

A-Engrossed Senate Bill 1070

Ordered by the Senate April 17
Including Senate Amendments dated April 17

Sponsored by Senator CAMPOS, Representatives GRAYBER, HARTMAN; Senators DEMBROW, FREDERICK, GOLDEN, MANNING JR, SOLLMAN, Representatives HUDSON, REYNOLDS, TRAN

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.

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

Creates procedure by which person currently serving sentence may petition court for resentencing if person was subjected to domestic abuse that was **ongoing when criminal behavior occurred and was** contributing factor in criminal behavior.

Establishes Task Force on Services and Support for Incarcerated Domestic Violence Survivors. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to domestic abuse survivor defendants; creating new provisions; amending ORS 137.635,
3 137.690, 137.700, 137.707, 137.717, 138.105, 138.115, 144.110, 161.620, 163.107, 163.115, 163.155,
4 420.240, 421.121, 421.168 and 475.930; prescribing an effective date; and providing for criminal
5 sentence reduction that requires approval by a two-thirds majority.

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

SENTENCING MITIGATION FINDINGS

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

12 **(a) The defendant was subjected to domestic abuse by a family or household member;**

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

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

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

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

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 **section.**

2 **(4) As used in this section:**

3 **(a) “Domestic abuse” means a pattern of behavior in a relationship by which one person**
4 **in the relationship gains or maintains control over the other person, consisting of physical,**
5 **sexual, emotional, economic or psychological actions or threats of action that influence the**
6 **other person, including but not limited to actions or threats of action that frighten, intim-**
7 **idate, terrorize, manipulate, hurt, humiliate, blame, injure or wound the other person.**

8 **(b) “Family or household member” means:**

9 **(A) Spouses.**

10 **(B) Former spouses.**

11 **(C) Adult persons related by blood or marriage.**

12 **(D) Persons cohabiting with each other.**

13 **(E) Persons who have cohabited with each other or who have been involved in a sexually**
14 **intimate relationship.**

15 **(F) Unmarried parents of a minor child.**

16 **SECTION 2.** ORS 137.635 is amended to read:

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

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

30 (a) Murder in any degree, as defined in ORS 163.107 or 163.115, and any aggravated form
31 thereof.

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

33 (c) Assault in the first degree, as defined in ORS 163.185.

34 (d) Kidnapping in the first degree, as defined in ORS 163.235.

35 (e) Rape in the first degree, as defined in ORS 163.375.

36 (f) Sodomy in the first degree, as defined in ORS 163.405.

37 (g) Unlawful sexual penetration in the first degree, as defined in ORS 163.411.

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

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

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

41 (3) When the court imposes a sentence under this section, the court shall indicate in the judg-
42 ment that the defendant is subject to this section.

43 **(4) Notwithstanding any other provision of this section, when a person is convicted of one**
44 **of the offenses listed in subsection (2) of this section and the court finds substantial and**
45 **compelling reasons justifying a lesser sentence under section 1 of this 2023 Act, the court is**

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

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

8 137.690. [a.] (1) **Except as provided in subsection (2) of this section,** any person who is con-
 9 victed of a major felony sex crime, who has one [(or more)] **or more** previous [conviction of] **con-**
 10 **victions for** a major felony sex crime, shall be imprisoned for a mandatory minimum term of 25
 11 years.

12 **(2) When a person is convicted as described in subsection (1) of this section and the court**
 13 **finds substantial and compelling reasons justifying a lesser sentence under section 1 of this**
 14 **2023 Act, the court is not obligated to impose the sentence described in subsection (1) of this**
 15 **section and may instead impose any other sentence in accordance with the rules of the**
 16 **Oregon Criminal Justice Commission. If the court imposes a sentence under this subsection,**
 17 **unless the court orders otherwise under ORS 137.750, the person is eligible for a reduction**
 18 **in sentence under ORS 421.121 and any form of temporary leave from custody, work release**
 19 **or program of conditional or supervised release.**

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

21 (a) “Major felony sex crime” means rape in the first degree [(ORS 163.375)] **under ORS**
 22 **163.375,** sodomy in the first degree [(ORS 163.405)] **under ORS 163.405,** unlawful sexual penetration
 23 in the first degree [(ORS 163.411),] **under ORS 163.411** or using a child in a display of sexually ex-
 24 plicit conduct [(ORS 163.670)] **under ORS 163.670.**

25 [c.] (b) “Previous conviction” includes a conviction for the statutory counterpart of a major
 26 felony sex crime in any jurisdiction, and includes a conviction in the same sentencing proceeding
 27 if the conviction is for a separate criminal episode as defined in ORS 131.505.

28 **SECTION 3.** ORS 137.700 is amended to read:

29 137.700. (1)(a) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses
 30 listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995,
 31 or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on
 32 or after October 4, 1997, or of the offense described in subsection (2)(c) of this section and the of-
 33 fense was committed on or after January 1, 2008, the court shall impose, and the person shall serve,
 34 at least the entire term of imprisonment listed in subsection (2) of this section. The person is not,
 35 during the service of the term of imprisonment, eligible for release on post-prison supervision or any
 36 form of temporary leave from custody. The person is not eligible for any reduction in[, or based
 37 on,] the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute. The
 38 court may impose a greater sentence if otherwise permitted by law, but may not impose a lower
 39 sentence than the sentence specified in subsection (2) of this section.

40 **(b) Notwithstanding any other provision of this section, when a person is convicted of**
 41 **one of the offenses listed in subsection (2) of this section and the court finds substantial and**
 42 **compelling reasons justifying a lesser sentence under section 1 of this 2023 Act, the court is**
 43 **not obligated to sentence the defendant to the sentence specified in subsection (2) of this**
 44 **section and may instead impose any other sentence in accordance with the rules of the**
 45 **Oregon Criminal Justice Commission. If the court imposes a sentence under this paragraph,**

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

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

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- 6
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- 8 (a)(A) Murder in the second
9 degree, as defined in
10 ORS 163.115.....300 months
 - 11 (B) Murder in the first
12 degree, as defined
13 in ORS 163.107.....360 months
 - 14 (C) Attempt or conspiracy
15 to commit aggravated
16 murder, as defined
17 in ORS 163.095.....120 months
 - 18 (D) Attempt or conspiracy
19 to commit murder
20 in any degree.....90 months
 - 21 (E) Manslaughter in the
22 first degree, as defined
23 in ORS 163.118.....120 months
 - 24 (F) Manslaughter in the
25 second degree, as defined
26 in ORS 163.125.....75 months
 - 27 (G) Assault in the first
28 degree, as defined in
29 ORS 163.185.....90 months
 - 30 (H) Assault in the second
31 degree, as defined in
32 ORS 163.175.....70 months
 - 33 (I) Except as provided in
34 paragraph (b)(G) of
35 this subsection,
36 kidnapping in the first
37 degree, as defined
38 in ORS 163.235.....90 months
 - 39 (J) Kidnapping in the second
40 degree, as defined in
41 ORS 163.225.....70 months
 - 42 (K) Rape in the first degree,
43 as defined in ORS 163.375
44 (1)(a), (c) or (d).....100 months
 - 45 (L) Rape in the second degree,

- 1 as defined in
- 2 ORS 163.365.....75 months
- 3 (M) Sodomy in the first degree,
- 4 as defined in ORS 163.405
- 5 (1)(a), (c) or (d).....100 months
- 6 (N) Sodomy in the second
- 7 degree, as defined in
- 8 ORS 163.395.....75 months
- 9 (O) Unlawful sexual penetration
- 10 in the first degree, as
- 11 defined in ORS 163.411
- 12 (1)(a) or (c).....100 months
- 13 (P) Unlawful sexual penetration
- 14 in the second degree, as
- 15 defined in ORS 163.408.....75 months
- 16 (Q) Sexual abuse in the first
- 17 degree, as defined in
- 18 ORS 163.427.....75 months
- 19 (R) Robbery in the first degree,
- 20 as defined in
- 21 ORS 164.415.....90 months
- 22 (S) Robbery in the second
- 23 degree, as defined in
- 24 ORS 164.405.....70 months
- 25 (b)(A) Arson in the first degree,
- 26 as defined in ORS 164.325,
- 27 when the offense represented
- 28 a threat of serious
- 29 physical injury.90 months
- 30 (B) Using a child in a display
- 31 of sexually explicit
- 32 conduct, as defined in
- 33 ORS 163.670.....70 months
- 34 (C) Compelling prostitution,
- 35 as defined in
- 36 ORS 167.017.....70 months
- 37 (D) Rape in the first degree,
- 38 as defined in
- 39 ORS 163.375 (1)(b).300 months
- 40 (E) Sodomy in the first degree,
- 41 as defined in
- 42 ORS 163.405 (1)(b).300 months
- 43 (F) Unlawful sexual penetration
- 44 in the first degree, as
- 45 defined in

- 1 ORS 163.411 (1)(b).300 months
- 2 (G) Kidnapping in the first
- 3 degree, as defined in
- 4 ORS 163.235, when the
- 5 offense is committed in
- 6 furtherance of the commission
- 7 or attempted commission of an
- 8 offense listed in subparagraph
- 9 (D), (E) or (F) of
- 10 this paragraph.....300 months
- 11 (c) Aggravated vehicular
- 12 homicide, as defined in
- 13 ORS 163.149.....240 months

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SECTION 4. ORS 137.707 is amended to read:

17 137.707. (1)(a) When a person waived under ORS 419C.349 (1)(a) is convicted of an offense listed
18 in subsection (4) of this section, the court shall impose at least the presumptive term of
19 imprisonment provided for the offense in subsection (4) of this section. The court may impose a
20 greater presumptive term if otherwise permitted by law, but may not impose a lesser term. The
21 person is not, during the service of the term of imprisonment, eligible for release on post-prison
22 supervision or any form of temporary leave from custody. The person is not eligible for any re-
23 duction in the minimum sentence for any reason under ORS 421.121 or any other provision of law.
24 The person is eligible for a hearing and conditional release under ORS 420A.203 and 420A.206.

25 **(b) Notwithstanding any other provision of this section, when a person is convicted of**
26 **one of the offenses listed in subsection (4) of this section and the court finds substantial and**
27 **compelling reasons justifying a lesser sentence under section 1 of this 2023 Act, the court is**
28 **not obligated to sentence the defendant to the sentence specified in subsection (4) of this**
29 **section and may instead impose any other sentence in accordance with the rules of the**
30 **Oregon Criminal Justice Commission. If the court imposes a sentence under this paragraph,**
31 **unless the court orders otherwise under ORS 137.750, the person is eligible for a reduction**
32 **in sentence under ORS 421.121 and any form of temporary leave from custody, work release**
33 **or program of conditional or supervised release.**

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

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

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

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- 43 (a)(A) Murder in the second
- 44 degree, as defined in
- 45 ORS 163.115300 months

- 1 (B) Murder in the first
2 degree, as defined
3 in ORS 163.107.....360 months
- 4 (C) Attempt or conspiracy
5 to commit aggravated
6 murder, as defined
7 in ORS 163.095.....120 months
- 8 (D) Attempt or conspiracy
9 to commit murder
10 in any degree.....90 months
- 11 (E) Manslaughter in the
12 first degree, as defined
13 in ORS 163.118.....120 months
- 14 (F) Manslaughter in the
15 second degree, as defined
16 in ORS 163.125.....75 months
- 17 (G) Assault in the first
18 degree, as defined
19 in ORS 163.185.....90 months
- 20 (H) Assault in the second
21 degree, as defined
22 in ORS 163.175.....70 months
- 23 (I) Kidnapping in the first
24 degree, as defined in
25 ORS 163.235.....90 months
- 26 (J) Kidnapping in the second
27 degree, as defined in
28 ORS 163.225.....70 months
- 29 (K) Rape in the first degree,
30 as defined in ORS 163.375....100 months
- 31 (L) Rape in the second
32 degree, as defined in
33 ORS 163.365.....75 months
- 34 (M) Sodomy in the first
35 degree, as defined in
36 ORS 163.405.....100 months
- 37 (N) Sodomy in the second
38 degree, as defined in
39 ORS 163.395.....75 months
- 40 (O) Unlawful sexual
41 penetration in the first
42 degree, as defined
43 in ORS 163.411.....100 months
- 44 (P) Unlawful sexual
45 penetration in the

- 1 second degree, as
- 2 defined in ORS 163.408.75 months
- 3 (Q) Sexual abuse in the first
- 4 degree, as defined in
- 5 ORS 163.427.75 months
- 6 (R) Robbery in the first
- 7 degree, as defined in
- 8 ORS 164.415.90 months
- 9 (S) Robbery in the second
- 10 degree, as defined in
- 11 ORS 164.405.70 months
- 12 (b)(A) Arson in the first degree,
- 13 as defined in ORS 164.325,
- 14 when the offense represented
- 15 a threat of serious
- 16 physical injury.90 months
- 17 (B) Using a child in a display
- 18 of sexually explicit
- 19 conduct, as defined in
- 20 ORS 163.670.70 months
- 21 (C) Compelling prostitution,
- 22 as defined in ORS 167.017
- 23 (1)(a), (b) or (d).70 months
- 24 (c) Aggravated vehicular
- 25 homicide, as defined in
- 26 ORS 163.149.240 months

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

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

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

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

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

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

43 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
44 419C.067 and 419C.411; and

45 (iv) Enter an order providing that all court records of the case are subject to the same limita-

1 tions on inspection, copying and disclosure of records, reports and materials as those set forth under
2 ORS 419A.255.

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

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

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

8 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
9 419C.067 and 419C.411; and

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

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

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

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

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

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

35 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
36 419C.067 and 419C.411; and

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

40 **SECTION 5.** ORS 137.717 is amended to read:

41 137.717. (1) When a court sentences a person convicted of:

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

1 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
2 in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in
3 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated
4 identity theft under ORS 165.803;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (f) Burglary in the second degree under ORS 164.215;
 - 2 (g) Burglary in the first degree under ORS 164.225;
 - 3 (h) Criminal mischief in the second degree under ORS 164.354;
 - 4 (i) Criminal mischief in the first degree under ORS 164.365;
 - 5 (j) Computer crime under ORS 164.377;
 - 6 (k) Forgery in the second degree under ORS 165.007;
 - 7 (L) Forgery in the first degree under ORS 165.013;
 - 8 (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
 - 9 (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
 - 10 (o) Fraudulent use of a credit card under ORS 165.055;
 - 11 (p) Identity theft under ORS 165.800;
 - 12 (q) Possession of a stolen vehicle under ORS 819.300;
 - 13 (r) Trafficking in stolen vehicles under ORS 819.310; and
 - 14 (s) Any attempt to commit a crime listed in this subsection.
- 15 (3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall be in-
- 16 creased by two months for each previous conviction the person has that:
- 17 (A) Was for any of the crimes listed in subsection (1) or (2) of this section; and
 - 18 (B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or
 - 19 (b) of this section.
- 20 (b) Previous convictions may not increase a presumptive sentence described in subsection (1)(a)
- 21 or (b) of this section by more than 12 months under this subsection.
- 22 (4) The court may impose a sentence other than the sentence provided by subsection (1) or (3)
- 23 of this section if the court imposes:
- 24 (a) A longer term of incarceration that is otherwise required or authorized by law; or
 - 25 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission
 - 26 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon
 - 27 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-
 - 28 lowed for a person sentenced under this subsection is double the presumptive sentence provided in
 - 29 subsection (1) or (3) of this section.
- 30 (5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under
- 31 subsection (4) of this section to a term of incarceration that exceeds the period of time described
- 32 in ORS 161.605.
- 33 (6) The court shall sentence a person under this section to at least the presumptive sentence
- 34 described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise, **the**
- 35 **court finds substantial and compelling reasons justifying a downward departure under sec-**
- 36 **tion 1 of this 2023 Act**, or the court finds that:
- 37 (a) The person was not on probation, parole or post-prison supervision for a crime listed in
 - 38 subsection (1) of this section at the time of the commission of the current crime of conviction;
 - 39 (b) The person has not previously received a downward departure from a presumptive sentence
 - 40 for a crime listed in subsection (1) of this section;
 - 41 (c) The harm or loss caused by the crime is not greater than usual for that type of crime; and
 - 42 (d) In consideration of the nature of the offense and the harm to the victim, a downward de-
 - 43 parture will:
- 44 (A) Increase public safety;
 - 45 (B) Enhance the likelihood that the person will be rehabilitated; and

1 (C) Not unduly reduce the appropriate punishment.

2 (7) When the court imposes a sentence of probation for a conviction for theft in the first degree
3 or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS
4 144.087 may require the person to receive a high level of supervision for at least 12 months, and
5 may extend the period of high-level supervision for all or part of the remaining probationary term.

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

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

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

15 (10) As used in this section:

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

18 (b) "Previous conviction" includes:

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

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

21 **SECTION 6.** ORS 137.717, as amended by section 7, chapter 649, Oregon Laws 2013, and section
22 6, chapter 673, Oregon Laws 2017, is amended to read:

23 137.717. (1) When a court sentences a person convicted of:

24 (a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under
25 ORS 164.225, robbery in the third degree under ORS 164.395 or aggravated identity theft under ORS
26 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon
27 Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

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

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

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

38 (b) Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under
39 ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree
40 under ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS
41 165.013, criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent
42 use of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under ORS 819.300 or
43 trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18 months of
44 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
45 presumptive sentence, if the person has:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (j) Computer crime under ORS 164.377;

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

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

35 (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;

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

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

38 (p) Identity theft under ORS 165.800;

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

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

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

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

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

45 (B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or

1 (b) of this section.

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

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

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

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

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

15 (6) The court shall sentence a person under this section to at least the presumptive sentence
16 described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise, **the**
17 **court finds substantial and compelling reasons justifying a downward departure under sec-**
18 **tion 1 of this 2023 Act**, or the court finds that:

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

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

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

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

26 (A) Increase public safety;

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

28 (C) Not unduly reduce the appropriate punishment.

29 (7) When the court imposes a sentence of probation for a conviction for theft in the first degree
30 or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS
31 144.087 may require the person to receive a high level of supervision for at least 12 months, and
32 may extend the period of high-level supervision for all or part of the remaining probationary term.

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

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

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

42 (10) As used in this section:

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

45 (b) "Previous conviction" includes:

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

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

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

4 163.107. (1) "Murder in the first degree" means murder in the second degree as defined in ORS
5 163.115 which is committed under, or accompanied by, any of the following circumstances:

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

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

10 (c) The defendant committed murder after having been convicted previously in any jurisdiction
11 of any homicide, the elements of which constitute the crime of aggravated murder as defined in ORS
12 163.095, murder in the first degree under this section, murder in the second degree as defined in
13 ORS 163.115 or manslaughter in the first degree as defined in ORS 163.118.

14 (d) There was more than one murder victim in the same criminal episode as defined in ORS
15 131.505.

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

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

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

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

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

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

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

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

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

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

29 (H) A regulatory specialist.

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

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

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

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

37 (L) The murder was committed after the defendant had escaped from a state, county or munic-
38 ipal penal or correctional facility and before the defendant had been returned to the custody of the
39 facility.

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

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

9 **(c) If the court finds substantial and compelling reasons justifying a lesser sentence un-**
10 **der section 1 of this 2023 Act, the court is not obligated to sentence the defendant to the**
11 **sentence specified in paragraphs (a) and (b) of this subsection and may instead impose any**
12 **other sentence in accordance with the rules of the Oregon Criminal Justice Commission.**

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

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

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

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

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

34 (c) If the board denies the relief sought in the petition, the board shall determine the date of the
35 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS
36 144.285.

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

40 **SECTION 8.** ORS 163.115 is amended to read:

41 163.115. (1) Except as provided in ORS 163.095, 163.118 and 163.125, criminal homicide consti-
42 tutes murder in the second degree:

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

45 (b) When it is committed by a person, acting either alone or with one or more persons, who

1 commits or attempts to commit any of the following crimes and in the course of and in furtherance
2 of the crime the person is committing or attempting to commit, or during the immediate flight
3 therefrom, the person, or another participant if there be any, causes the death of a person other
4 than one of the participants:

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

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

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

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

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

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

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

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

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

14 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
15 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
16 14 years of age; or

17 (c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to
18 the value of human life, causes the death of a child under 14 years of age or a dependent person,
19 as defined in ORS 163.205, and:

20 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-
21 tim or another child under 14 years of age or a dependent person; or

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

23 (2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section
24 need not allege specific incidents of assault or torture.

25 (3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the
26 defendant:

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

28 (b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause
29 or aid in the commission thereof;

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

31 (d) Had no reasonable ground to believe that any other participant was armed with a dangerous
32 or deadly weapon; and

33 (e) Had no reasonable ground to believe that any other participant intended to engage in con-
34 duct likely to result in death.

35 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that
36 the victim was a dependent person who was at least 18 years of age and was under care or treat-
37 ment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person
38 or the guardian of the dependent person.

39 (5) Except as otherwise provided in ORS 144.397 and 163.155 **and subsection (6) of this**
40 **section:**

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

43 (b) When a defendant is convicted of murder in the second degree under this section, the court
44 shall order that the defendant shall be confined for a minimum of 25 years without possibility of
45 parole, release to post-prison supervision, release on work release or any form of temporary leave

1 or employment at a forest or work camp.

2 (c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
3 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
4 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
5 within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabili-
6 tated within a reasonable period of time. At the hearing the prisoner has:

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

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

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

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

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

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

28 **(6) If the court finds substantial and compelling reasons justifying a lesser sentence un-**
29 **der section 1 of this 2023 Act, the court is not obligated to sentence the defendant to the**
30 **sentence specified in subsection (5) of this section and may instead impose any other sen-**
31 **tence in accordance with the rules of the Oregon Criminal Justice Commission.**

32 [(6)] (7) As used in this section:

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

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

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

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

43 **SECTION 9.** ORS 163.155 is amended to read:

44 163.155. (1) **Except as provided in subsection (3) of this section,** when a defendant, who was
45 at least 15 years of age at the time of committing the murder, is convicted of murdering a pregnant

1 victim under ORS 163.115 (1)(a) and the defendant knew that the victim was pregnant, the defendant
2 shall be sentenced to life imprisonment without the possibility of release or parole if the person was
3 at least 18 years of age at the time of committing the offense or to life imprisonment. The court shall
4 conduct a sentencing proceeding to determine whether the defendant shall be sentenced to life
5 imprisonment without the possibility of release or parole as described in subsection [(4)] (5) of this
6 section, **sentenced [or] to life imprisonment as described in subsection [(5)] (6) of this section or**
7 **sentenced under subsection (3) of this section.** If the defendant waives all rights to a jury sen-
8 tencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The pro-
9 cedure for the sentencing proceeding, whether before a court or a jury, shall follow the procedure
10 of ORS 163.150 (1)(a), as modified by this section.

11 (2) Following the presentation of evidence and argument under subsection (1) of this section, the
12 court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment
13 without the possibility of release or parole as described in subsection [(4)] (5) of this section, unless
14 **the court sentences the person under subsection (3) of this section, or unless,** after consider-
15 ing all of the evidence submitted, 10 or more members of the jury find there are sufficient mitigating
16 circumstances to warrant life imprisonment with the possibility of release or parole as described in
17 subsection [(5)] (6) of this section. If 10 or more members of the jury do not find there are sufficient
18 mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the
19 trial court shall sentence the defendant to life imprisonment without the possibility of release or
20 parole as described in subsection [(4)] (5) of this section, **unless the court sentences the defend-**
21 **ant under subsection (3) of this section.** If 10 or more members of the jury find there are suffi-
22 cient mitigating circumstances to warrant life imprisonment with the possibility of release or parole,
23 the trial court shall sentence the defendant to life imprisonment as described in subsection [(5)] (6)
24 of this section.

25 (3) **Notwithstanding any jury finding under subsection (2) of this section, if the court**
26 **finds substantial and compelling reasons justifying a lesser sentence under section 1 of this**
27 **2023 Act, the court is not obligated to sentence the defendant to a sentence otherwise re-**
28 **quired by this section, and may instead impose any other sentence in accordance with the**
29 **rules of the Oregon Criminal Justice Commission.**

30 [(3)] (4) Nothing in this section precludes the court from sentencing the defendant to life
31 imprisonment, as described in subsection [(5)] (6) of this section, or life imprisonment without the
32 possibility of release or parole, as described in subsection [(4)] (5) of this section, pursuant to a
33 stipulation of sentence or stipulation of sentencing facts agreed to and offered by both parties if the
34 defendant waives all rights to a jury sentencing proceeding.

35 [(4)] (5) A sentence of life imprisonment without the possibility of release or parole under this
36 section may not be suspended, deferred or commuted by any judicial officer, and the State Board
37 of Parole and Post-Prison Supervision may neither parole the prisoner nor reduce the period of
38 confinement in any manner whatsoever. The Department of Corrections or any executive official
39 may not permit the prisoner to participate in any sort of release or furlough program.

40 [(5)] (6) If the defendant is sentenced to life imprisonment, the court shall order that the de-
41 fendant be confined for a minimum of 30 years without possibility of parole or release to post-prison
42 supervision except as provided in ORS 144.397, and without the possibility of release on work re-
43 lease or any form of temporary leave or employment at a forest or work camp.

44 [(6)] (7) At any time after completion of the minimum period of confinement pursuant to sub-
45 section [(5)] (6) of this section, the board, upon the petition of a prisoner so confined, shall hold a

1 hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time.
2 The sole issue shall be whether the prisoner is likely to be rehabilitated within a reasonable period
3 of time. The proceeding shall be conducted in the manner prescribed for a contested case hearing
4 under ORS chapter 183, except that:

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

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

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

12 [(7)] (8) If, upon hearing all of the evidence, the board, upon a unanimous vote of three board
13 members or, if the chairperson requires all voting members to participate, a unanimous vote of all
14 voting members, finds that the prisoner is capable of rehabilitation and that the terms of the
15 prisoner's confinement should be changed to life imprisonment with the possibility of parole, release
16 on post-prison supervision or work release, it shall enter an order to that effect and the order shall
17 convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole,
18 release on post-prison supervision or work release and may set a release date. Otherwise the board
19 shall deny the relief sought in the petition.

20 [(8)] (9) Not less than two years after the denial of the relief sought in a petition under this
21 section, the prisoner may petition again for a change in the terms of confinement. Further petitions
22 for a change may be filed at intervals of not less than two years thereafter.

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

24 475.930. (1) **Except as provided in subsection (3) of this section,** when a court sentences a
25 person under ORS 164.061, 475.907, 475.924 [and] or 475.925:

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

28 (A) ORS 475.925 (1) shall be determined utilizing crime category 10 of the sentencing guidelines
29 grid.

30 (B) ORS 475.907 (1) and 475.925 (2) shall be determined utilizing crime category 9 of the sen-
31 tencing guidelines grid.

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

33 (b)(A) Notwithstanding ORS 161.605, the court shall impose the sentence described in ORS
34 164.061, 475.907, 475.924 [and] or 475.925 and may not impose a sentence of optional probation or
35 grant a downward dispositional departure or a downward durational departure under the rules of
36 the commission.

37 (B) The court may impose a sentence other than the sentence described in ORS 164.061, 475.907,
38 475.924 [and] or 475.925 if the court imposes a longer term of incarceration that is otherwise re-
39 quired or authorized by law.

40 (2) A person sentenced under ORS 164.061, 475.907, 475.924 [and] or 475.925 may not receive a
41 reduction in the term of incarceration for appropriate institutional behavior that exceeds 20 percent
42 of the sentence imposed.

43 (3) **Notwithstanding ORS 164.061, 475.907, 475.924 and 475.925, when a court sentences a**
44 **person under ORS 164.061, 475.907, 475.924 or 475.925 and the court finds substantial and**
45 **compelling reasons justifying a lesser sentence under section 1 of this 2023 Act, the court is**

1 not obligated to sentence the person to the sentence specified in ORS 164.061, 475.907, 475.924
2 or 475.925 and may instead impose any other sentence in accordance with the rules of the
3 Oregon Criminal Justice Commission.

4
5 **PROCEDURE FOR PERSONS PREVIOUSLY SENTENCED**

6
7 **SECTION 11.** (1) Except as provided in subsection (9) of this section, a person serving a
8 sentence of imprisonment after conviction of a felony is eligible to be resentenced under this
9 section if:

10 (a) The person was sentenced to, and is currently serving, a term of imprisonment for
11 the felony conviction;

12 (b) The person was subjected to domestic abuse by a family or household member;

13 (c) The domestic abuse was ongoing when the person's criminal behavior occurred and
14 was a contributing factor to the criminal behavior; and

15 (d) The sentence the person received was unduly harsh in light of the circumstances of
16 the crime, the circumstances of the person, the domestic abuse the person suffered and the
17 likely sentence the person would receive if the person were sentenced under current law.

18 (2)(a) A person described in subsection (1) of this section may file a petition for a hearing
19 to determine whether the person should be resentenced in the circuit court in which the
20 person was originally convicted and sentenced.

21 (b) The petition shall include:

22 (A) The case number and specific counts for which the person is requesting resentencing;
23 and

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

26 (c) The petition may be accompanied by supporting documents.

27 (d) Facts within the petition that are within the personal knowledge of the petitioner, and
28 the authenticity of all documents accompanying the petition, must be sworn to affirmatively
29 by the petitioner as true and correct.

30 (3)(a) Upon filing the petition, the person shall serve a copy of the petition on the district
31 attorney.

32 (b) Upon receipt of the petition, the district attorney shall make reasonable efforts to
33 inform the victim:

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

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

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

37 (4)(a) Upon receiving the petition, the sentencing court shall determine whether the facts
38 stated in the petition are sufficient to support a finding that the person meets the eligibility
39 requirements described in subsection (1) of this section. When making this determination,
40 the court shall assume that the facts stated in the petition are uncontested and established
41 in court by a preponderance of evidence. If the court determines that the facts stated in the
42 petition are sufficient, the court shall grant the petition. If the court determines that the
43 facts stated in the petition are insufficient, the court shall enter an order denying the peti-
44 tion and shall cause a copy of the order to be provided to the person.

45 (b) If a petition is denied, upon the request of the person, the court shall appoint counsel

1 for the person for the purpose of assisting the person in preparing an amended petition.
2 Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall provide
3 for the representation of a person for whom counsel is appointed under this paragraph.

4 (c) Upon granting a petition, including an amended petition, the court shall set a resen-
5 tencing hearing, and shall hold the hearing within 60 days of the date the petition was
6 granted unless the court finds good cause to hold a hearing at a later date. If counsel was
7 appointed under paragraph (b) of this subsection, the appointed counsel shall continue to
8 represent the petitioner for the hearing.

9 (d) The court shall issue an order granting or denying a petition with 30 days of the date
10 the petition is filed. If the court does not issue an order as described in this paragraph, the
11 petition shall be deemed granted.

12 (e) If, upon review of an amended petition, the court determines that the facts stated in
13 the petition are insufficient to support a finding that the person meets the eligibility re-
14 quirements described in subsection (1) of this section, the court shall issue a final order de-
15 nying the petition. The person may not file another petition upon issuance of a final order
16 described in this paragraph except as described in subsection (8) of this section.

17 (f) An order granting or denying a petition under this subsection is not appealable.

18 (5)(a) When the court sets a resentencing hearing under subsection (4) of this section,
19 the court shall appoint counsel for the person, if counsel has not previously been appointed
20 or hired for the current petition, and notify the person, the person's counsel, the Depart-
21 ment of Corrections and the district attorney of the hearing date. Upon receipt of the notice,
22 the district attorney shall make reasonable efforts to inform the victim of:

23 (A) The hearing date; and

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

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

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

30 (A) The person was subjected to domestic abuse by a family or household member;

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

32 (C) The sentence the person received is unduly harsh in light of the circumstances of the
33 crime, the circumstances of the person, the domestic abuse the person suffered and the
34 likely sentence the person would receive if the person were sentenced under current law.

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

36 (c) Upon the conclusion of the hearing, if the court finds that the person has met the
37 burden of proof, the court shall find that there exists substantial and compelling reasons
38 justifying a downward durational departure or a downward dispositional departure from any
39 presumptive or mandatory sentence and shall resentence the defendant to an appropriate
40 sentence under the rules of the Oregon Criminal Justice Commission.

41 (d) The court may not resentence a person under this section to a more severe sentence
42 than originally imposed or impose an upward durational or dispositional departure.

43 (e) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply to a hearing conducted under
44 this section.

45 (f) The sentencing court has jurisdiction to amend its judgment and resentence the de-

1 **defendant as provided in this subsection.**

2 (7) **Unless the court orders otherwise, a person shall appear at a hearing described in**
3 **subsection (6) of this section by simultaneous electronic transmission as defined in ORS**
4 **131.045.**

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

9 (a) **Evidence that did not exist at the time the previous hearing was held or previous**
10 **petition or amended petition was filed; or**

11 (b) **Evidence that existed at the time the previous hearing was held or previous petition**
12 **or amended petition was filed, but could not have been discovered with reasonable diligence.**

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

17 (10) **As used in this section:**

18 (a) **“Domestic abuse” means a pattern of behavior in a relationship by which one person**
19 **in the relationship gains or maintains control over the other person, consisting of physical,**
20 **sexual, emotional, economic or psychological actions or threats of action that influence the**
21 **other person, including but not limited to actions or threats of action that frighten, intim-**
22 **idate, terrorize, manipulate, hurt, humiliate, blame, injure or wound the other person.**

23 (b) **“Family or household member” means:**

24 (A) **Spouses.**

25 (B) **Former spouses.**

26 (C) **Adult persons related by blood or marriage.**

27 (D) **Persons cohabiting with each other.**

28 (E) **Persons who have cohabited with each other or who have been involved in a sexually**
29 **intimate relationship.**

30 (F) **Unmarried parents of a minor child.**

31 (c) **“Reasonable efforts to inform the victim” has the meaning given that phrase in ORS**
32 **147.500.**

33 (d) **“Victim” has the meaning given that term in ORS 147.500.**

34
35 **CONFORMING AMENDMENTS**

36
37 **SECTION 12.** ORS 138.105 is amended to read:

38 138.105. (1) **On appeal by a defendant, the appellate court has authority to review the judgment**
39 **or order being appealed, subject to the provisions of this section.**

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

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

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

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

1 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 (1)(a) or
37 137.707 (1)(a).

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

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

44 (b) On appeal from a corrected or amended judgment that is entered after expiration of the ap-
45 plicable period under ORS 138.071 (1) or (2) during which the original judgment was or could have

1 been appealed, the appellate court has authority to review, as provided in this section, only the
2 corrected or amended part of the judgment, any part of the judgment affected by the correction or
3 amendment, or the trial court's decision under ORS 137.172 not to correct or amend the judgment.

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

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

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

10 **SECTION 13.** ORS 138.115 is amended to read:

11 138.115. (1) On appeal by the state, the appellate court has authority to review the judgment or
12 order being appealed, subject to the provisions of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (A) In ranking the crime seriousness classification of the current crime or in determining the
45 appropriate classification of a prior conviction or juvenile adjudication for criminal history pur-

1 poses.

2 (B) In imposing or failing to impose a minimum sentence prescribed by ORS 137.700 (1)(a) or
3 137.707 (1)(a).

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

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

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

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

16 **SECTION 14.** ORS 144.110 is amended to read:

17 144.110. (1) In any felony case, the court may impose a minimum term of imprisonment of up to
18 one-half of the sentence it imposes.

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

20 (a) The State Board of Parole and Post-Prison Supervision shall not release a prisoner on parole
21 who has been sentenced under subsection (1) of this section until the minimum term has been served,
22 except upon affirmative vote of a majority of three board members or, if the chairperson requires
23 all voting members to participate, a majority of all voting members.

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

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

27 (B) Who has been convicted of murder in the first degree under the provisions of ORS 163.107,
28 except as provided in ORS 163.107 (3) [*or 163.155 (6) to (8)*]; or

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

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

33 **SECTION 15.** ORS 161.620 is amended to read:

34 161.620. Notwithstanding any other provision of law, a sentence imposed upon any person
35 waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not include any sentence of death
36 or life imprisonment without the possibility of release or parole nor imposition of any mandatory
37 minimum sentence except that a mandatory minimum sentence under:

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

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

40 (3) ORS 161.610 may be imposed.

41 **SECTION 16.** ORS 420.240 is amended to read:

42 420.240. (1) The Oregon Youth Authority may establish and administer a work release program
43 in which persons who are committed to the custody of the Department of Corrections and placed in
44 the physical custody of the youth authority under ORS 137.124 or other statute may be authorized
45 to leave assigned quarters for the purpose of:

1 (a) Participating in private, gainful employment;

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

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

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

7 (e) Participating in mental health programs;

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

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

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

12 (3) The provisions of this section do not apply to persons sentenced under ORS 137.635 (1),
13 137.700 (1)(a) or 137.707 (1)(a) or any other provision of law that prohibits eligibility for any form
14 of temporary leave from custody.

15 **SECTION 17.** ORS 421.121 is amended to read:

16 421.121. (1) Except as **otherwise** provided in ORS 137.635, 137.700, 137.707, 163.105, 163.107 and
17 163.115, each adult in custody sentenced to the custody of the Department of Corrections for felonies
18 committed on or after November 1, 1989, is eligible for a reduction in the term of incarceration for:

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

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

21 (2) The maximum amount of time credits earned for appropriate institutional behavior or for
22 participation in the adult basic skills development program described in ORS 421.084 may not exceed
23 20 percent of the total term of incarceration in a Department of Corrections institution.

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

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

29 **SECTION 18.** ORS 421.168 is amended to read:

30 421.168. (1) The Department of Corrections shall establish a short-term transitional leave pro-
31 gram. The program shall provide adults in custody with an opportunity to secure appropriate tran-
32 sitional support when necessary for successful reintegration into the community prior to the adult's
33 discharge to post-prison supervision.

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

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

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

44 (5) The department shall adopt rules to carry out the provisions of this section. The rules must
45 include a set of release conditions for adults in custody released on transitional leave status. An

1 adult in custody on transitional leave status is subject to immediate return to prison for any vio-
2 lation of the conditions of release.

3 (6) The provisions of this section do not apply to adults in custody whose sentences were im-
4 posed under ORS 137.635 (1), 137.690 (1), 137.700 (1)(a), 137.707 (1)(a), 164.061, 475.907, 475.925,
5 475.930 (1) or 813.011 or under a provision of law that prohibits release on any form of temporary
6 leave from custody.

7
8 **TASK FORCE**

9
10 **SECTION 19. (1) The Task Force on Services and Support for Incarcerated Domestic Vi-**
11 **olence Survivors is established.**

12 **(2) The task force consists of 15 members appointed as follows:**

13 **(a) The President of the Senate shall appoint two members from among members of the**
14 **Senate.**

15 **(b) The Speaker of the House of Representatives shall appoint two members from among**
16 **members of the House of Representatives.**

17 **(c) The Director of the Department of Corrections shall appoint two members to repre-**
18 **sent the department.**

19 **(d) The Governor shall appoint nine members as follows:**

20 **(A) Two members who are experts on the psychological and behavioral effects of trauma.**

21 **(B) Two members who are experts on domestic violence prevention or treatment.**

22 **(C) Two members who were previously incarcerated in a Department of Corrections**
23 **correctional facility, including one member who was previously incarcerated at Coffee Creek**
24 **Correctional Facility.**

25 **(D) Two members who are currently incarcerated in a Department of Corrections**
26 **correctional facility, including one member who is currently incarcerated at Coffee Creek**
27 **Correctional Facility.**

28 **(e) One member representing the Oregon Justice Resource Center.**

29 **(3) The purpose of task force is to make recommendations to the Department of Cor-**
30 **rections concerning:**

31 **(a) Programs and services needed to help ensure that incarcerated domestic violence**
32 **survivors return to the community in a safe and healthy manner; and**

33 **(b) Any changes needed in the department's facility operations, procedures and protocols**
34 **to prevent further retraumatization of incarcerated domestic violence survivors.**

35 **(4) The task force shall:**

36 **(a) Conduct a review of the department's current programs and services that address**
37 **domestic violence, identifying eligibility for each program or service, the duration of the**
38 **program or service and the number of adults in custody who are able to participate in the**
39 **program or service.**

40 **(b) Consult with currently incarcerated and formerly incarcerated domestic violence**
41 **survivors as to programs or services needed by survivors while incarcerated, and about de-**
42 **partment facility operations, procedures and protocols that are problematic for survivors.**

43 **(c) Consult with experts and advocates in domestic violence prevention and treatment,**
44 **representing diverse populations in the community, to understand the dynamics of domestic**
45 **violence and about the programs or services that should be available to incarcerated do-**

1 **mestic violence survivors.**

2 **(d) Consider the feedback from currently incarcerated and formerly incarcerated do-**
3 **mestic violence survivors about problematic department facility operations, procedures and**
4 **protocols and review those operations, procedures and protocols in consultation with trauma**
5 **experts.**

6 **(5) A majority of the voting members of the task force constitutes a quorum for the**
7 **transaction of business.**

8 **(6) Official action by the task force requires the approval of a majority of the voting**
9 **members of the task force.**

10 **(7) The task force shall elect one of its members to serve as chairperson.**

11 **(8) If there is a vacancy for any cause, the appointing authority shall make an appoint-**
12 **ment to become immediately effective.**

13 **(9) The task force shall meet at times and places specified by the call of the chairperson**
14 **or of a majority of the voting members of the task force.**

15 **(10) The task force may adopt rules necessary for the operation of the task force.**

16 **(11)(a) No later than September 15, 2024, the task force shall submit a report in the**
17 **manner provided by ORS 192.245 to the interim committees of the Legislative Assembly re-**
18 **lated to the judiciary. The report must contain:**

19 **(A) Recommendations for department programs and services needed to help ensure that**
20 **incarcerated domestic violence survivors return to the community in a healthy and safe**
21 **manner; and**

22 **(B) Recommendations for changes to department facility operations, procedures and**
23 **protocols necessary to prevent further retraumatization of incarcerated domestic violence**
24 **survivors.**

25 **(b) The department shall publish a copy of the report on the website of the department.**

26 **(12) The Legislative Policy and Research Director shall provide staff support to the task**
27 **force.**

28 **(13) Members of the Legislative Assembly appointed to the task force are nonvoting**
29 **members of the task force and may act in an advisory capacity only.**

30 **(14) Members of the task force who are not members of the Legislative Assembly are not**
31 **entitled to compensation or reimbursement for expenses and serve as volunteers on the task**
32 **force.**

33 **(15) All agencies of state government, as defined in ORS 174.111, are directed to assist**
34 **the task force in the performance of the duties of the task force and, to the extent permitted**
35 **by laws relating to confidentiality, to furnish information and advice the members of the task**
36 **force consider necessary to perform their duties.**

37 **SECTION 20. Section 19 of this 2023 Act is repealed on January 2, 2025.**

38
39 **APPLICABILITY**

40
41 **SECTION 21. (1) Section 1 of this 2023 Act and the amendments to ORS 137.635, 137.690,**
42 **137.700, 137.707, 137.717, 138.105, 138.115, 144.110, 161.620, 163.107, 163.115, 163.155, 420.240,**
43 **421.121, 421.168 and 475.930 by sections 2 to 10 and 12 to 18 of this 2023 Act apply to sentences**
44 **imposed on or after the effective date of this 2023 Act, including resentencings under section**
45 **11 of this 2023 Act or any other law.**

