

# House Bill 2256

Sponsored by Representative MANNIX (Pre-session filed.)

## SUMMARY

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

Repeals requirement for court to include in judgment document age of defendant at time of committing offense if defendant is sentenced to term of incarceration and physical custody of defendant is related to age of defendant at time of committing offense.

Repeals direction to Department of Corrections to transfer person sentenced to term of incarceration for offense committed when person was under 18 years of age to physical custody of Oregon Youth Authority even if criminal proceedings were initiated after person attained 18 years of age.

Restores mandatory adult prosecution for certain offenses committed when person charged is 15, 16 or 17 years of age at time of offense. Requires juvenile court, upon filing by state of motion requesting waiver hearing, to hold hearing to determine whether person should be prosecuted as adult.

Repeals eligibility of juvenile offender charged with offense subject to mandatory minimum sentence for conditional release hearing after serving at least one-half of sentence imposed.

Repeals eligibility for conditional release hearing of person in custody of Oregon Youth Authority for offense committed while person was under 18 years of age, for which person was sentenced to term of imprisonment with projected release date that falls after person attains 25 years of age but before person attains 27 years of age.

Repeals prohibition on person who was under 18 years of age at time of committing offense being sentenced to life imprisonment without possibility of release or parole.

Repeals requirement for court to consider certain factors when sentencing person who was under 18 years of age at time of committing offense. Repeals prohibition on court considering age as aggravating factor. Repeals direction to court to include in judgment document fact that person is eligible for hearing and release after serving 15 years of sentence of imprisonment.

Repeals process for hearing with State Board of Parole and Post-Prison Supervision for persons who were under 18 years of age at time of committing offense and who have served 15 years of sentence of imprisonment. Repeals authorization for release of person on parole or post-prison supervision if certain findings are made.

Repeals direction to Department of Justice to adopt model policies for providing victim notification concerning conditional release and waiver hearings. Repeals direction to district attorney victim assistance programs to provide notice to victims in accordance with model policies.

## A BILL FOR AN ACT

1  
2 Relating to juvenile offender sentencing; creating new provisions; amending ORS 137.071, 137.124,  
3 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.107, 163.115, 163.155, 163A.130,  
4 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.013, 419C.050, 419C.153, 419C.346, 419C.349,  
5 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203; and repealing ORS  
6 144.397, 161.740 and 419C.274.

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

8 **SECTION 1.** ORS 137.071 is amended to read:

9 137.071. (1) The judge in a criminal action shall ensure that the creation and filing of a judgment  
10 document complies with this section. On appeal, the appellate court may give leave as provided in  
11 ORS 19.270 for entry of a judgment document that complies with this section but may not reverse  
12 or set aside a judgment, determination or disposition on the sole ground that the judgment document  
13 fails to comply with this section.

14 (2) A judgment document in a criminal action must comply with ORS 18.038. In addition, a  
15 judgment document in a criminal action must:

**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 (a) Indicate whether the defendant was determined to be financially eligible for purposes of ap-  
 2 pointed counsel in the action.

3 (b) Indicate whether the court appointed counsel for the defendant in the action.

4 (c) If there is no attorney for the defendant, indicate whether the defendant knowingly waived  
 5 any right to an attorney after having been informed of that right.

6 (d) Include the identity of the recorder or reporter for the proceeding or action who is to be  
 7 served under ORS 138.081.

8 (e) Include any information specifically required by statute or by court rule.

9 (f) Specify clearly the court's determination for each charge in the information, indictment or  
 10 complaint.

11 (g) Specify clearly the court's disposition, including all legal consequences the court establishes  
 12 or imposes. If the determination is one of conviction, the judgment document must include any sus-  
 13 pension of sentence, forfeiture, imprisonment, cancellation of license, removal from office, monetary  
 14 obligation, probation, conditions of probation, discharge, restitution, community service and all other  
 15 sentences and legal consequences imposed by the court. Nothing in this paragraph requires the  
 16 judgment document to specify any consequences that may result from the determination but are not  
 17 established or imposed by the court.

18 (h) Include the identities of the attorney for the state and the attorney, if any, for the defendant.

19 *[(i) If the court sentences the defendant to a term of incarceration, and the physical custody of the*  
 20 *defendant as determined by ORS 137.124 is related to the age of the defendant at the time of committing*  
 21 *an offense, indicate the age of the defendant at the time of committing the offense.]*

22 (3) A judgment document in a criminal action that includes a money award, as defined in ORS  
 23 18.005, must comply with ORS 18.048.

24 (4) The requirements of this section do not apply to a judgment document if the action was  
 25 commenced by the issuance of a uniform citation adopted under ORS 1.525 and the court has used  
 26 the space on the citation for the entry of a judgment. The exemption provided by this subsection  
 27 does not apply if any indictment, information or complaint other than a uniform citation is filed in  
 28 the action.

29 *[(5) For the purposes of determining the defendant's age at the time of committing an offense under*  
 30 *subsection (2) of this section:]*

31 *[(a) If the defendant is convicted of two or more offenses occurring on different days, the*  
 32 *defendant's age shall be calculated using the earliest date.]*

33 *[(b) If the defendant is convicted of an offense occurring within a range of dates, the defendant's*  
 34 *age shall be calculated using the date at the beginning of the range.]*

35 **SECTION 2.** ORS 137.124 is amended to read:

36 137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of  
 37 incarceration that exceeds 12 months:

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

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

45 (2)(a) If the court imposes a sentence upon conviction of a felony that includes a term of

1 incarceration that is 12 months or less, the court shall commit the defendant to the legal and  
2 physical custody of the supervisory authority of the county in which the crime of conviction oc-  
3 curred.

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

10 (3) After assuming custody of the convicted person the Department of Corrections may transfer  
11 adults in custody from one correctional facility to another such facility for the purposes of diagnosis  
12 and study, rehabilitation and treatment, as best seems to fit the needs of the adult in custody and  
13 for the protection and welfare of the community and the adult in custody.

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

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

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

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

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

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

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

39 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20  
40 years of age at the time of sentencing is committed to the legal and physical custody of the De-  
41 partment of Corrections or the supervisory authority of a county following waiver under ORS  
42 419C.349 [(1)(b)], 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b)  
43 or 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the  
44 person to the physical custody of the Oregon Youth Authority for placement as provided in ORS  
45 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS

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

9 (b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS  
 10 419C.349 [(1)(b)], 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of  
 11 imprisonment in the county jail, the sheriff shall transfer the person to a youth correction facility  
 12 for physical custody as provided in ORS 420.011 (3).

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

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

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

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

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

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

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

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

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

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

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

43 [(9) *If a defendant is transferred under subsection (5) of this section, the defendant shall also be*  
 44 *transferred after a resentencing on the same charges resulting from an appellate decision or a post-*  
 45 *conviction relief proceeding or for any other reason, even if the defendant is 20 years of age or older*

1 at the time of the resentencing.]

2 [(10) For the purposes of determining the person’s age at the time of committing an offense under  
3 this section:]

4 [(a) If the person is convicted of two or more offenses occurring on different days, the person’s age  
5 shall be calculated using the earliest date.]

6 [(b) If the person is convicted of an offense occurring within a range of dates, the person’s age shall  
7 be calculated using the date at the beginning of the range.]

8 **SECTION 3.** ORS 137.705 is amended to read:

9 137.705. (1)(a) As used in this section and ORS 137.707:

10 (A) “Charged” means the filing of an accusatory instrument in a court of criminal jurisdiction  
11 **alleging the commission of an offense listed in ORS 137.707.**

12 (B) “Detention facility” has the meaning given that term in ORS 419A.004.

13 (C) “Prosecuted” includes pretrial and trial procedures, requirements and limitations provided  
14 for in criminal cases.

15 (b) Unless otherwise provided in ORS 137.707, ORS chapters 137 and 138 apply to proceedings  
16 under ORS 137.707.

17 **(2)(a) Notwithstanding ORS 419B.100 and 419C.005, a person 15, 16 or 17 years of age at  
18 the time of committing the offense may be charged with the commission of an offense listed  
19 in ORS 137.707 and may be prosecuted as an adult.**

20 **(b) The district attorney shall notify the juvenile court and the juvenile department when  
21 a person under 18 years of age is charged with an offense listed in ORS 137.707.**

22 **(c) The filing of an accusatory instrument in a criminal court under ORS 137.707 divests  
23 the juvenile court of jurisdiction in the matter if juvenile court jurisdiction is based on the  
24 conduct alleged in the accusatory instrument or any conduct arising out of the same act or  
25 transaction. Upon receiving notice from the district attorney under paragraph (b) of this  
26 subsection, the juvenile court shall dismiss, without prejudice, the juvenile court proceeding  
27 and enter any order necessary to transfer the matter or transport the person to the criminal  
28 court for further proceedings. Nothing in this paragraph affects the authority or jurisdiction  
29 of the juvenile court with respect to other matters or conduct.**

30 [(2)(a)] **(3)(a) [If the juvenile court enters an order of waiver under ORS 419C.349 (1)(a), the person  
31 waived may be charged with the commission of an offense listed in ORS 137.707 and may be prosecuted  
32 as an adult. The person may ] A person charged with a crime under ORS 137.707 who is 16 or  
33 17 years of age shall be detained in custody [only] in a detention facility, unless the [person is 16  
34 or 17 years of age and the] director of the county juvenile department and the sheriff agree to detain  
35 the person in a jail or other place where adults are detained. A person detained in accordance with  
36 this paragraph is subject to release on the same terms and conditions as for adults.**

37 **(b) If a person [waived under ORS 419C.349 (1)(a)] charged with a crime under ORS 137.707  
38 is under 16 years of age, the person may not be detained before conviction, or after conviction but  
39 before execution of the sentence, in a jail or other place where adults are detained.**

40 **SECTION 4.** ORS 137.707 is amended to read:

41 137.707. (1)(a) **Notwithstanding any other provision of law, when a person charged with  
42 aggravated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this  
43 section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is  
44 committed on or after April 1, 1995, or when a person charged with an offense listed in sub-  
45 section (4)(b) of this section is 15, 16 or 17 years of age at the time the offense is committed,**

1 and the offense is committed on or after October 4, 1997, or when a person charged with the  
2 offense described in subsection (4)(c) of this section is 15, 16 or 17 years of age at the time  
3 the offense is committed and the offense is committed on or after January 1, 2008, the person  
4 shall be prosecuted as an adult in criminal court.

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

9 [(1)] (2) When a person [*waived under ORS 419C.349 (1)(a)*] charged under this section is  
10 convicted of an offense listed in subsection (4) of this section, the court shall impose at least the  
11 presumptive term of imprisonment provided for the offense in subsection (4) of this section. The  
12 court may impose a greater presumptive term if otherwise permitted by law, but may not impose a  
13 lesser term. The person is not, during the service of the term of imprisonment, eligible for release  
14 on post-prison supervision or any form of temporary leave from custody. The person is not eligible  
15 for any reduction in, or based on, the minimum sentence for any reason under ORS 421.121 or any  
16 other provision of law. [*The person is eligible for a hearing and conditional release under ORS*  
17 *420A.203 and 420A.206.*]

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

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

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



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

- 1 (G) Assault in the first
- 2 degree, as defined
- 3 in ORS 163.185.....90 months
- 4 (H) Assault in the second
- 5 degree, as defined
- 6 in ORS 163.175.....70 months
- 7 (I) Kidnapping in the first
- 8 degree, as defined in
- 9 ORS 163.235.....90 months
- 10 (J) Kidnapping in the second
- 11 degree, as defined in
- 12 ORS 163.225.....70 months
- 13 (K) Rape in the first degree,
- 14 as defined in ORS 163.375....100 months
- 15 (L) Rape in the second
- 16 degree, as defined in
- 17 ORS 163.365.....75 months
- 18 (M) Sodomy in the first
- 19 degree, as defined in
- 20 ORS 163.405.....100 months
- 21 (N) Sodomy in the second
- 22 degree, as defined in
- 23 ORS 163.395.....75 months
- 24 (O) Unlawful sexual
- 25 penetration in the first
- 26 degree, as defined
- 27 in ORS 163.411.....100 months
- 28 (P) Unlawful sexual
- 29 penetration in the
- 30 second degree, as
- 31 defined in ORS 163.408. ....75 months
- 32 (Q) Sexual abuse in the first
- 33 degree, as defined in
- 34 ORS 163.427.....75 months
- 35 (R) Robbery in the first
- 36 degree, as defined in
- 37 ORS 164.415.....90 months
- 38 (S) Robbery in the second
- 39 degree, as defined in
- 40 ORS 164.405.....70 months
- 41 (b)(A) Arson in the first degree,
- 42 as defined in ORS 164.325,
- 43 when the offense represented
- 44 a threat of serious
- 45 physical injury. ....90 months

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

11  
12

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

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

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

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

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

25 (ii) Set forth in a memorandum any observations and recommendations that the court deems  
26 appropriate; **and**

27 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
28 419C.067 and 419C.411[; and].

29 [(iv) Enter an order providing that all court records of the case are subject to the same limitations  
30 on inspection, copying and disclosure of records, reports and materials as those set forth under ORS  
31 419A.255.]

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

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

35 (ii) Set forth in a memorandum any observations and recommendations that the court deems  
36 appropriate; **and**

37 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
38 419C.067 and 419C.411[; and].

39 [(iv) Enter an order providing that all court records of the case are subject to the same limitations  
40 on inspection, copying and disclosure of records, reports and materials as those set forth under ORS  
41 419A.255.]

42 (6) When a person is charged under this section, other offenses based on the same act or  
43 transaction shall be charged as separate counts in the same accusatory instrument and consolidated  
44 for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection  
45 (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by



1 the joinder and consolidation of offenses, the court may order an election or separate trials of  
 2 counts or provide whatever other relief justice requires.

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

8 (b) If a person charged and tried as provided in subsection (6) of this section is not found guilty  
 9 of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one  
 10 of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349  
 11 [(1)(b)], the court, upon motion of the district attorney, shall hold a hearing to determine whether  
 12 to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether  
 13 to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court  
 14 retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If  
 15 the court does not retain jurisdiction, the court shall:

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

17 (B) Set forth in a memorandum any observations and recommendations that the court deems  
 18 appropriate; **and**

19 (C) Enter an order transferring the case to the juvenile court for disposition under ORS  
 20 419C.067 and 419C.411[; and].

21 *[(D) Enter an order providing that all court records of the case are subject to the same limitations*  
 22 *on inspection, copying and disclosure of records, reports and materials as those set forth under ORS*  
 23 *419A.255.]*

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

25 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of  
 26 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-  
 27 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the  
 28 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,  
 29 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first  
 30 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS  
 31 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice  
 32 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700  
 33 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)  
 34 of this section and finds that a substantial and compelling reason under the rules of the Oregon  
 35 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under  
 36 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and  
 37 any other statute [*and is eligible for a hearing and conditional release under ORS 420A.203 and*  
 38 *420A.206*].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (B) That, if the defendant represented by words or conduct that the defendant was armed with  
 29 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-  
 30 nificant physical injury;

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

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

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

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

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

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

45 (D) That the defendant was no more than five years older than the victim at the time of the

1 offense;

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

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

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

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

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

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

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

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

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

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

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

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

24 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);

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

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

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

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

29 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

30 (g) Rape in the third degree, as defined in ORS 163.355;

31 (h) Sodomy in the third degree, as defined in ORS 163.385;

32 (i) Sexual abuse in the second degree, as defined in ORS 163.425;

33 (j) Stalking, as defined in ORS 163.732;

34 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person  
35 felony under the rules of the Oregon Criminal Justice Commission;

36 (L) Arson in the first degree, as defined in ORS 164.325;

37 (m) Robbery in the third degree, as defined in ORS 164.395;

38 (n) A bias crime in the first degree, as defined in ORS 166.165;

39 (o) Promoting prostitution, as defined in ORS 167.012; and

40 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)  
41 of this subsection.

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

1 (6) As used in this section:

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

3 (A) A juvenile court adjudication finding a person within the court’s jurisdiction under ORS  
4 419C.005, if the person was at least 15 years of age at the time the person committed the offense  
5 that brought the person within the jurisdiction of the juvenile court. “Conviction” does not include  
6 a juvenile court adjudication described in this subparagraph if the person successfully asserted the  
7 defense set forth in ORS 419C.522.

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

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

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

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

18 (B) Causes a serious and temporary disfigurement;

19 (C) Causes a protracted disfigurement; or

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

21 **SECTION 6.** ORS 144.185 is amended to read:

22 144.185. Before making a determination regarding a prisoner’s release on parole as provided by  
23 ORS 144.125 [or 144.397], the State Board of Parole and Post-Prison Supervision may cause to be  
24 brought before it current records and information regarding the prisoner, including:

25 (1) Any relevant information which may be submitted by the prisoner, the prisoner’s attorney,  
26 the victim of the crime, the Department of Corrections, or by other persons;

27 (2) The presentence investigation report specified in ORS 144.791 or if no such report has been  
28 prepared, a report of similar content prepared by institutional staff;

29 (3) The reports of any physical, mental and psychiatric examinations of the prisoner;

30 (4) The prisoner’s parole plan; and

31 (5) Other relevant information concerning the prisoner as may be reasonably available.

32 **SECTION 7.** ORS 161.610 is amended to read:

33 161.610. (1) As used in this section, “firearm” has the meaning given that term in ORS 166.210.

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

39 (3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise pro-  
40 vided in subsection (6) of this section, if a defendant is convicted of a felony having as an element  
41 the defendant’s use or threatened use of a firearm during the commission of the crime, the court  
42 shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section.  
43 Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall  
44 any person punishable under this section become eligible for work release, parole, temporary leave  
45 or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent

1 to any reduction of imprisonment granted for good time served or time credits earned under ORS  
 2 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the  
 3 court.

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

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

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

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

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

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

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

22 (6) When a defendant who is convicted of a felony having as an element the defendant's use or  
 23 threatened use of a firearm during the commission of the crime is a person who was waived **from**  
 24 **juvenile court** under ORS 137.707 (5)(b)(A), 419C.349 [(1)(b)], 419C.352, 419C.364 or 419C.370, the  
 25 court is not required to impose a minimum term of imprisonment under this section.

26 **SECTION 8.** ORS 161.620 is amended to read:

27 161.620. Notwithstanding any other provision of law, a sentence imposed upon any person  
 28 waived **from the juvenile court** under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not in-  
 29 clude any sentence of death or life imprisonment without the possibility of release or parole nor  
 30 imposition of any mandatory minimum sentence except that a mandatory minimum sentence under:

31 [(1) ORS 137.707 shall be imposed, except as provided in ORS 137.712;]

32 [(2)] (1) ORS 163.105 (1)(c) shall be imposed; and

33 [(3)] (2) ORS 161.610 may be imposed.

34 **SECTION 9.** ORS 163.105 is amended to read:

35 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

36 (1)(a) Except as otherwise provided in ORS 137.707, when a defendant is convicted of aggravated  
 37 murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150, to  
 38 death, life imprisonment without the possibility of release or parole or life imprisonment.

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

44 (c) If sentenced to life imprisonment, the court shall order that the defendant shall be confined  
 45 for a minimum of 30 years without possibility of parole, [or] release to post-prison supervision [except

1 *as provided in ORS 144.397*], *[and without the possibility of]* release on work release or any form of  
 2 temporary leave or employment at a forest or work camp.

3 (2) At any time after completion of a minimum period of confinement pursuant to subsection  
 4 (1)(c) of this section, the State Board of Parole and Post-Prison Supervision, upon the petition of a  
 5 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated  
 6 within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be re-  
 7 habilitated within a reasonable period of time. At the hearing, the prisoner has:

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

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

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

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

23 (4) If the board denies the relief sought in the petition, the board shall determine the date of the  
 24 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS  
 25 144.285.

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

29 **SECTION 10.** ORS 163.115 is amended to read:

30 163.115. (1) Except as provided in ORS 163.095, 163.118 and 163.125, criminal homicide consti-  
 31 tutes murder in the second degree:

32 (a) When it is committed intentionally, except that it is an affirmative defense that, at the time  
 33 of the homicide, the defendant was under the influence of an extreme emotional disturbance;

34 (b) When it is committed by a person, acting either alone or with one or more persons, who  
 35 commits or attempts to commit any of the following crimes and in the course of and in furtherance  
 36 of the crime the person is committing or attempting to commit, or during the immediate flight  
 37 therefrom, the person, or another participant if there be any, causes the death of a person other  
 38 than one of the participants:

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

40 (B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

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

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

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

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

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

- 1 (H) Any felony sexual offense in the first degree defined in this chapter;
- 2 (I) Compelling prostitution as defined in ORS 167.017; or
- 3 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
- 4 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
- 5 14 years of age; or
- 6 (c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to
- 7 the value of human life, causes the death of a child under 14 years of age or a dependent person,
- 8 as defined in ORS 163.205, and:
- 9 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-
- 10 tim or another child under 14 years of age or a dependent person; or
- 11 (B) The person causes the death by neglect or maltreatment.
- 12 (2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section
- 13 need not allege specific incidents of assault or torture.
- 14 (3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the
- 15 defendant:
- 16 (a) Was not the only participant in the underlying crime;
- 17 (b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause
- 18 or aid in the commission thereof;
- 19 (c) Was not armed with a dangerous or deadly weapon;
- 20 (d) Had no reasonable ground to believe that any other participant was armed with a dangerous
- 21 or deadly weapon; and
- 22 (e) Had no reasonable ground to believe that any other participant intended to engage in con-
- 23 duct likely to result in death.
- 24 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that
- 25 the victim was a dependent person who was at least 18 years of age and was under care or treat-
- 26 ment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person
- 27 or the guardian of the dependent person.
- 28 (5) Except as otherwise provided in ORS [144.397 and] 163.155:
- 29 (a) A person convicted of murder in the second degree, who was at least 15 years of age at the
- 30 time of committing the murder, shall be punished by imprisonment for life.
- 31 (b) When a defendant is convicted of murder in the second degree under this section, the court
- 32 shall order that the defendant shall be confined for a minimum of 25 years without possibility of
- 33 parole, release to post-prison supervision, release on work release or any form of temporary leave
- 34 or employment at a forest or work camp.
- 35 (c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
- 36 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
- 37 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
- 38 within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabili-
- 39 tated within a reasonable period of time. At the hearing the prisoner has:
- 40 (A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation
- 41 within a reasonable period of time;
- 42 (B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented
- 43 by legal counsel, appointed by the board, at board expense; and
- 44 (C) The right to a subpoena upon a showing of the general relevance and reasonable scope of
- 45 the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by

1 the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

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

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

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

16 (6) As used in this section:

17 (a) "Assault" means the intentional, knowing or reckless causation of physical injury to another  
 18 person. "Assault" does not include the causation of physical injury in a motor vehicle accident that  
 19 occurs by reason of the reckless conduct of a defendant.

20 (b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545 or 163.547 or a failure  
 21 to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or  
 22 welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to  
 23 replace or affect the duty or standard of care required under ORS chapter 677.

24 (c) "Pattern or practice" means one or more previous episodes.

25 (d) "Torture" means the intentional infliction of intense physical pain upon an unwilling victim  
 26 as a separate objective apart from any other purpose.

27 **SECTION 11.** ORS 163.155 is amended to read:

28 163.155. (1) When a defendant, who was at least 15 years of age at the time of committing the  
 29 murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a) and the defendant  
 30 knew that the victim was pregnant, the defendant shall be sentenced to life imprisonment without  
 31 the possibility of release or parole [*if the person was at least 18 years of age at the time of committing*  
 32 *the offense*] or to life imprisonment. The court shall conduct a sentencing proceeding to determine  
 33 whether the defendant shall be sentenced to life imprisonment without the possibility of release or  
 34 parole as described in subsection (4) of this section or to life imprisonment as described in sub-  
 35 section (5) of this section. If the defendant waives all rights to a jury sentencing proceeding, the  
 36 court shall conduct the sentencing proceeding as the trier of fact. The procedure for the sentencing  
 37 proceeding, whether before a court or a jury, shall follow the procedure of ORS 163.150 (1)(a), as  
 38 modified by this section.

39 (2) Following the presentation of evidence and argument under subsection (1) of this section, the  
 40 court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment  
 41 without the possibility of release or parole as described in subsection (4) of this section, unless after  
 42 considering all of the evidence submitted, 10 or more members of the jury find there are sufficient  
 43 mitigating circumstances to warrant life imprisonment with the possibility of release or parole as  
 44 described in subsection (5) of this section. If 10 or more members of the jury do not find there are  
 45 sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or



1 parole, the trial court shall sentence the defendant to life imprisonment without the possibility of  
 2 release or parole as described in subsection (4) of this section. If 10 or more members of the jury  
 3 find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility  
 4 of release or parole, the trial court shall sentence the defendant to life imprisonment as described  
 5 in subsection (5) of this section.

6 (3) Nothing in this section precludes the court from sentencing the defendant to life  
 7 imprisonment, as described in subsection (5) of this section, or life imprisonment without the possi-  
 8 bility of release or parole, as described in subsection (4) of this section, pursuant to a stipulation  
 9 of sentence or stipulation of sentencing facts agreed to and offered by both parties if the defendant  
 10 waives all rights to a jury sentencing proceeding.

11 (4) A sentence of life imprisonment without the possibility of release or parole under this section  
 12 may not be suspended, deferred or commuted by any judicial officer, and the State Board of Parole  
 13 and Post-Prison Supervision may neither parole the prisoner nor reduce the period of confinement  
 14 in any manner whatsoever. The Department of Corrections or any executive official may not permit  
 15 the prisoner to participate in any sort of release or furlough program.

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

20 (6) At any time after completion of the minimum period of confinement pursuant to subsection  
 21 (5) of this section, the board, upon the petition of a prisoner so confined, shall hold a hearing to  
 22 determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole  
 23 issue shall be whether the prisoner is likely to be rehabilitated within a reasonable period of time.  
 24 The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS  
 25 chapter 183, except that:

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

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

30 (c) The prisoner has the right to a subpoena upon a showing of the general relevance and rea-  
 31 sonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner  
 32 must be issued by the board pursuant to rules adopted by the board.

33 (7) If, upon hearing all of the evidence, the board, upon a unanimous vote of three board mem-  
 34 bers or, if the chairperson requires all voting members to participate, a unanimous vote of all voting  
 35 members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's  
 36 confinement should be changed to life imprisonment with the possibility of parole, release on post-  
 37 prison supervision or work release, it shall enter an order to that effect and the order shall convert  
 38 the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release  
 39 on post-prison supervision or work release and may set a release date. Otherwise the board shall  
 40 deny the relief sought in the petition.

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

44 **SECTION 12.** ORS 163A.130 is amended to read:

45 163A.130. (1) A person required to report as a sex offender under ORS 163A.025 (1)(a), (b) or (c),

1 or required to report as a sex offender under the laws of another state as a result of an adjudication  
 2 in an Oregon juvenile court, may file a petition for an order relieving the person of the obligation  
 3 to report. If the person resides:

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

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

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

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

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

15 (b) A Class C felony sex crime if committed by an adult, the petition may be filed no sooner than  
 16 30 days before the termination of juvenile court jurisdiction over the person or, if the person is  
 17 placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than 30 days be-  
 18 fore the person is discharged from the jurisdiction of the board.

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

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

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

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

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

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

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

33 (d) Whether the act was premeditated;

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

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

37 (g) The vulnerability of the victim;

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

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

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

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

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

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

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

5 (C) The person’s compliance with court, board or supervision requirements regarding treatment;  
 6 and

7 (D) The quality and thoroughness of the treatment program;

8 (m) The person’s academic and employment history;

9 (n) The person’s use of drugs or alcohol before and after the adjudication;

10 (o) The person’s history of public or private indecency;

11 (p) The person’s compliance with and success in completing the terms of supervision;

12 (q) The results of psychological examinations of the person;

13 (r) The protection afforded the public by the continued existence of the records; and

14 (s) Any other relevant factors.

15 (5) In a hearing under this section, the juvenile court may receive testimony, reports and other  
 16 evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and  
 17 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this  
 18 section. As used in this subsection, “relevant evidence” has the meaning given that term in ORS  
 19 40.150.

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

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

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

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

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

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

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

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

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

44 (11) If a person commits an act **that could be charged as a sex crime listed in ORS 137.707**  
 45 *[for which the person could be waived under ORS 419C.349 (1)(a)]* and the person is 15, 16 or 17 years

1 of age at the time the act is committed, the state and the person may stipulate that the person may  
 2 not petition for relief under this section as part of an agreement that the **person be subject to the**  
 3 **jurisdiction of the juvenile court rather than being prosecuted as an adult under ORS 137.707**  
 4 [*state not file a motion requesting waiver under ORS 419C.349 (1)(a)*].

5 (12) When a petition is filed under subsection (2)(b) of this section before the termination of ju-  
 6 venile court or board jurisdiction, the court shall appoint suitable counsel to represent the person  
 7 for purposes of the petition described in this section if the appointment of counsel is requested by  
 8 the person or, if the person is under 18 years of age, by the parent or guardian of the person. Ap-  
 9 pointment of counsel under this subsection is subject to ORS 419C.200, 419C.206 and 419C.209.

10 **SECTION 13.** ORS 163A.135 is amended to read:

11 163A.135. (1) Except as provided in subsection (7) of this section, a person required to report  
 12 under ORS 163A.025 (1)(d) may file a petition in the juvenile court for an order relieving the person  
 13 of the duty to report. If the person resides:

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

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

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

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

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

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

- 29 (a) The juvenile court petition;
- 30 (b) The dispositional report to the court;
- 31 (c) The order of adjudication or jurisdiction;
- 32 (d) Any other relevant court documents;
- 33 (e) The police report relating to the act for which reporting is required;
- 34 (f) The order terminating jurisdiction for the act for which reporting is required; and
- 35 (g) The evaluation and treatment records or reports of the person that are related to the act for  
 36 which reporting is required.

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

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

42 (6) If a person who files a petition under this section is required to report as a sex offender for  
 43 having committed an act that if committed in this state could have subjected the person to **prose-**  
 44 **cution as an adult under ORS 137.707** [*waiver under ORS 419C.349 (1)(a)*], the court may not grant  
 45 the petition notwithstanding the fact that the person has met the burden of proof established in

1 subsection (4) of this section unless the court determines that to do so is in the interest of public  
2 safety.

3 (7) This section does not apply to a person who is required to register as a sex offender for life  
4 in the jurisdiction in which the offense occurred.

5 (8) In a hearing under this section, the court may receive testimony, reports and other evidence  
6 without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to  
7 40.585 if the evidence is relevant to the determination and findings required under this section. As  
8 used in this subsection, “relevant evidence” has the meaning given that term in ORS 40.150.

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

13 **SECTION 14.** ORS 339.317 is amended to read:

14 339.317. (1)(a) No later than five days after a person under 18 years of age is **charged with a**  
15 **crime under ORS 137.707 or is** waived under ORS 419C.349, 419C.352 or 419C.364, the district at-  
16 torney or city attorney, if the person is waived to municipal court or, in the case of a juvenile de-  
17 partment that has agreed to be responsible for providing the notice required under this section, the  
18 juvenile department shall give notice of the charge to the school administrator of the school at-  
19 tended by the person or to the school administrator of the school district in which the person re-  
20 sides. For purposes of this section, “school administrator” has the meaning given that term in ORS  
21 419A.305.

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

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

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

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

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

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

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

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

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

34 **SECTION 15.** ORS 339.319 is amended to read:

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

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

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

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

45 (C) The crime of conviction;

1 (D) The sentence imposed;

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

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

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

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

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

11 **SECTION 16.** ORS 339.321 is amended to read:

12 339.321. (1) No later than 15 days before the release or discharge of a person committed to the  
13 legal custody of the Department of Corrections or the supervisory authority of a county **under ORS**  
14 **137.707 or** following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370, the department  
15 or supervisory authority or, in the case of a juvenile department that has agreed to be responsible  
16 for providing the notice required under this section, the juvenile department shall notify the fol-  
17 lowing of the release or discharge if the person is under 21 years of age at the time of the release:

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

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

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

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

24 (b) The date of release or discharge;

25 (c) The person's address;

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

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

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

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

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

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

37 (4) As used in this section, "school administrator" has the meaning given that term in ORS  
38 419A.305.

39 **SECTION 17.** ORS 419C.005 is amended to read:

40 419C.005. (1) **Except as otherwise provided in ORS 137.707,** the juvenile court has exclusive  
41 original jurisdiction in any case involving a person who is under 18 years of age and who has  
42 committed an act that is a violation, or that if done by an adult would constitute a violation, of a  
43 law or ordinance of the United States or a state, county or city.

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

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

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

5 (a) The court dismisses a petition filed under this chapter or waives the case under ORS  
 6 419C.340. If jurisdiction is based on a previous adjudication, then dismissal or waiver of a later case  
 7 does not terminate jurisdiction under the previous case unless the court so orders.

8 (b) The court transfers jurisdiction of the case as provided in ORS 419C.053, 419C.056 and  
 9 419C.059.

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

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

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

17 **SECTION 18.** ORS 419C.050 is amended to read:

18 419C.050. **Except as otherwise provided in ORS 137.707**, if during the pendency of a proceed-  
 19 ing involving an allegation of a crime in any court other than a juvenile court it is ascertained that  
 20 the age of the person who is the subject of the proceeding is such that the matter is within the  
 21 exclusive jurisdiction of the juvenile court, it is the duty of the court in which the proceeding is  
 22 pending to transfer the proceeding to the juvenile court of the county in which the proceeding is  
 23 pending. The clerk of the court transferring the proceeding shall notify the clerk of the juvenile  
 24 court of the transfer.

25 **SECTION 19.** ORS 419C.346 is amended to read:

26 419C.346. If the juvenile court waives a youth to another court under ORS 419C.349 [(1)(b)] or  
 27 419C.370 for disposition as an adult, the juvenile court nevertheless may retain jurisdiction over the  
 28 youth's parents or guardians under ORS 419C.570. However, if the court enters an order of waiver  
 29 under ORS [419C.349 (1)(a) or] 419C.364, jurisdiction over the parents or guardians under ORS  
 30 419C.570 shall terminate.

31 **SECTION 20.** ORS 419C.349 is amended to read:

32 419C.349. (1) **The juvenile court, after a hearing** except as otherwise provided in ORS  
 33 419C.364 or 419C.370, **may waive a youth to a circuit, justice or municipal court of competent**  
 34 **jurisdiction for prosecution as an adult if** [*the juvenile court shall conduct a waiver hearing*  
 35 *when*]:

36 (a) **The youth is 15 years of age or older at the time of the commission of the alleged**  
 37 **offense;**

38 (b) **The youth, except as otherwise provided in ORS 419C.364 and 419C.370, is alleged to**  
 39 **have committed a criminal offense constituting:**

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

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

1 **(A) Murder under ORS 163.107 or 163.115 or any aggravated form thereof;**

2 [(A)] **(B)** A Class A or Class B felony;

3 [(B)] **(C)** Any of the following Class C felonies:

4 (i) Escape in the second degree under ORS 162.155;

5 (ii) Assault in the third degree under ORS 163.165;

6 (iii) Coercion under ORS 163.275 (1)(a);

7 (iv) Arson in the second degree under ORS 164.315; or

8 (v) Robbery in the third degree under ORS 164.395;

9 [(C)] **(D)** Any Class C felony in which the youth used or threatened to use a firearm; or

10 [(D)] **(E)** Any other [*crime that the state and the youth stipulate is subject to waiver.*] **felony or**  
 11 **misdemeanor if the youth and the state stipulate to the waiver;**

12 [(2) *After the hearing, the juvenile court may waive the youth to a circuit, justice or municipal court*  
 13 *of competent jurisdiction if:*]

14 [(a)] **(c)** The youth at the time of the alleged offense was of sufficient sophistication and matu-  
 15 rity to appreciate the nature and quality of the conduct involved; and

16 [(b)] **(d)** The juvenile court, after considering the following criteria, determines by a preponder-  
 17 ance of the evidence that retaining jurisdiction will not serve the best interests of the youth and  
 18 of society and therefore is not justified:

19 (A) The amenability of the youth to treatment and rehabilitation given the techniques, facilities  
 20 and personnel for rehabilitation available to the juvenile court and to the criminal court that would  
 21 have jurisdiction after transfer;

22 (B) The protection required by the community, given the seriousness of the offense alleged[, *and*  
 23 *whether the youth can be safely rehabilitated under the jurisdiction of the juvenile court*];

24 (C) The aggressive, violent, premeditated or willful manner in which the offense was alleged to  
 25 have been committed;

26 (D) The previous history of the youth, including:

27 (i) Prior treatment efforts and out-of-home placements; and

28 (ii) The physical, emotional and mental health of the youth;

29 (E) The youth's prior record of acts that would be crimes if committed by an adult;

30 (F) The gravity of the loss, damage or injury caused or attempted during the offense;

31 (G) The prosecutive merit of the case against the youth; and

32 (H) The desirability of disposing of all cases in one trial if there were adult co-offenders.

33 [(3)(a) *The victim of the alleged offense has the right to appear at a hearing under this section and*  
 34 *to provide the court with any information reasonably related to the court's determination.*]

35 [(b)] **(2)** Notwithstanding ORS 419A.255, the district attorney may provide to the victim, at the  
 36 request of the victim and pursuant to a protective order, a copy of the court's written waiver  
 37 findings and determination, if any, regardless of whether the victim appeared at the hearing or  
 38 presented information to the court.

39 [(4) *The right to counsel, and the appointment of counsel under ORS 419C.200, applies to a hearing*  
 40 *under this section.*]

41 [(5) *The state has the right to have at least one psychiatrist or licensed psychologist of its selection*  
 42 *examine the youth concerning the determination of whether to waive the youth under this section.*]

43 **SECTION 21.** ORS 419C.352 is amended to read:

44 419C.352. (1) The juvenile court, after a hearing, except as provided in ORS 419C.364 or  
 45 419C.370, may waive a youth under 15 years of age at the time the act was committed to circuit



1 court for prosecution as an adult if:

2 (a) The youth is represented by counsel during the waiver proceedings;

3 (b) The juvenile court makes the findings required under ORS 419C.349 [(2)] **(1)(c) and (d)**; and

4 (c) The youth is alleged to have committed an act or acts that if committed by an adult would  
5 constitute one or more of the following crimes:

6 (A) Murder or any aggravated form thereof under ORS 163.095, 163.107 or 163.115;

7 (B) Rape in the first degree under ORS 163.375 (1)(a);

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

9 (D) Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).

10 (2) Notwithstanding ORS 419A.255, the district attorney may provide to the victim, at the re-  
11 quest of the victim and pursuant to a protective order, a copy of the court's written waiver findings  
12 and determination, if any, regardless of whether the victim appeared at the hearing or presented  
13 information to the court.

14 **SECTION 22.** ORS 419C.355 is amended to read:

15 419C.355. The juvenile court shall make a specific, detailed, written finding of fact to support  
16 [the findings] **any determination** made under ORS 419C.349 [(2)] **(1)(c) and (d)**.

17 **SECTION 23.** ORS 419C.358 is amended to read:

18 419C.358. (1) [*Except as otherwise provided in subsection (2) of this section and ORS 137.707 (6),*]  
19 When a person is waived for prosecution as an adult, the person shall be waived only on the actual  
20 charges justifying the waiver under ORS 419C.349 **(1)(b)** or 419C.352, as the case may be.

21 (2) Any nonwaivable charges arising out of the same act or transaction as the waivable charge  
22 shall be consolidated with the waivable charge **for purposes of conducting the adjudicatory**  
23 **hearing on the nonwaivable charges.**

24 **SECTION 24.** ORS 419C.361 is amended to read:

25 419C.361. (1)[(a)] Notwithstanding that the juvenile court has waived the case under ORS  
26 419C.349, 419C.352, **419C.355, 419C.358, 419C.364, 419C.367 and** [or] 419C.370, the court of waiver  
27 shall return the case to the juvenile court unless an accusatory instrument is filed in the court of  
28 waiver alleging, in the case of a person under [15] **16** years of age, a crime listed in ORS 419C.352  
29 or, in the case of any other person, a crime described in ORS 419C.349 **(1)(b)**. **Also in the case of**  
30 **a waived person,**

31 [(b)] when a trial has been held in the court of waiver upon an accusatory instrument alleging  
32 a crime listed in ORS 419C.349 (1)(b) or 419C.352, as the case may be, and the person is found guilty  
33 of any lesser included offense that is not itself a waivable offense, the trial court shall not sentence  
34 the defendant therein, but the trial court shall order a presentence report to be made in the case,  
35 shall set forth in a memorandum such observations as the court may make regarding the case and  
36 shall then return the case to the juvenile court in order that the juvenile court make disposition in  
37 the case based upon the guilty finding in the court of waiver. Disposition shall be as if the juvenile  
38 court itself had found the youth to be in its jurisdiction pursuant to ORS 419C.005. The records and  
39 consequences of the case shall, in all respects, be as if the juvenile court itself had found the youth  
40 to be in its jurisdiction pursuant to ORS 419C.005. When the person is found guilty of a nonwaivable  
41 charge that was consolidated with a waivable charge under ORS 419C.358, the case shall be re-  
42 turned to the juvenile court for disposition as provided in this subsection for lesser included of-  
43 fenses.

44 (2) Nothing in this section or ORS 419C.358 applies to a waiver under ORS 419C.364 or 419C.370.

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

1       420.011. (1) Except as provided in subsections (2), (3) and (4) of this section, admissions to the  
2 youth correction facilities are limited to adjudicated youths who are at least 12 but less than 20  
3 years of age, found by the juvenile court to have committed an act that if committed by an adult  
4 would constitute aggravated murder, murder, a felony or a Class A misdemeanor and placed in the  
5 legal custody of the Oregon Youth Authority. An adjudicated youth admitted to a youth correction  
6 facility may not be transferred by administrative process to any penal or correctional institution.

7       (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS  
8 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority  
9 or the director's designee, persons who are committed to the Department of Corrections under ORS  
10 137.124 and meet the requirements of ORS 137.124 (5) **or** (7) may be temporarily assigned to a youth  
11 correction facility as provided by ORS 137.124 (5) **or** (7). A person assigned on such a temporary  
12 basis remains within the legal custody of the Department of Corrections and such reassignment is  
13 subject to termination by the Director of the Oregon Youth Authority by referring the person back  
14 to the Department of Corrections as provided in paragraph (b) of this subsection.

15       (b) After a person is transferred to the physical custody of the youth authority under ORS  
16 137.124 (5) **or** (7), the Director of the Oregon Youth Authority may refer the person back to the  
17 Department of Corrections for physical custody and placement if the director, after consulting with  
18 the Department of Corrections, determines that the person is at least 18 years of age and:

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

21       (B) Is not likely, in the foreseeable future, to benefit from the rehabilitation and treatment pro-  
22 grams administered by the youth authority and is appropriate for placement in a Department of  
23 Corrections institution.

24       (3) Any person under 18 years of age at the time of committing the crime and under 20 years  
25 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349 [(1)(b)],  
26 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is  
27 sentenced to a term of imprisonment in the custody of the Department of Corrections, and any per-  
28 son under 16 years of age who after waiver under ORS 419C.349 [(1)(b)], 419C.352, 419C.364 or  
29 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of  
30 imprisonment in the county jail, shall be temporarily assigned to a youth correction facility by the  
31 Department of Corrections, or by the sheriff to whose custody the person has been committed, pur-  
32 suant to ORS 137.124 (6). The director shall designate the appropriate youth correction facility or  
33 schools for such assignment. A person assigned to a youth correction facility under ORS 137.124 (6)  
34 and this subsection remains within the legal custody of the Department of Corrections or sheriff to  
35 whose custody the person was committed. The assignment of such a person to the youth correction  
36 facility is subject, when the person is 18 years of age or older, to termination by the director by  
37 referring the person back to the Department of Corrections or the sheriff to serve the balance of  
38 the person's sentence. Assignment to a youth correction facility pursuant to ORS 137.124 (6) and this  
39 subsection, if not terminated earlier by the director, shall terminate upon the person's attaining the  
40 age specified in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may  
41 retain legal and physical custody of the person, and the person shall be referred to the Department  
42 of Corrections or the sheriff having legal custody of the person to serve the balance of the person's  
43 sentence.

44       (4)(a) Admission to youth correction facilities for adjudicated youths who have been previously  
45 adjudicated, but who have not been previously placed in custody of a youth correction facility as a

1 result of the adjudication, is limited to adjudicated youths under 19 years of age.

2 (b) Notwithstanding paragraph (a) of this subsection, admission to youth correction facilities for  
 3 adjudicated youths who have been previously adjudicated for an act that, if committed by an adult,  
 4 would constitute a crime listed in ORS 137.707 (4), but who have not been previously placed in  
 5 custody of a youth correction facility as a result of the adjudication, is limited to adjudicated youths  
 6 under 20 years of age.

7 (5)(a) Whenever a person committed to the custody of the Department of Corrections is tempo-  
 8 rarily assigned to a youth correction facility pursuant to this section, the youth authority may pro-  
 9 vide programs and treatment for the person, and may adopt rules relating to conditions of  
 10 confinement at the youth correction facility, as the youth authority determines are appropriate.  
 11 However, the person remains subject to laws and rules of the State Board of Parole and Post-Prison  
 12 Supervision relating to parole.

13 (b) Information or records prepared or maintained by the youth authority relating to a person  
 14 committed to the custody of the Department of Corrections and temporarily assigned to a youth  
 15 correction facility pursuant to this section are confidential and exempt from disclosure if the public  
 16 interest in confidentiality clearly outweighs the public interest in disclosure and:

17 (A) The disclosure would interfere with the rehabilitation or treatment of the person, of another  
 18 person committed to the custody of the Department of Corrections and temporarily assigned to a  
 19 youth correction facility under this section or of an adjudicated youth; or

20 (B) The disclosure would substantially prejudice or prevent the carrying out of the functions of  
 21 the youth authority.

22 (c) Nothing in this section prohibits the youth authority from disclosing information or records  
 23 relating to a person committed to the custody of the Department of Corrections and temporarily  
 24 assigned to a youth correction facility pursuant to this section to counsel representing the person  
 25 or to the district attorney or assistant district attorney general representing the state, for use in  
 26 connection with the person's criminal, juvenile dependency or juvenile delinquency proceeding.

27 *[(6) For the purposes of determining the person's age at the time of committing an offense under  
 28 this section:]*

29 *[(a) If the person is convicted of two or more offenses occurring on different days, the person's age  
 30 shall be calculated using the earliest date.]*

31 *[(b) If the person is convicted of an offense occurring within a range of dates, the person's age shall  
 32 be calculated using the date at the beginning of the range.]*

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

34 420.081. (1) The total population of adjudicated youths confined in the youth correction facilities  
 35 may not exceed the design capacity of the facilities designated for close custody purposes by the  
 36 Director of the Oregon Youth Authority. The total population limit shall include adjudicated youths  
 37 in the youth correction facility who were waived by the juvenile court to be prosecuted as adults  
 38 **or who were prosecuted as adults under ORS 137.707.**

39 (2) The director by rule shall determine reasonable standards for care and treatment of adjudi-  
 40 cated youths housed in youth correction facilities. Within the total limit established under sub-  
 41 section (1) of this section, the Director of the Oregon Youth Authority shall establish and impose  
 42 a maximum allowable population level for each youth correction facility. The maximum allowable  
 43 population shall not exceed the design capacity for the facility and shall be further limited by the  
 44 ability of the facility to meet the standard of care and treatment established by rule under this  
 45 subsection, protect communities, hold adjudicated youths accountable for their behavior and improve

1 the competency of adjudicated youths to become responsible and productive members of their com-  
 2 munities.

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

6 (4) After conferring with the juvenile court judges, the director shall develop and implement by  
 7 rule, a method of controlling admissions to the youth correction facilities so as not to exceed max-  
 8 imum levels determined under subsections (1) and (2) of this section.

9 **SECTION 27.** ORS 420A.203 is amended to read:

10 420A.203. (1)(a) This section and ORS 420A.206 apply only to a person who[:]

11 [(A)] was under 18 years of age at the time of the commission of the offense for which the person  
 12 was sentenced to a term of imprisonment, who committed the offense on or after June 30, 1995, and  
 13 who was:

14 [(i)] (A) Sentenced to a term of imprisonment of at least 24 months following waiver under ORS  
 15 419C.349 [(1)(b)], 419C.352, 419C.364 or 419C.370; or

16 [(ii)] (B) Sentenced to a term of imprisonment of at least 24 months under ORS 137.707 (5)(b)(A)  
 17 or (7)(b). [or 137.712; or]

18 [(B)(i)] Was under 18 years of age at the time of the commission of all offenses for which the person  
 19 was sentenced to a term of imprisonment;]

20 [(ii)] Is in the physical custody of the Oregon Youth Authority; and]

21 [(iii)] Has a projected release date, as determined by the Department of Corrections, that falls on  
 22 or after the person's 25th birthday and before the person's 27th birthday.]

23 (b) When a person described in paragraph [(a)(A)] (a) of this subsection has served one-half of  
 24 the sentence imposed [or when a person described in paragraph (a)(B) of this subsection attains 24  
 25 years and six months of age], the sentencing court shall determine what further commitment or dis-  
 26 position is appropriate as provided in this section. As used in this subsection and subsection (2) of  
 27 this section, "sentence imposed" means the total period of mandatory incarceration imposed for all  
 28 convictions resulting from a single prosecution or criminal proceeding not including any reduction  
 29 in the sentence under ORS 421.121 or any other statute.

30 (2)(a) No more than 120 days and not less than 60 days before the date on which a person has  
 31 served one-half of the sentence imposed [or attains 24 years and six months of age], the Oregon  
 32 Youth Authority or the Department of Corrections, whichever has physical custody of the person,  
 33 shall file in the sentencing court a notice and request that the court set a time and place for the  
 34 hearing required under this section. The youth authority or department shall serve the person with  
 35 a copy of the notice and request for hearing on or before the date of filing.

36 (b) Upon receiving the notice and request for a hearing under paragraph (a) of this subsection,  
 37 the sentencing court shall schedule a hearing for a date not more than 30 days after the date on  
 38 which the person will have served one-half of the sentence imposed [or attains 24 years and six  
 39 months of age], or such later date as is agreed upon by the parties.

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

41 (A) The person and[, if the person is under 18 years of age,] the person's parents;

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

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

45 (d) The court shall make reasonable efforts to notify the following of the time and place of the

1 hearing:

2 (A) The victim and[, *if the victim is under 18 years of age,*] the victim's parents or legal guardian;  
3 and

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

6 [*(e) Notwithstanding paragraph (b) of this subsection, the court may delay the hearing for good*  
7 *cause.*]

8 (3) In a hearing under this section:

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

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

13 (c) The district attorney represents the state.

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

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

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

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

28 (h) The hearing must be recorded.

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

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

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

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

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

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

44 (i) Has been rehabilitated and reformed;

45 (ii) Is not a threat to the safety of the victim, the victim's family or the community; and

- 1 (iii) Will comply with the conditions of release.
- 2 (b) In making the determination under this section, the court shall consider:
- 3 (A) The experiences and character of the person before and after commitment to the Oregon
- 4 Youth Authority or the Department of Corrections;
- 5 (B) The person's juvenile and criminal records;
- 6 (C) The person's mental, emotional and physical health;
- 7 (D) The gravity of the loss, damage or injury caused or attempted, during or as part of the
- 8 criminal act for which the person was convicted and sentenced;
- 9 (E) The manner in which the person committed the criminal act for which the person was con-
- 10 victed and sentenced;
- 11 (F) The person's efforts, participation and progress in rehabilitation programs since the person's
- 12 conviction;
- 13 (G) The results of any mental health or substance abuse treatment;
- 14 (H) Whether the person demonstrates accountability and responsibility for past and future con-
- 15 duct;
- 16 (I) Whether the person has made and will continue to make restitution to the victim and the
- 17 community;
- 18 (J) Whether the person will comply with and benefit from all conditions that will be imposed if
- 19 the person is conditionally released;
- 20 (K) The safety of the victim, the victim's family and the community;
- 21 (L) The recommendations of the district attorney, the Oregon Youth Authority and the Depart-
- 22 ment of Corrections; and
- 23 (M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Au-
- 24 thority, the Department of Corrections or the person.
- 25 (5) The court shall provide copies of its disposition order under subsection (4) of this section to
- 26 the parties, to the records supervisor of the correctional institution in which the person is
- 27 incarcerated and to the manager of the institution-based records office of the Department of Cor-
- 28 rections.
- 29 (6) The person or the state may appeal an order entered under this section. On appeal, the ap-
- 30 pellate court's review is limited to claims that:
- 31 (a) The disposition is not authorized under this section;
- 32 (b) The court failed to comply with the requirements of this section in imposing the disposition;
- 33 or
- 34 (c) The findings of the court are not supported by substantial evidence in the record.
- 35 [(7) A person described in subsection (1)(a)(B) of this section may waive a hearing under this sec-
- 36 tion.]
- 37 **SECTION 28.** ORS 419C.013 is amended to read:
- 38 419C.013. (1)(a) Except as otherwise provided in this subsection, a juvenile proceeding based on
- 39 allegations of jurisdiction under ORS 419C.005 shall commence in either the county where the youth
- 40 resides or the county in which the alleged act was committed.
- 41 (b) A juvenile proceeding described in paragraph (a) of this subsection that is subject to a
- 42 waiver hearing under ORS 419C.349 [(1)] shall commence in the county where the alleged act was
- 43 committed and may not be transferred under ORS 419C.050, 419C.053 or 419C.056 unless:
- 44 (A) The court determines that the case may not be waived under ORS 419C.349; or
- 45 (B) The state stipulates that it will not file a motion requesting waiver under ORS 419C.349

1 [(1)].

2 (2) Notwithstanding the provisions of ORS 34.320, an application for a writ of habeas corpus  
 3 brought by or on behalf of a person who has been committed or placed in a youth correction facility  
 4 which attacks the validity of the order of commitment shall be brought in the county in which the  
 5 court that entered the order of commitment is located.

6 **SECTION 29.** ORS 419C.153 is amended to read:

7 419C.153. (1) Except as provided in subsection (2) of this section, any youth ordered detained  
 8 under ORS 419C.145, 419C.150 and 419C.156 shall have a review hearing at least every 10 days, ex-  
 9 cluding Saturdays, Sundays and judicial holidays. At the review hearing the court shall determine  
 10 whether sufficient cause exists to require continued detention of the youth. In addition, the court  
 11 may review and may confirm, revoke or modify any order for the detention or release of the youth  
 12 under this section or ORS 419C.109, 419C.136, 419C.139, 419C.145, 419C.150 or 419C.156 and, in the  
 13 event that the youth is alleged to have committed an offense which if committed by an adult would  
 14 be a misdemeanor or Class C felony, may do so ex parte. Release of a youth may not be revoked,  
 15 however, except upon a finding that the youth may be detained under this section or ORS 419C.145,  
 16 419C.150 and 419C.156, and after a hearing is held in accordance with ORS 419C.109, 419C.136 and  
 17 419C.139.

18 (2)(a) Any youth detained under ORS 419C.145, 419C.150 and 419C.156 in whose case the state  
 19 has filed a request for a waiver hearing under ORS 419C.349 [(1)] shall have a review hearing every  
 20 30 days at which:

21 (A) The court shall require the parties to describe the efforts made toward expeditious case re-  
 22 solution, considering public safety and the youth’s continued placement in detention as paramount  
 23 concerns, and the court shall identify opportunities for judicial intervention to assist the parties  
 24 with resolution of any outstanding issues; and

25 (B) The court may, upon the request of the youth or at the discretion of the court, determine  
 26 whether sufficient cause exists to require continued detention of the youth. In addition, the court  
 27 may review and may confirm, revoke or modify any order for the detention or release of the youth  
 28 under this subsection or ORS 419C.109, 419C.136, 419C.139, 419C.145, 419C.150 or 419C.156. Release  
 29 of a youth may not be revoked, however, except upon a finding that the youth may be detained un-  
 30 der this section or ORS 419C.145, 419C.150 or 419C.156, and after a hearing is held in accordance  
 31 with ORS 419C.109, 419C.136 and 419C.139.

32 (b) Upon filing with the court of a written waiver signed by the youth and the youth’s counsel,  
 33 the court may waive the youth’s presence at a review hearing under this subsection.

34 (3) If a youth intends to request release at a review hearing under subsection (1) or (2) of this  
 35 section, the youth’s counsel must notify the district attorney of the youth’s intent to request release  
 36 at least five days prior to the date of the review hearing.

37 (4) If a victim requests, the district attorney or juvenile department shall notify the victim of a  
 38 review hearing under subsection (1) or (2) of this section.

39 **SECTION 30.** ORS 163.107 is amended to read:

40 163.107. (1) “Murder in the first degree” means murder in the second degree as defined in ORS  
 41 163.115 which is committed under, or accompanied by, any of the following circumstances:

42 (a) The defendant committed the murder pursuant to an agreement that the defendant receive  
 43 money or other thing of value for committing the murder.

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

1 (c) The defendant committed murder after having been convicted previously in any jurisdiction  
 2 of any homicide, the elements of which constitute the crime of aggravated murder as defined in ORS  
 3 163.095, murder in the first degree under this section, murder in the second degree as defined in  
 4 ORS 163.115 or manslaughter in the first degree as defined in ORS 163.118.

5 (d) There was more than one murder victim in the same criminal episode as defined in ORS  
 6 131.505.

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

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

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

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

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

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

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

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

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

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

20 (H) A regulatory specialist.

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

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

24 (j) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed the  
 25 homicide under the circumstances set forth in ORS 163.115 (1)(b).

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

28 (L) The murder was committed after the defendant had escaped from a state, county or municip-  
 29 al penal or correctional facility and before the defendant had been returned to the custody of the  
 30 facility.

31 (2)(a) Except as otherwise provided in ORS 163.155 and paragraph (b) of this subsection, the  
 32 court shall sentence a person convicted of murder in the first degree, who was at least 15 years of  
 33 age at the time of committing the murder, to life imprisonment. The court shall order that the de-  
 34 fendant be confined for a minimum of 30 years without possibility of parole or release to post-prison  
 35 supervision [*except as provided in ORS 144.397*], and without the possibility of release on work re-  
 36 lease or any form of temporary leave or employment at a forest or work camp.

37 (b) The court may sentence the person to life imprisonment without the possibility of parole if  
 38 the person was at least 18 years of age at the time of committing the murder. The court shall state  
 39 on the record the reasons for imposing the sentence. A person sentenced to life imprisonment  
 40 without the possibility of release or parole under this paragraph shall not have that sentence sus-  
 41 pended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison  
 42 Supervision may not parole the prisoner nor reduce the period of confinement in any manner what-  
 43 soever. The Department of Corrections or any executive official may not permit the prisoner to  
 44 participate in any sort of release or furlough program.

45 (3)(a) For a person sentenced to life imprisonment, at any time after completion of the minimum



1 period of confinement described in subsection (2)(a) of this section, the State Board of Parole and  
 2 Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to deter-  
 3 mine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue  
 4 is whether the prisoner is likely to be rehabilitated within a reasonable period of time. At the  
 5 hearing the prisoner has:

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

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

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

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

21 (c) If the board denies the relief sought in the petition, the board shall determine the date of the  
 22 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS  
 23 144.285.

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

27 **SECTION 31. ORS 144.397, 161.740 and 419C.274 are repealed.**

28 **SECTION 32. The amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185,**  
 29 **161.610, 161.620, 163.105, 163.107, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321,**  
 30 **419C.005, 419C.013, 419C.050, 419C.153, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361,**  
 31 **420.011, 420.081 and 420A.203 by sections 1 to 30 of this 2023 Act and the repeal of ORS 144.397,**  
 32 **161.740 and 419C.274 by section 31 of this 2023 Act apply to sentences imposed on or after**  
 33 **January 1, 2024.**