Senate Bill 782

Sponsored by Senator FREDERICK

SUMMARY

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

Removes statutory provisions relating to death penalty.

Takes effect only if constitutional amendment proposed by Senate Joint Resolution 27 (2023) is approved by people at regular general election held in November 2024. Takes effect on effective date of constitutional amendment proposed by Senate Joint Resolution 27 (2023).

A BILL FOR AN ACT

Relating to the death penalty; creating new provisions; amending ORS 8.705, 9.527, 40.015, 40.355, 133.805, 133.809, 137.635, 137.707, 138.310, 138.500, 138.510, 138.590, 144.122, 144.126, 146.003, 161.620, 161.665, 161.725, 163.105, 163.150, 163.155 and 475.188; and repealing ORS 137.463, 137.464, 137.466, 137.467, 137.473, 137.476, 137.478, 137.482, 138.052 and 138.686.

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

CHANGES TO MURDER SENTENCING PROCEEDINGS

SECTION 1. ORS 163.105 is amended to read:

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

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

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

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

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

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

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.

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

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

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

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

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

SECTION 2. ORS 163.150 is amended to read:

163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, except as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described in ORS 163.105 (1)(c), **or** life imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b)[*, or death*]. The proceeding shall be conducted in the trial court before the trial jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror, the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the name of one of the alternate jurors, who shall then become a member of the jury for the sentencing proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt. If the defendant has pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence including, but not limited to, victim impact evidence relating to the personal characteristics of the victim or the impact of the crime on the victim's family and any aggravating or mitigating evidence relevant to [*the issue in paragraph (b)(C) of this subsection*] **sentencing**; however, neither the state nor the defendant shall be allowed to introduce repetitive evidence that has previously been offered and received during the trial on the issue of guilt. The court shall instruct the jury that all evidence previously offered and received may be considered for purposes of the sentencing hearing. This paragraph shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Oregon. The state and the defendant or the counsel of the defendant shall be permitted to present arguments [*for or against a sentence of death and*] for or against a sentence of life imprisonment with or without the possibility of release or parole.

[*(b) Upon the conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:*]

[*(A) Whether the conduct of the defendant that caused the death of the deceased was committed*

deliberately and with the reasonable expectation that death of the deceased or another would result;]

[*(B) If raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased; and*]

[*(C) Whether the defendant should receive a death sentence.*]

[*(c)(A)*] **(b)** The court shall instruct the jury to consider[*, in determining the issues in paragraph (b) of this subsection,*] any mitigating circumstances offered in evidence, including but not limited to the defendant's age, the extent and severity of the defendant's prior criminal conduct and the extent of the mental and emotional pressure under which the defendant was acting at the time the offense was committed.

[*(B) The court shall instruct the jury to answer the question in paragraph (b)(C) of this subsection "no" if, after considering any aggravating evidence and any mitigating evidence concerning any aspect of the defendant's character or background, or any circumstances of the offense and any victim impact evidence as described in paragraph (a) of this subsection, one or more of the jurors believe that the defendant should not receive a death sentence.*]

[*(d) The state must prove each issue submitted under paragraph (b) of this subsection beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue considered.*]

[*(e) The court shall charge the jury that it may not answer any issue "yes," under paragraph (b) of this subsection unless it agrees unanimously.*]

[*(f) If the jury returns an affirmative finding on each issue considered under paragraph (b) of this subsection, the trial judge shall sentence the defendant to death.*]

(2)(a) Upon the conclusion of the presentation of the evidence, the court shall also instruct the jury that [*if it reaches a negative finding on any issue under subsection (1)(b) of this section,*] the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b), unless 10 or more members of the jury [*further*] find that there are sufficient mitigating circumstances to warrant life imprisonment, in which case the trial court shall sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

(b) If the jury [*returns a negative finding on any issue under subsection (1)(b) of this section and further*] finds that there are sufficient mitigating circumstances to warrant life imprisonment, the trial court shall sentence the defendant to life imprisonment in the custody of the Department of Corrections as provided in ORS 163.105 (1)(c).

(3)(a) When the defendant is found guilty of aggravated murder[,] and ORS 137.707 (2) applies [*or the state advises the court on the record that the state declines to present evidence for purposes of sentencing the defendant to death*], the court[*:*]

[*(A) Shall not conduct a sentencing proceeding as described in subsection (1) of this section, and a sentence of death shall not be ordered.*]

[*(B)*] shall conduct a sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the procedure of subsection (1)(a) of this section[*, as modified by this subsection*]. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, including, but not limited to, victim impact evidence relating to the personal characteristics of the victim or the impact of the crime on the victim's family.

(b) Following the presentation of evidence and argument under paragraph (a) of this subsection, the court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b), unless after considering all of the evidence submitted, 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of parole as described in ORS 163.105 (1)(c). If 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of parole, the trial court shall sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

(c) Nothing in this subsection shall preclude the court from sentencing the defendant to life imprisonment, as described in ORS 163.105 (1)(c), or life imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b), pursuant to a stipulation of sentence or stipulation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to a jury sentencing proceeding.

(4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant who has been sentenced to life imprisonment without possibility of release or parole will instead be sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS 163.105 (2), the defendant shall be confined for a minimum of 30 years without possibility of parole, release on work release or any form of temporary leave or employment at a forest or work camp. Subsection (2) of this section shall apply only to trials commencing on or after July 19, 1989.

(5) Notwithstanding subsection (1)(a) of this section, if the trial court grants a mistrial during the sentencing proceeding, the trial court, at the election of the state, shall either:

(a) Sentence the defendant to imprisonment for life in the custody of the Department of Corrections as provided in ORS 163.105 (1)(c); or

(b) Impanel a new sentencing jury for the purpose of conducting a new sentencing proceeding to determine if the defendant should be sentenced to:

[*(A) Death;*]

[*(B)*] **(A)** Imprisonment for life without the possibility of release or parole as provided in ORS 163.105 (1)(b); or

[*(C)*] **(B)** Imprisonment for life in the custody of the Department of Corrections as provided in ORS 163.105 (1)(c).

SECTION 3. ORS 163.155 is amended to read:

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

(2) Following the presentation of evidence and argument under subsection (1) of this section, the court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section, unless after

considering all of the evidence submitted, 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole as described in subsection (5) of this section. If 10 or more members of the jury do not find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section. If 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the trial court shall sentence the defendant to life imprisonment as described in subsection (5) of this section.

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

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

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

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

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

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

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

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

(8) Not less than two years after the denial of the relief sought in a petition under this section,

the prisoner may petition again for a change in the terms of confinement. Further petitions for a change may be filed at intervals of not less than two years thereafter.

REPEALS

SECTION 4. ORS 137.463, 137.464, 137.466, 137.467, 137.473, 137.476, 137.478, 137.482, 138.052 and 138.686 are repealed.

CONFORMING AMENDMENTS

SECTION 5. ORS 8.705 is amended to read:

8.705. (1) The district attorney in each county shall develop and formally adopt written office policies concerning all of the following subject areas:

(a) Pretrial discovery, including:

(A) The process for obtaining discovery.

(B) Compliance with discovery obligations required by Oregon and federal law.

(C) Existing agreements with law enforcement agencies on data retention and data sharing.

(D) Costs charged for discovery materials.

(b) Prosecutorial ethics, including compliance with the rules of professional conduct adopted under ORS 9.490.

(c) Confidentiality, including obtaining and handling confidential information.

(d) The use of certified law students.

(e) Charging decisions concerning:

(A) Driving under the influence of intoxicants under ORS 813.010 or 813.011.

(B) Controlled substance crimes.

(C) The aggregation of property offenses under ORS 164.043, 164.045, 164.055, 164.057, 164.061, 164.098, 164.125, 164.140, 164.367, 165.013, 165.055, 165.694 or 165.803.

(D) Crimes constituting domestic violence as defined in ORS 135.230.

(E) Misdemeanor crimes.

(F) Crimes requiring mandatory minimum sentences.

[*(f) The decision whether to present evidence for purposes of seeking the death penalty under ORS 163.150.*]

[*(g)*] **(f)** Plea offers.

[*(h)*] **(g)** Civil compromise under ORS 135.703 to 135.709.

[*(i)*] **(h)** Diversion programs.

[*(j)*] **(i)** Requests for the imposition of fines and fees, including attorney fees for appointed counsel.

[*(k)*] **(j)** If an early disposition program exists in the county, eligibility and standard disposition recommendations.

[*(L)*] **(k)** If any treatment court exists in the county, eligibility and standard disposition recommendations.

[*(m)*] **(L)** If any pre-arrest diversion program exists in the county, eligibility.

[*(n)*] **(m)** The consideration of collateral consequences of conviction, including immigration consequences.

[*(o)*] **(n)** Sentencing programs, including alternative incarceration programs, conditional release,

work release, earned sentence reductions and short-term transitional leave.

[*(p)*] **(o)** The filing of an affidavit and motion for change of judge under ORS 14.260.

[*(q)*] **(p)** Victim engagement and involvement, including but not limited to involvement in charging decisions.

[*(r)*] **(q)** Pretrial release under ORS 135.230 to 135.290, including the amount of security release requested for charged offenses and objections to release.

[*(s)*] **(r)** Guilty except for insanity dispositions.

(2) The district attorney shall ensure that the policies described in subsection (1) of this section are available to the public on the district attorney's website.

(3) No later than five years after the initial adoption of the policies described in subsection (1) of this section, and every five years thereafter, the district attorney shall:

(a) Review the policies, make revisions to the policies as necessary and readopt the policies; and

(b) Make the revised policies available to the public on the district attorney's website.

SECTION 6. ORS 9.527 is amended to read:

9.527. The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:

(1) The member has committed an act or carried on a course of conduct of such nature that, if the member were applying for admission to the bar, the application should be denied;

(2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by [*death or*] imprisonment under the laws of the United States, in any of which cases the record of the conviction shall be conclusive evidence;

(3) The member has willfully disobeyed an order of a court requiring the member to do or forbear an act connected with the legal profession;

(4) The member is guilty of willful deceit or misconduct in the legal profession;

(5) The member is guilty of willful violation of any of the provisions of ORS 9.460 or 9.510;

(6) The member is guilty of gross or repeated negligence or incompetence in the practice of law; or

(7) The member has violated any of the provisions of the rules of professional conduct adopted pursuant to ORS 9.490.

SECTION 7. ORS 40.015 is amended to read:

40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

(a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS 305.501;

(b) The small claims department of a circuit court as provided by ORS 46.415; and

(c) The small claims department of a justice court as provided by ORS 55.080.

(2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal actions and proceedings and to contempt proceedings except those in which the court may act summarily.

(3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and proceedings.

(4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following situations:

(a) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under ORS 40.030.

(b) Proceedings before grand juries, except as required by ORS 132.320.

(c) Proceedings for extradition, except as required by ORS 133.743 to 133.857.

(d) Sentencing proceedings, except proceedings under ORS [*138.052 and*] 163.150, as required by ORS 137.090 or proceedings under ORS 136.765 to 136.785.

(e) Proceedings to revoke probation, except as required by ORS 137.090.

(f) Proceedings conducted in a reentry court under section 29, chapter 649, Oregon Laws 2013.

(g) Issuance of warrants of arrest, bench warrants or search warrants.

(h) Proceedings under ORS chapter 135 relating to conditional release, security release, release on personal recognizance, or preliminary hearings, subject to ORS 135.173.

(i) Proceedings to determine proper disposition of a child in accordance with ORS 419B.325 (2) and 419C.400 (4).

(j) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and 813.255 to determine whether a driving while under the influence of intoxicants diversion agreement should be allowed or terminated.

(k) Proceedings under ORS 147.530 relating to victims' rights, except for the provisions of ORS 40.105 and 40.115.

SECTION 8. ORS 40.015, as amended by section 37, chapter 649, Oregon Laws 2013, is amended to read:

40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

(a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS 305.501;

(b) The small claims department of a circuit court as provided by ORS 46.415; and

(c) The small claims department of a justice court as provided by ORS 55.080.

(2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal actions and proceedings and to contempt proceedings except those in which the court may act summarily.

(3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and proceedings.

(4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following situations:

(a) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under ORS 40.030.

(b) Proceedings before grand juries, except as required by ORS 132.320.

(c) Proceedings for extradition, except as required by ORS 133.743 to 133.857.

(d) Sentencing proceedings, except proceedings under ORS [*138.052 and*] 163.150, as required by ORS 137.090 or proceedings under ORS 136.765 to 136.785.

(e) Proceedings to revoke probation, except as required by ORS 137.090.

(f) Issuance of warrants of arrest, bench warrants or search warrants.

(g) Proceedings under ORS chapter 135 relating to conditional release, security release, release on personal recognizance, or preliminary hearings, subject to ORS 135.173.

(h) Proceedings to determine proper disposition of a child in accordance with ORS 419B.325 (2) and 419C.400 (4).

(i) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and 813.255 to determine whether a driving while under the influence of intoxicants diversion agreement should be allowed or terminated.

(j) Proceedings under ORS 147.530 relating to victims' rights, except for the provisions of ORS 40.105 and 40.115.

SECTION 9. ORS 40.355 is amended to read:

40.355. (1) For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record, but only if the crime:

(a) Was punishable by [*death or*] imprisonment in excess of one year under the law under which the witness was convicted; or

(b) Involved false statement or dishonesty.

(2)(a) If a defendant is charged with one or more of the crimes listed in paragraph (b) of this subsection, and the defendant is a witness, evidence that the defendant has been convicted of committing one or more of the following crimes against a family or household member, as defined in ORS 135.230, may be elicited from the defendant, or established by public record, and admitted into evidence for the purpose of attacking the credibility of the defendant:

(A) Assault in the fourth degree under ORS 163.160.

(B) Menacing under ORS 163.190.

(C) Harassment under ORS 166.065.

(D) Attempted assault in the fourth degree under ORS 163.160 (1).

(E) Attempted assault in the fourth degree under ORS 163.160 (3).

(F) Strangulation under ORS 163.187.

(G) The statutory counterpart in another jurisdiction to a crime listed in this paragraph.

(b) Evidence may be admitted into evidence for the purpose of attacking the credibility of a defendant under the provisions of this subsection only if the defendant is charged with committing one or more of the following crimes against a family or household member, as defined in ORS 135.230:

(A) Aggravated murder under ORS 163.095.

(B) Murder in the first degree under ORS 163.107.

(C) Murder in the second degree under ORS 163.115.

(D) Manslaughter in the first degree under ORS 163.118.

(E) Manslaughter in the second degree under ORS 163.125.

(F) Assault in the first degree under ORS 163.185.

(G) Assault in the second degree under ORS 163.175.

(H) Assault in the third degree under ORS 163.165.

(I) Assault in the fourth degree under ORS 163.160.

(J) Rape in the first degree under ORS 163.375 (1)(a).

(K) Sodomy in the first degree under ORS 163.405 (1)(a).

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

(M) Sexual abuse in the first degree under ORS 163.427 (1)(a)(B).

(N) Kidnapping in the first degree under ORS 163.235.

(O) Kidnapping in the second degree under ORS 163.225.

(P) Burglary in the first degree under ORS 164.225.

(Q) Coercion under ORS 163.275.

(R) Stalking under ORS 163.732.

(S) Violating a court's stalking protective order under ORS 163.750.

(T) Menacing under ORS 163.190.

(U) Harassment under ORS 166.065.

(V) Strangulation under ORS 163.187.

(W) Attempting to commit a crime listed in this paragraph.

(3) Evidence of a conviction under this section is not admissible if:

(a) A period of more than 15 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date; or

(b) The conviction has been expunged by pardon, reversed, set aside or otherwise rendered nugatory.

(4) When the credibility of a witness is attacked by evidence that the witness has been convicted of a crime, the witness shall be allowed to explain briefly the circumstances of the crime or former conviction; once the witness explains the circumstances, the opposing side shall have the opportunity to rebut the explanation.

(5) The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

(6) An adjudication by a juvenile court that a child is within its jurisdiction is not a conviction of a crime.

(7) A conviction of any of the statutory counterparts of offenses designated as violations as described in ORS 153.008 may not be used to impeach the character of a witness in any criminal or civil action or proceeding.

SECTION 10. ORS 137.635 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. ORS 137.707 is amended to read:

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

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

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

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

(a)(A) Murder in the second degree, as defined in ORS 163.115. .....300 months

(B) Murder in the first degree, as defined in ORS 163.107. .....360 months

(C) Attempt or conspiracy to commit aggravated murder, as defined in ORS 163.095. .....120 months

(D) Attempt or conspiracy to commit murder in any degree.....90 months

(E) Manslaughter in the first degree, as defined in ORS 163.118. .....120 months

(F) Manslaughter in the second degree, as defined in ORS 163.125. .....75 months

(G) Assault in the first degree, as defined in ORS 163.185. .....90 months

(H) Assault in the second degree, as defined in ORS 163.175. .....70 months

(I) Kidnapping in the first degree, as defined in ORS 163.235. .....90 months

(J) Kidnapping in the second degree, as defined in ORS 163.225. .....70 months

(K) Rape in the first degree, as defined in ORS 163.375. ...100 months

(L) Rape in the second degree, as defined in ORS 163.365. .....75 months

(M) Sodomy in the first degree, as defined in ORS 163.405. .....100 months

(N) Sodomy in the second degree, as defined in ORS 163.395. .....75 months

(O) Unlawful sexual penetration in the first degree, as defined in ORS 163.411. .....100 months

(P) Unlawful sexual penetration in the second degree, as defined in ORS 163.408. .....75 months

(Q) Sexual abuse in the first degree, as defined in ORS 163.427. .....75 months

(R) Robbery in the first degree, as defined in ORS 164.415. .....90 months

(S) Robbery in the second degree, as defined in ORS 164.405. .....70 months

(b)(A) Arson in the first degree, as defined in ORS 164.325, when the offense represented a threat of serious physical injury. .....90 months

(B) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670. .....70 months

(C) Compelling prostitution, as defined in ORS 167.017 (1)(a), (b) or (d). .....70 months

(c) Aggravated vehicular homicide, as defined in

ORS 163.149. .....240 months

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

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

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

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

(i) Order that a presentence report be prepared;

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

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

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

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

(i) Order that a presentence report be prepared;

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

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

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

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

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

(b) If a person charged and tried as provided in subsection (6) of this section is not found guilty of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one

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

(A) Order that a presentence report be prepared;

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

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

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

SECTION 12. ORS 138.310 is amended to read:

138.310. When the public defense services executive director pays costs, expenses or compensation under ORS 138.500 [*(5)*] **(4)** on appeal in a criminal action, the public defense services executive director shall notify the court below of the costs, expenses and compensation paid in order that the court below may exercise its discretion under ORS 151.505 or 161.665 (2).

SECTION 13. ORS 138.500 is amended to read:

138.500. (1) If a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS 138.510 to 138.680 wishes to appeal from an appealable adverse final order or judgment of a circuit court and if the person is without funds to employ suitable counsel possessing skills and experience commensurate with the nature and complexity of the case for the appeal, the person may request the circuit court from which the appeal is or would be taken to appoint counsel to represent the person on appeal. The following apply to a request under this subsection:

(a) The request shall be in writing and shall be made within the time during which an appeal may be taken or, if the notice of appeal has been filed, at any time thereafter. The request shall include a brief statement of the assets, liabilities and income in the previous year of the person unless the court already determined the person to be financially eligible for appointed counsel at state expense for purposes of the specific case, in which instance, the written request need only so indicate. However, if a request relies on a court's previous determination that the person is financially eligible, the court, in its discretion, may require the person to submit a new statement of assets, liabilities and income.

(b) If, based upon a request under paragraph (a) of this subsection, the court finds that petitioner or defendant previously received the services of appointed counsel or currently is without funds to employ suitable counsel for an appeal, the court shall appoint counsel to represent petitioner or defendant on the appeal.

[*(2)(a) Notwithstanding subsection (1) of this section, when a defendant has been sentenced to death, the request for appointed counsel shall be made to the Supreme Court. The Supreme Court shall appoint suitable counsel to represent the defendant on the appeal.*]

[*(b) After the notice of appeal has been filed, the Court of Appeals has concurrent authority to appoint or substitute counsel or appoint or substitute a legal advisor for the defendant under ORS 138.504.*]

[*(c) The Supreme Court has concurrent authority to appoint or substitute counsel or appoint or*

substitute a legal advisor for the defendant under ORS 138.504 in connection with review of a Court of Appeals decision under ORS 2.520.]

[*(d) Neither the Court of Appeals nor the Supreme Court may substitute one appointed counsel for another under paragraph (b) or (c) of this subsection except pursuant to the policies, procedures, standards and guidelines of the Public Defense Services Commission.*]

[*(3)*] **(2)** Whenever a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS 138.510 to 138.680 has filed a notice of appeal from an appealable adverse final order or judgment of a circuit court and the person is without funds to pay for a transcript, or portion thereof, necessary to present adequately the case upon appeal, the person may request the public defense services executive director to have the transcript, or portion thereof, prepared for purposes of appeal. The following apply to a request under this subsection:

(a) The public defense services executive director shall authorize the preparation of a transcript after a court has determined that the person is eligible for court-appointed counsel or, if the person has not applied for court-appointed counsel, the person submits a statement of the person's assets, liabilities and income in the previous year and the director determines that the person is eligible for preparation of a transcript at state expense.

(b) The cost of the transcript preparation under paragraph (a) of this subsection shall be in the amount prescribed in ORS 21.345 and paid for as provided by the policies, procedures, standards and guidelines of the Public Defense Services Commission.

[*(4)*] **(3)** After submission of the original brief by counsel, the public defense services executive director shall determine the cost of briefs and any other expenses of appellant, except transcripts, necessary to appellate review and a reasonable amount of compensation for counsel appointed under this section. Compensation payable to appointed counsel shall be as established under ORS 151.216. On any review by the Supreme Court of the judgment of the Court of Appeals the public defense services executive director shall similarly determine the costs of briefs and any other expenses necessary for review and a reasonable amount of compensation for counsel appointed under this section.

[*(5)*] **(4)** Costs, expenses and compensation determined by the public defense services executive director under subsection [*(4)*] **(3)** of this section shall be paid by the public defense services executive director from funds available for that purpose.

[*(6)*] **(5)** If the public defense services executive director denies, in whole or in part, costs, expenses and compensation submitted for review and payment, the person who submitted the payment request may appeal the decision to the Chief Judge of the Court of Appeals, if the appeal is in the Court of Appeals, or to the Chief Justice of the Supreme Court, if the appeal is in the Supreme Court. The Chief Judge, Chief Justice or the designee of the Chief Judge or Chief Justice, as appropriate, shall review the public defense services executive director's decision for abuse of discretion. The decision of the Chief Judge, the Chief Justice or the designee of the Chief Judge or Chief Justice is final.

[*(7)*] **(6)** The provisions of this section shall apply in favor of the defendant in a criminal action or the petitioner in a proceeding pursuant to ORS 138.510 to 138.680 when the person is respondent in an appeal taken by the state in a criminal action or by the defendant in a proceeding pursuant to ORS 138.510 to 138.680.

[*(8)*] **(7)** As used in this section, "criminal action" does not include an action that involves only violations.

[*(9)*] **(8)** As used in subsection [*(4)*] **(3)** of this section, "counsel" includes a legal advisor ap-

pointed under ORS 138.504.

SECTION 14. ORS 138.510 is amended to read:

138.510. (1) Except as otherwise provided in ORS 138.540, any person convicted of a crime under the laws of this state may file a petition for post-conviction relief pursuant to ORS 138.510 to 138.680.

[*(2) A petition for post-conviction relief may be filed by one person on behalf of another person who has been convicted of aggravated murder and sentenced to death only if the person filing the petition demonstrates by a preponderance of the evidence that:*]

[*(a) The person sentenced to death is unable to file a petition on the person's own behalf due to mental incapacity or because of a lack of access to the court; and*]

[*(b) The person filing the petition has a significant relationship with the person sentenced to death and will act in the best interest of the person on whose behalf the petition is being filed.*]

[*(3)*] **(2)** A petition pursuant to ORS 138.510 to 138.680 must be filed within two years of the following, unless the court on hearing a subsequent petition finds grounds for relief asserted which could not reasonably have been raised in the original or amended petition:

(a) If no appeal is taken, the date the judgment [*or order on the*] **of** conviction was entered in the register.

(b) If an appeal is taken, the date the appeal is final in the Oregon appellate courts.

(c) If a petition for certiorari to the United States Supreme Court is filed, the later of:

(A) The date of denial of certiorari, if the petition is denied; or

(B) The date of entry of a final state court judgment following remand from the United States Supreme Court.

[*(4) A one-year filing period shall apply retroactively to petitions filed by persons whose convictions and appeals became final before August 5, 1989, and any such petitions must be filed within one year after November 4, 1993. A person whose post-conviction petition was dismissed prior to November 4, 1993, cannot file another post-conviction petition involving the same case.*]

[*(5) The remedy created by ORS 138.510 to 138.680 is available to persons convicted before May 26, 1959.*]

[*(6) In any post-conviction proceeding pending in the courts of this state on May 26, 1959, the person seeking relief in such proceedings shall be allowed to amend the action and seek relief under ORS 138.510 to 138.680. If such person does not choose to amend the action in this manner, the law existing prior to May 26, 1959, shall govern the case.*]

SECTION 15. ORS 138.590 is amended to read:

138.590. (1) Any petitioner who is unable to pay the expenses of a proceeding pursuant to ORS 138.510 to 138.680 or to employ suitable counsel possessing skills and experience commensurate with the nature of the conviction and complexity of the case for the proceeding may proceed as a financially eligible person pursuant to this section upon order of the circuit court in which the petition is filed.

(2) If the petitioner wishes to proceed as a financially eligible person, the person shall file with the petition an affidavit stating inability to pay the expenses of a proceeding pursuant to ORS 138.510 to 138.680, including, but not limited to, the filing fee required by ORS 138.560, or to employ suitable counsel for such a proceeding. The affidavit shall contain a brief statement of the petitioner's assets and liabilities and income during the previous year. If the circuit court is satisfied that the petitioner is unable to pay such expenses or to employ suitable counsel, it shall order that the petitioner proceed as a financially eligible person. [*If the court finds that a petitioner who has*

been sentenced to death is not competent to decide whether to accept or reject the appointment of counsel, the court shall appoint counsel to represent the petitioner.] However, when a circuit court orders petitioner's case transferred to another circuit court as provided in ORS 138.560 (4), the matter of petitioner's proceeding as a financially eligible person shall be determined by the latter court.

[*(3) If a petitioner who has been sentenced to death qualifies for the appointment of counsel under this section but rejects the appointment, the court shall determine, after a hearing if necessary, whether the petitioner rejected the offer of counsel and made the decision with an understanding of its legal consequences. The court shall make appropriate findings on the record.*]

[*(4)*] **(3)** In the order to proceed as a financially eligible person, the circuit court shall appoint suitable counsel to represent petitioner. Counsel so appointed shall represent petitioner throughout the proceedings in the circuit court. The court may not substitute one appointed counsel for another except pursuant to the policies, procedures, standards and guidelines of the Public Defense Services Commission.

[*(5)*] **(4)** If counsel appointed by the circuit court determines that the petition as filed by petitioner is defective, either in form or in substance, or both, counsel may move to amend the petition within 15 days following counsel's appointment, or within a further period as the court may allow. The amendment shall be permitted as of right at any time during this period. If appointed counsel believes that the original petition cannot be construed to state a ground for relief under ORS 138.510 to 138.680, and cannot be amended to state a ground for relief, counsel shall, in lieu of moving to amend the petition, inform the petitioner and notify the circuit court of counsel's belief by filing an affidavit stating the belief and the reasons therefor with the clerk of the circuit court. This affidavit does not constitute a ground for denying the petition prior to a hearing upon its sufficiency, but the circuit court may consider the affidavit in deciding upon the sufficiency of the petition at the hearing.

[*(6)*] **(5)** When a petitioner has been ordered to proceed as a financially eligible person, the expenses which are necessary for the proceedings upon the petition in the circuit court and the compensation to appointed counsel for petitioner as provided in this subsection shall be paid by the public defense services executive director from funds available for the purpose. At the conclusion of proceedings on a petition pursuant to ORS 138.510 to 138.680, the public defense services executive director shall determine and pay, as provided by the policies, procedures, standards and guidelines of the Public Defense Services Commission, the amount of expenses of petitioner and compensation for the services of appointed counsel in the proceedings in the circuit court.

[*(7)*] **(6)** If the public defense services executive director denies, in whole or in part, expenses and compensation submitted for review and payment, the person who submitted the payment request may appeal the decision to the presiding judge of the circuit court. The presiding judge or the designee of the presiding judge shall review the public defense services executive director's decision for abuse of discretion. The decision of the presiding judge or the designee of the presiding judge is final.

[*(8)(a)*] **(7)(a)** When a petitioner has been authorized to proceed as a financially eligible person, all court fees in the circuit court, except for the filing fee required by ORS 138.560, are waived.

(b) When a petitioner is allowed to file a petition without payment of the fee required by ORS 138.560 due to inability to pay, the fee is not waived but may be drawn from, or charged against, the petitioner's trust account if the petitioner is an adult in custody in a correctional facility.

[*(9) Notwithstanding any other provision of this chapter, a court may not appoint as counsel for*

a petitioner who has been sentenced to death a counsel who previously represented the petitioner at trial or on automatic and direct review in the case resulting in the death sentence unless the petitioner and the counsel expressly request continued representation.]

SECTION 16. ORS 144.122 is amended to read:

144.122. (1) After the initial parole release date has been set under ORS 144.120 and after a minimum period of time established by the State Board of Parole and Post-Prison Supervision under subsection (2)(a) of this section, the prisoner may request that the parole release date be reset to an earlier date. The board may grant the request upon a determination by the board that continued incarceration is cruel and inhumane and that resetting the release date to an earlier date is not incompatible with the best interests of the prisoner and society and that the prisoner:

(a) Has demonstrated an extended course of conduct indicating outstanding reformation;

(b) Suffers from a severe medical condition including terminal illness; or

(c) Is elderly and is permanently incapacitated in such a manner that the prisoner is unable to move from place to place without the assistance of another person.

(2) The Advisory Commission on Prison Terms and Parole Standards may propose to the board and the board shall adopt rules:

(a) Establishing minimum periods of time to be served by prisoners before application may be made for a reset of release date under subsection (1) of this section;

(b) Detailing the criteria set forth under subsection (1) of this section for the resetting of a parole release date; and

(c) Establishing criteria for parole release plans for prisoners released under this section that, at a minimum, must ensure appropriate supervision and services for the person released.

(3) The provisions of subsection (1)(b) of this section apply to prisoners sentenced in accordance with ORS 161.610.

(4) The provisions of this section do not apply to prisoners sentenced to life imprisonment without the possibility of release or parole under ORS [*138.052 or*] 163.150.

(5) If the victim has requested notification of the release of the prisoner, the board shall notify the victim as described in ORS 144.750 (3) prior to any hearing or administrative decision under this section.

SECTION 17. ORS 144.126 is amended to read:

144.126. (1) The State Board of Parole and Post-Prison Supervision may advance the release date of a prisoner who was sentenced in accordance with rules of the Oregon Criminal Justice Commission or ORS 161.610. The release date may be advanced if the board determines that continued incarceration is cruel and inhumane and that advancing the release date of the prisoner is not incompatible with the best interests of the prisoner and society and that the prisoner is:

(a) Suffering from a severe medical condition including terminal illness; or

(b) Elderly and permanently incapacitated in such a manner that the prisoner is unable to move from place to place without the assistance of another person.

(2) The board shall adopt rules establishing criteria for release plans for prisoners released under this section that, at a minimum, must insure appropriate supervision and services for the person released.

(3) The provisions of this section do not apply to prisoners sentenced to life imprisonment without the possibility of release or parole under ORS [*138.052 or*] 163.150.

(4) If the victim has requested notification of the release of the prisoner, the board shall notify the victim as described in ORS 144.750 (3) prior to any hearing or administrative decision under this

section.

SECTION 18. ORS 146.003 is amended to read:

146.003. As used in ORS 146.003 to 146.189 and 146.710 to 146.992, unless the context requires otherwise:

(1) "Approved laboratory" means a laboratory approved by the Chief Medical Examiner as competent to perform the blood sample analysis required by ORS 146.113 (2).

(2) "Assistant district medical examiner" means a physician appointed by the district medical examiner to investigate and certify deaths within a county or district.

(3) "Cause of death" means the primary or basic disease process or injury ending life.

(4) "Death requiring investigation" means the death of a person occurring in any one of the circumstances set forth in ORS 146.090.

(5) "District medical examiner" means a physician appointed by the Chief Medical Examiner to investigate and certify deaths within a county or district, including a Deputy State Medical Examiner.

(6) "Law enforcement agency" means a county sheriff's office, municipal police department, police department established by a university under ORS 352.121 or 353.125 and the Oregon State Police.

(7) "Legal intervention" includes [*an execution pursuant to ORS 137.463, 137.467 and 137.473 and other*] **the** legal use of force resulting in death.

(8) "Manner of death" means the designation of the probable mode of production of the cause of death, including natural, accidental, suicidal, homicidal, legal intervention or undetermined.

(9) "Medical examiner" means a physician appointed as provided by ORS 146.003 to 146.189 to investigate and certify the cause and manner of deaths requiring investigation, including the Chief Medical Examiner.

(10) "Medical-legal death investigator" means a person appointed by the district medical examiner to assist in the investigation of deaths within a county.

(11) "Pathologist" means a physician holding a current license to practice medicine and surgery and who is eligible for certification by the American Board of Pathology.

(12) "Unidentified human remains" does not include human remains that are unidentified human remains that are part of an archaeological site or suspected of being Native American and covered under ORS chapters 97 and 390 and ORS 358.905 to 358.961.

SECTION 19. ORS 161.620 is amended to read:

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

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

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

(3) ORS 161.610 may be imposed.

SECTION 20. ORS 161.665 is amended to read:

161.665. (1) Except as provided in ORS 151.505, the court, only in the case of a defendant for whom it enters a judgment of conviction, may include in its sentence thereunder a money award for all costs specially incurred by the state in prosecuting the defendant. Costs include a reasonable attorney fee for counsel appointed pursuant to ORS 135.045 or 135.050 and a reasonable amount for fees and expenses incurred pursuant to preauthorization under ORS 135.055. A reasonable attorney

fee is presumed to be a reasonable number of hours at the hourly rate authorized by the Public Defense Services Commission under ORS 151.216. Costs do not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

(2) Except as provided in ORS 151.505, the court, after the conclusion of an appeal of its initial judgment of conviction, may include in its general judgment, or enter a supplemental judgment that includes, a money award that requires a convicted defendant to pay a reasonable attorney fee for counsel appointed pursuant to ORS 138.500, including counsel who is appointed under ORS 151.216 or counsel who is under contract to provide services for the proceeding under ORS 151.219, and other costs and expenses allowed by the public defense services executive director under ORS 138.500 [*(4)*] **(3)**. A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by the commission under ORS 151.216.

(3) For purposes of subsections (1) and (2) of this section, compensation of counsel is determined by reference to a schedule of compensation established by the commission under ORS 151.216.

(4) The court may not sentence a defendant to pay costs under this section unless the defendant is or may be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(5) A defendant who has been sentenced to pay costs under this section and who is not in contumacious default in the payment of costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the immediate family of the defendant, the court may enter a supplemental judgment that remits all or part of the amount due in costs, or modifies the method of payment under ORS 161.675.

(6) Except as provided in subsection (7) of this section, all moneys collected or paid under this section shall be paid into the Criminal Fine Account.

(7) The court may, in the judgment of conviction, include a money award requiring the defendant to pay the costs of extraditing the defendant to this state. Any amounts awarded to the state under this subsection must be listed separately in the money award portion of the judgment. All moneys collected or paid under this subsection shall be deposited into the Arrest and Return Account established by ORS 133.865.

SECTION 21. ORS 475.188 is amended to read:

475.188. (1) Prescription drug orders may be transmitted by electronic means from a practitioner authorized to prescribe drugs directly to the dispensing pharmacist.

(2) All prescription drug orders communicated by way of electronic transmission shall:

(a) Be transmitted only by an authorized practitioner;

(b) Be transmitted directly to a pharmacist in a pharmacy of the patient's choice with no intervening person having access to the prescription drug order;

(c) Specify the prescribing practitioner's telephone number for verbal confirmation, the time and date of transmission, the identity of the pharmacy intended to receive the transmission and all other information required for a prescription by federal or state law; and

(d) Be traceable to the prescribing practitioner by an electronic signature or other secure method of validation.

(3) An electronic transmission of a prescription drug order shall be stored by electronic means or reduced promptly to writing, filed by the pharmacy and retained in conformity with the requirements of ORS 475.165.

(4) The dispensing pharmacist shall exercise professional judgment regarding the accuracy, validity and authenticity of an electronically transmitted prescription drug order.

(5) All equipment for transmission, storage or receipt of electronically transmitted prescription drug orders shall be maintained to protect against unauthorized access.

(6) A pharmacist, pharmacy or pharmacy department shall not enter into an agreement with a practitioner or health care facility concerning the provision of any electronic transmission equipment or apparatus that would adversely affect a patient's freedom to select the pharmacy or pharmacy department of the patient's choice.

(7) A pharmacist, pharmacy or pharmacy department shall not provide any electronic equipment or apparatus to a practitioner or health care facility for the purpose of providing an incentive to the practitioner or health care facility to refer patients to a particular pharmacy or pharmacy department.

(8) There shall be no additional charge to the patient because the prescription drug order was electronically transmitted.

(9) Nothing in this section shall be construed as authorizing the electronic transmission of a prescription drug order when a written prescription is required under ORS 127.815, [*137.473,*] 169.750 or 453.025.

CAPTIONS

SECTION 22. The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

EFFECTIVE DATE

SECTION 23. This 2023 Act does not take effect unless the amendment to the Oregon Constitution proposed by Senate Joint Resolution 27 (2023) is approved by the people at the regular general election held in November 2024. This 2023 Act takes effect on the effective date of that constitutional amendment.