this section and may instead impose any sentence in accordance**
21 **with the rules of the Oregon Criminal Justice Commission.**

22 “[~~(3)~~] **(4)** Nothing in this section precludes the court from sentencing the
23 defendant to life imprisonment, as described in subsection [(5)] **(6)** of this
24 section, or life imprisonment without the possibility of release or parole, as
25 described in subsection [(4)] **(5)** of this section, pursuant to a stipulation of
26 sentence or stipulation of sentencing facts agreed to and offered by both
27 parties if the defendant waives all rights to a jury sentencing proceeding.

28 “[~~(4)~~] **(5)** A sentence of life imprisonment without the possibility of re-
29 lease or parole under this section may not be suspended, deferred or com-
30 muted by any judicial officer, and the State Board of Parole and Post-Prison

1 Supervision may neither parole the prisoner nor reduce the period of con-
2 finement in any manner whatsoever. The Department of Corrections or any
3 executive official may not permit the prisoner to participate in any sort of
4 release or furlough program.

5 “[5] (6) If the defendant is sentenced to life imprisonment, the court
6 shall order that the defendant be confined for a minimum of 30 years without
7 possibility of parole or release to post-prison supervision except as provided
8 in ORS 144.397, and without the possibility of release on work release or any
9 form of temporary leave or employment at a forest or work camp.

10 “[6] (7) At any time after completion of the minimum period of con-
11 finement pursuant to subsection [(5)] (6) of this section, the board, upon the
12 petition of a prisoner so confined, shall hold a hearing to determine if the
13 prisoner is likely to be rehabilitated within a reasonable period of time. The
14 sole issue shall be whether the prisoner is likely to be rehabilitated within
15 a reasonable period of time. The proceeding shall be conducted in the manner
16 prescribed for a contested case hearing under ORS chapter 183, except that:

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

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

22 “(c) The prisoner has the right to a subpoena upon a showing of the
23 general relevance and reasonable scope of the evidence sought, provided that
24 any subpoena issued on behalf of the prisoner must be issued by the board
25 pursuant to rules adopted by the board.

26 “[7] (8) If, upon hearing all of the evidence, the board, upon a unani-
27 mous vote of three board members or, if the chairperson requires all voting
28 members to participate, a unanimous vote of all voting members, finds that
29 the prisoner is capable of rehabilitation and that the terms of the prisoner’s
30 confinement should be changed to life imprisonment with the possibility of

1 parole, release on post-prison supervision or work release, it shall enter an
2 order to that effect and the order shall convert the terms of the prisoner's
3 confinement to life imprisonment with the possibility of parole, release on
4 post-prison supervision or work release and may set a release date. Otherwise
5 the board shall deny the relief sought in the petition.

6 “[8] (9) Not less than two years after the denial of the relief sought in
7 a petition under this section, the prisoner may petition again for a change
8 in the terms of confinement. Further petitions for a change may be filed at
9 intervals of not less than two years thereafter.

10 **“SECTION 10.** ORS 475.930 is amended to read:

11 “475.930. (1) **Except as provided in subsection (3) of this section,** when
12 a court sentences a person under ORS 164.061, 475.907, 475.924 [and] **or**
13 475.925:

14 “(a) The court shall use the criminal history scale of the sentencing
15 guidelines grid of the Oregon Criminal Justice Commission to determine the
16 sentence to impose. The sentence described in:

17 “(A) ORS 475.925 (1) shall be determined utilizing crime category 10 of the
18 sentencing guidelines grid.

19 “(B) ORS 475.907 (1) and 475.925 (2) shall be determined utilizing crime
20 category 9 of the sentencing guidelines grid.

21 “(C) ORS 164.061 shall be determined utilizing crime category 8 of the
22 sentencing guidelines grid.

23 “(b)(A) Notwithstanding ORS 161.605, the court shall impose the sentence
24 described in ORS 164.061, 475.907, 475.924 [and] **or** 475.925 and may not im-
25 pose a sentence of optional probation or grant a downward dispositional de-
26 parture or a downward durational departure under the rules of the
27 commission.

28 “(B) The court may impose a sentence other than the sentence described
29 in ORS 164.061, 475.907, 475.924 [and] **or** 475.925 if the court imposes a longer
30 term of incarceration that is otherwise required or authorized by law.

1 “(2) A person sentenced under ORS 164.061, 475.907, 475.924 [and] or
2 475.925 may not receive a reduction in the term of incarceration for appro-
3 priate institutional behavior that exceeds 20 percent of the sentence imposed.

4 “(3) **Notwithstanding ORS 164.061, 475.907, 475.924 and 475.925, when**
5 **a court sentences a person under ORS 164.061, 475.907, 475.924 or 475.925**
6 **and the court finds substantial and compelling reasons justifying a**
7 **lesser sentence under section 1 of this 2021 Act, the court is not obli-**
8 **gated to sentence the person to the sentence specified in ORS 164.061,**
9 **475.907, 475.924 or 475.925 and may instead impose any sentence in ac-**
10 **cordance with the rules of the Oregon Criminal Justice Commission.**

11

12 **“PROCEDURE FOR PERSONS PREVIOUSLY SENTENCED**

13

14 **“SECTION 11. (1) Except as provided in subsection (9) of this sub-**
15 **section, a person serving a sentence of imprisonment after conviction**
16 **of a felony is eligible to be resentenced under this section if:**

17 **“(a) The person was sentenced to, and is currently serving, a term**
18 **of imprisonment for the felony conviction;**

19 **“(b) The person was subjected to physical, sexual or psychological**
20 **abuse by an intimate partner or a family or household member;**

21 **“(c) The abuse was a contributing factor to the person’s criminal**
22 **behavior; and**

23 **“(d) The sentence the person received is unduly harsh in light of**
24 **the circumstances of the crime, the circumstances of the person, the**
25 **abuse the person suffered and the likely sentence the person would**
26 **receive if the person were sentenced under current law and sentencing**
27 **philosophy.**

28 **“(2)(a) A person described in subsection (1) of this section may file**
29 **a petition for resentencing in the county in which the person was or-**
30 **iginally convicted and sentenced.**

1 **“(b) The petition shall include:**

2 **“(A) The specific counts for which the person is requesting resen-**
3 **tencing; and**

4 **“(B) A factual statement explaining how the person meets the el-**
5 **igibility requirements described in subsection (1) of this section.**

6 **“(3)(a) Upon filing the petition, the person shall serve a copy of the**
7 **petition on the district attorney.**

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

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

11 **“(B) Of the victim’s rights implicated by the resentencing; and**

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

14 **“(4)(a) Upon receiving the petition, the sentencing court shall de-**
15 **termine whether the facts stated in the petition, assuming those facts**
16 **are established in court by a preponderance of evidence and uncon-**
17 **tested, are sufficient to support a finding that the person meets the**
18 **eligibility requirements described in subsection (1) of this section.**

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

23 **“(c) If the court determines that the facts stated in the petition are**
24 **insufficient, the court shall enter an order denying the petition and**
25 **shall cause a copy of the order to be provided to the person.**

26 **“(d) If a petition is denied under paragraph (c) of this subsection,**
27 **upon the request of the person, the court shall appoint counsel for the**
28 **person for the purpose of assisting the person in preparing an amended**
29 **petition. Pursuant to ORS 151.216 and 151.219, the Public Defense Ser-**
30 **vices Commission shall provide for the representation of a person for**

1 **whom counsel is appointed under this paragraph.**

2 **“(5)(a) When the court sets a resentencing hearing under subsection**
3 **(4) of this section, the court shall appoint counsel for the person and**
4 **notify the person, the person’s counsel, the Department of Corrections**
5 **and the district attorney of the hearing date. Upon receipt of the no-**
6 **tice, the district attorney shall make reasonable efforts to inform the**
7 **victim of:**

8 **“(A) The hearing date; and**

9 **“(B) The victim’s rights implicated in the resentencing hearing.**

10 **“(b) Pursuant to ORS 151.216 and 151.219, the Public Defense Ser-**
11 **vices Commission shall provide for the representation of a person for**
12 **whom counsel is appointed under this subsection.**

13 **“(6)(a) At the hearing, the person has the burden of proving by a**
14 **preponderance of the evidence that:**

15 **“(A) The person was subjected to physical, sexual or psychological**
16 **abuse by an intimate partner or a family or household member;**

17 **“(B) The abuse was a contributing factor to the person’s criminal**
18 **behavior; and**

19 **“(C) The sentence the person received is unduly harsh in light of**
20 **the circumstances of the crime, the circumstances of the person, the**
21 **abuse the person suffered and the likely sentence the person would**
22 **receive if the person were sentenced under current law and sentencing**
23 **philosophy.**

24 **“(b) The district attorney may introduce evidence at the hearing.**

25 **“(c) Upon the conclusion of the hearing, if the court finds that the**
26 **person has met the burden of proof, the court shall find that there**
27 **exists substantial and compelling reasons justifying a downward du-**
28 **rational departure or a downward dispositional departure from any**
29 **presumptive or mandatory sentence and shall resentence the defend-**
30 **ant to an appropriate sentence under the rules of the Oregon Criminal**

1 **Justice Commission.**

2 **“(d) The court may not resentence a person under this section to**
3 **a more severe sentence than originally imposed.**

4 **“(e) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply to a**
5 **hearing conducted under this section.**

6 **“(f) The sentencing court has jurisdiction to modify its judgment**
7 **and resentence the defendant as provided in this subsection.**

8 **“(7) Unless the court orders otherwise, a person shall appear at a**
9 **hearing described in subsection (6) of this section by simultaneous**
10 **electronic transmission as defined in ORS 131.045.**

11 **“(8) A person whose petition is denied under subsection (4) of this**
12 **section after filing an amended petition, or who is not resented**
13 **after a hearing under subsection (6) of this section, may file a new**
14 **petition under this section only if the new petition is based on the**
15 **following evidence not previously considered by the court:**

16 **“(a) Evidence that did not exist at the time the previous petition**
17 **was filed; or**

18 **“(b) Evidence that existed at the time the previous petition was**
19 **filed, but could not have been discovered with reasonable diligence.**

20 **“(9) A person serving a sentence for aggravated murder as defined**
21 **in ORS 163.095 is not eligible to file a petition under this section unless**
22 **the conduct leading to the conviction would constitute murder in the**
23 **first degree under ORS 163.107 or murder in the second degree under**
24 **ORS 163.115 under current law.**

25 **“(10) The filing of a petition under this section operates as a stay**
26 **on any proceeding related to or based on the sentence imposed on the**
27 **person, including a proceeding under ORS 138.510 to 138.680.**

28 **“(11) As used in this section:**

29 **“(a) ‘Family or household member’ has the meaning given that**
30 **term in ORS 135.230.**

1 **“(b) ‘Reasonable efforts to inform the victim’ has the meaning**
2 **given that phrase in ORS 147.500.**

3 **“(c) ‘Victim’ has the meaning given that term in ORS 147.500.**

4
5 **“CONFORMING AMENDMENTS**

6
7 **“SECTION 12.** ORS 138.105 is amended to read:

8 “138.105. (1) On appeal by a defendant, the appellate court has authority
9 to review the judgment or order being appealed, subject to the provisions of
10 this section.

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

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

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

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

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

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

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

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

30 “(6) On appeal from a judgment ordering payment of restitution but not

1 specifying the amount of restitution, the appellate court has no authority to
2 review the decision to award restitution.

3 “(7) Except as otherwise provided in subsections (8) and (9) of this sec-
4 tion, the appellate court has authority to review any sentence to determine
5 whether the trial court failed to comply with requirements of law in impos-
6 ing or failing to impose a sentence.

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

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

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

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

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

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

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

25 “(B) Constitute substantial and compelling reasons for departure.

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

28 “(A) In ranking the crime seriousness classification of the current crime
29 or in determining the appropriate classification of a prior conviction or ju-
30 venile adjudication for criminal history purposes.

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

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

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

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

18 “(c) As used in this subsection, ‘judgment’ means any appealable judgment
19 or order.

20 “(11)(a) On a defendant’s cross-appeal under ORS 138.035 (5), the appellate
21 court may, in its discretion, limit review to any decision by the trial court
22 that is inextricably linked, either factually or legally, to the state’s appeal.

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

26 **“SECTION 13.** ORS 138.115 is amended to read:

27 “138.115. (1) On appeal by the state, the appellate court has authority to
28 review the judgment or order being appealed, subject to the provisions of this
29 section.

30 “(2) The appellate court has authority to review only questions of law

1 appearing on the record.

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

5 “(4)(a) Except as provided in paragraph (b) of this subsection, on appeal
6 from a judgment of conviction of any felony, the appellate court has au-
7 thority to review only the sentence as provided by subsections (5) and (6) of
8 this section.

9 “(b) The appellate court has authority to review whether the trial court
10 erred in merging determinations of guilt of two or more offenses, unless the
11 merger of determinations of guilt resulted from an agreement between the
12 state and the defendant.

13 “(5) Except as otherwise provided in subsections (6) and (7) of this sec-
14 tion, the appellate court has authority to review the sentence imposed on
15 conviction of any felony to determine whether the trial court failed to com-
16 ply with requirements of law in imposing or failing to impose a sentence.

17 “(6) Except as otherwise provided in subsection (7) of this section, for a
18 sentence imposed on conviction of a felony committed on or after November
19 1, 1989:

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

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

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

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

29 “(b) If the trial court imposed a sentence that departs from the
30 presumptive sentence prescribed by the rules of the Oregon Criminal Justice

1 Commission, the appellate court’s authority to review is limited to whether
2 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
7 has authority to review whether the sentencing court erred:

8 “(A) In ranking the crime seriousness classification of the current crime
9 or in determining the appropriate classification of a prior conviction or ju-
10 venile adjudication for criminal history purposes.

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

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

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

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

28 “(c) As used in this subsection, ‘judgment’ means any appealable judgment
29 or order.

30 **“SECTION 14.** ORS 144.110 is amended to read:

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

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

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

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

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

12 “(B) Who has been convicted of murder in the first degree under the
13 provisions of ORS 163.107, except as provided in ORS 163.107 (3) or 163.155
14 [(6) to (8)] (7) to (9); or

15 “(C) Who has been convicted of murder in the second degree under the
16 provisions of ORS 163.115, except as provided in ORS 163.115 (5)(c) to (f) or
17 163.155 [(6) to (8)] (7) to (9).

18 “(3) **This section does not apply to a person sentenced under ORS**
19 **163.107 (2)(c), 163.115 (6) or 163.155 (3).**

20 “**SECTION 15.** ORS 161.620 is amended to read:

21 “161.620. Notwithstanding any other provision of law, a sentence imposed
22 upon any person waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370
23 shall not include any sentence of death or life imprisonment without the
24 possibility of release or parole nor imposition of any mandatory minimum
25 sentence except that a mandatory minimum sentence under:

26 “(1) ORS 137.707 (1)(a) shall be imposed, except as provided in ORS
27 137.712;

28 “(2) ORS 163.105 (1)(c) shall be imposed; and

29 “(3) ORS 161.610 may be imposed.

30 “**SECTION 16.** ORS 420.240 is amended to read:

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

6 “(a) Participating in private, gainful employment;

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

10 “(c) Obtaining in this state additional education, including but not lim-
11 ited to vocational, technical and general education;

12 “(d) Participating in alcohol or drug treatment programs;

13 “(e) Participating in mental health programs;

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

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

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

19 “(3) The provisions of this section do not apply to persons sentenced un-
20 der ORS 137.635 (1), 137.700 (1)(a) or 137.707 (1)(a) or any other provision
21 of law that prohibits eligibility for any form of temporary leave from cus-
22 tody.

23 **“SECTION 17.** ORS 421.121 is amended to read:

24 “421.121. (1) Except as **otherwise** provided in ORS 137.635, 137.700,
25 137.707, 163.105, 163.107 and 163.115, each adult in custody sentenced to the
26 custody of the Department of Corrections for felonies committed on or after
27 November 1, 1989, is eligible for a reduction in the term of incarceration for:

28 “(a) Appropriate institutional behavior, as defined by rule of the Depart-
29 ment of Corrections; and

30 “(b) Participation in the adult basic skills development program described

1 in ORS 421.084.

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

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

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

12 **“SECTION 18.** ORS 421.168 is amended to read:

13 “421.168. (1) The Department of Corrections shall establish a short-term
14 transitional leave program. The program shall provide adults in custody with
15 an opportunity to secure appropriate transitional support when necessary for
16 successful reintegration into the community prior to the adult’s discharge to
17 post-prison supervision.

18 “(2) The Department of Corrections shall identify each adult in custody
19 who is eligible for the short-term transitional leave program and shall, in
20 conjunction with the supervisory authority for the county to which the adult
21 in custody will be released, assist each eligible adult in custody in preparing
22 a transition plan and in identifying and applying for an employment, educa-
23 tional or other transitional opportunity in the community.

24 “(3) If the transition plan for the adult in custody is approved by the de-
25 partment and is an essential part of successful reintegration into the com-
26 munity, the department may grant a transitional leave no more than 120 days
27 before the discharge date of the adult in custody.

28 “(4) An adult in custody is not eligible for transitional leave before hav-
29 ing served six months of prison incarceration.

30 “(5) The department shall adopt rules to carry out the provisions of this

1 section. The rules must include a set of release conditions for adults in
2 custody released on transitional leave status. An adult in custody on tran-
3 sitional leave status is subject to immediate return to prison for any vio-
4 lation of the conditions of release.

5 “(6) The provisions of this section do not apply to adults in custody whose
6 sentences were imposed under ORS 137.635 (1), 137.690 (1), 137.700 (1)(a),
7 137.707 (1)(a), 164.061, 475.907, 475.925, 475.930 (1) or 813.011 or under a pro-
8 vision of law that prohibits release on any form of temporary leave from
9 custody.

10

11

“MISCELLANEOUS

12

13 **“SECTION 19. (1) Section 1 of this 2021 Act and the amendments to**
14 **ORS 137.635, 137.690, 137.700, 137.707, 137.717, 138.105, 138.115, 144.110,**
15 **161.620, 163.107, 163.115, 163.155, 420.240, 421.121, 421.168 and 475.930 by**
16 **sections 2 to 10 and 12 to 18 of this 2021 Act apply to sentences imposed**
17 **on or after the effective date of this 2021 Act, including resentencings**
18 **under section 11 of this 2021 Act or any other law.**

19 **“(2) Section 11 of this 2021 Act applies to persons serving sentences**
20 **imposed before, on or after the effective date of this 2021 Act.**

21 **“SECTION 20. The unit captions used in this 2021 Act are provided**
22 **only for the convenience of the reader and do not become part of the**
23 **statutory law of this state or express any legislative intent in the**
24 **enactment of this 2021 Act.**

25

26

“EFFECTIVE DATE

27

28 **“SECTION 21. This 2021 Act takes effect on the 91st day after the**
29 **date on which the 2021 regular session of the Eighty-first Legislative**
30 **Assembly adjourns sine die.”**

