

House Bill 3268

Sponsored by Representative GREENLICK; Representatives BYNUM, GORSEK, KENY-GUYER, LIVELY, NOBLE, PILUSO, SALINAS, Senators DEMBROW, MONNES ANDERSON, STEINER HAYWARD

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**.

Redefines crime of aggravated murder. Reclassifies current manners of committing aggravated murder as murder in the first degree. Renames crime of murder to murder in the second degree. Specifies penalties.

Specifies procedures for persons already sentenced to death to be resentenced to life imprisonment without possibility of parole.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to murder; creating new provisions; amending ORS 40.355, 133.705, 136.450, 137.635, 137.700,
3 137.707, 144.079, 144.085, 144.110, 161.005, 161.535, 163.095, 163.098, 163.103, 163.115, 163.135,
4 163.707, 342.143, 419A.260, 419C.349, 419C.352, 419C.501, 421.121, 443.004 and 671.610; and pre-
5 scribing an effective date.

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

7 **SECTION 1.** ORS 163.095 is amended to read:

8 163.095. As used in ORS 163.105 and this section, "aggravated murder" means [*murder as defined*
9 *in ORS 163.115 which*] **criminal homicide of two or more persons that is premeditated and**
10 **committed intentionally** [*under, or accompanied by, any of the following circumstances*] **and with the**
11 **intent to:**

12 (1) **Intimidate, injure or coerce a civilian population;**

13 (2) **Influence the policy of a government by intimidation or coercion; or**

14 (3) **Affect the conduct of a government through destruction of property, murder, kid-**
15 **napping or aircraft piracy.**

16 [(1)(a) *The defendant committed the murder pursuant to an agreement that the defendant receive*
17 *money or other thing of value for committing the murder.*]

18 [(b) *The defendant solicited another to commit the murder and paid or agreed to pay the person*
19 *money or other thing of value for committing the murder.*]

20 [(c) *The defendant committed murder after having been convicted previously in any jurisdiction of*
21 *any homicide, the elements of which constitute the crime of murder as defined in ORS 163.115 or*
22 *manslaughter in the first degree as defined in ORS 163.118.*]

23 [(d) *There was more than one murder victim in the same criminal episode as defined in ORS*
24 *131.505.*]

25 [(e) *The homicide occurred in the course of or as a result of intentional maiming or torture of the*
26 *victim.*]

27 [(f) *The victim of the intentional homicide was a person under the age of 14 years.*]

28 [(2)(a) *The victim was one of the following and the murder was related to the performance of the*

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 *victim's official duties in the justice system:]*

2 [(A) A police officer as defined in ORS 181A.355;]

3 [(B) A correctional, parole and probation officer or other person charged with the duty of custody,
4 control or supervision of convicted persons;]

5 [(C) A member of the Oregon State Police;]

6 [(D) A judicial officer as defined in ORS 1.210;]

7 [(E) A juror or witness in a criminal proceeding;]

8 [(F) An employee or officer of a court of justice;]

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

10 [(H) A regulatory specialist.]

11 [(b) The defendant was confined in a state, county or municipal penal or correctional facility or
12 was otherwise in custody when the murder occurred.]

13 [(c) The defendant committed murder by means of an explosive as defined in ORS 164.055.]

14 [(d) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed the
15 homicide under the circumstances set forth in ORS 163.115 (1)(b).]

16 [(e) The murder was committed in an effort to conceal the commission of a crime, or to conceal the
17 identity of the perpetrator of a crime.]

18 [(f) The murder was committed after the defendant had escaped from a state, county or municipal
19 penal or correctional facility and before the defendant had been returned to the custody of the
20 facility.]

21 **SECTION 2.** Section 3 of this 2019 Act is added to and made a part of ORS 163.095 to
22 **163.115.**

23 **SECTION 3.** (1) "Murder in the first degree" means murder in the second degree as de-
24 fined in ORS 163.115 which is committed under, or accompanied by, any of the following cir-
25 cumstances:

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

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

30 (c) The defendant committed murder after having been convicted previously in any ju-
31 risdiction of any homicide, the elements of which constitute the crime of aggravated murder
32 as defined in ORS 163.095, murder in the first degree under this section, murder in the sec-
33 ond degree as defined in ORS 163.115 or manslaughter in the first degree as defined in ORS
34 **163.118.**

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

37 (e) The homicide occurred in the course of or as a result of intentional maiming or tor-
38 ture of the victim.

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

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

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

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

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

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

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

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

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

5 (H) A regulatory specialist.

6 (h) The defendant was confined in a state, county or municipal penal or correctional fa-
7 cility or was otherwise in custody when the murder occurred.

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

9 (j) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally com-
10 mitted the homicide under the circumstances set forth in ORS 163.115 (1)(b).

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

13 (L) The murder was committed after the defendant had escaped from a state, county or
14 municipal penal or correctional facility and before the defendant had been returned to the
15 custody of the facility.

16 (2)(a) Except as otherwise provided in ORS 163.155 and paragraph (b) of this subsection,
17 the court shall sentence a person convicted of murder in the first degree, who was at least
18 15 years of age at the time of committing the murder, to life imprisonment. The court shall
19 order that the defendant be confined for a minimum of 30 years without possibility of parole,
20 release to post-prison supervision, release on work release or any form of temporary leave
21 or employment at a forest or work camp.

22 (b) The court may sentence the person to life imprisonment without the possibility of
23 parole if the person was at least 18 years of age at the time of committing the murder. The
24 court shall state on the record the reasons for imposing the sentence. A person sentenced
25 to life imprisonment without the possibility of release or parole under this paragraph shall
26 not have that sentence suspended, deferred or commuted by any judicial officer, and the
27 State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce
28 the period of confinement in any manner whatsoever. The Department of Corrections or any
29 executive official may not permit the prisoner to participate in any sort of release or
30 furlough program.

31 (3)(a) For a person sentenced to life imprisonment, at any time after completion of the
32 minimum period of confinement described in subsection (2)(a) of this subsection, the State
33 Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined,
34 shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a rea-
35 sonable period of time. The sole issue is whether the prisoner is likely to be rehabilitated
36 within a reasonable period of time. At the hearing the prisoner has:

37 (A) The burden of proving by a preponderance of the evidence the likelihood of rehabili-
38 tation within a reasonable period of time;

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

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

45 (b) If, upon hearing all of the evidence, the board, upon a unanimous vote of three board

1 **members or, if the chairperson requires all voting members to participate, a unanimous vote**
 2 **of all voting members, finds that the prisoner is capable of rehabilitation and that the terms**
 3 **of the prisoner's confinement should be changed to life imprisonment with the possibility of**
 4 **parole, release to post-prison supervision or work release, it shall enter an order to that ef-**
 5 **fect and the order shall convert the terms of the prisoner's confinement to life imprisonment**
 6 **with the possibility of parole, release to post-prison supervision or work release and may set**
 7 **a release date. Otherwise, the board shall deny the relief sought in the petition.**

8 (c) **If the board denies the relief sought in the petition, the board shall determine the**
 9 **date of the subsequent hearing, and the prisoner may petition for an interim hearing, in ac-**
 10 **cordance with ORS 144.285.**

11 (d) **The board's final order shall be accompanied by findings of fact and conclusions of**
 12 **law. The findings of fact shall consist of a concise statement of the underlying facts sup-**
 13 **porting the findings as to each contested issue of fact and as to each ultimate fact required**
 14 **to support the board's order.**

15 **SECTION 4.** ORS 163.115 is amended to read:

16 163.115. (1) Except as provided in ORS **163.095**, 163.118 and 163.125, criminal homicide consti-
 17 tutes murder **in the second degree**:

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

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

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

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

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

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

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

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

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

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

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

34 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
 35 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
 36 14 years of age; or

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

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

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

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

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

1 defendant:

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

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

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

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

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

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

14 (5) Except as otherwise provided in ORS 163.155:

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

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

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

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

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

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

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

41 (e) If the board denies the relief sought in the petition, the board shall determine the date of the
42 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS
43 144.285.

44 (f) The board's final order shall be accompanied by findings of fact and conclusions of law. The
45 findings of fact shall consist of a concise statement of the underlying facts supporting the findings

1 as to each contested issue of fact and as to each ultimate fact required to support the board’s order.

2 (6) As used in this section:

3 (a) “Assault” means the intentional, knowing or reckless causation of physical injury to another
 4 person. “Assault” does not include the causation of physical injury in a motor vehicle accident that
 5 occurs by reason of the reckless conduct of a defendant.

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

10 (c) “Pattern or practice” means one or more previous episodes.

11 (d) “Torture” means the intentional infliction of intense physical pain upon an unwilling victim
 12 as a separate objective apart from any other purpose.

13 **SECTION 5.** ORS 40.355 is amended to read:

14 40.355. (1) For the purpose of attacking the credibility of a witness, evidence that the witness
 15 has been convicted of a crime shall be admitted if elicited from the witness or established by public
 16 record, but only if the crime:

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

19 (b) Involved false statement or dishonesty.

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

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

26 (B) Menacing under ORS 163.190.

27 (C) Harassment under ORS 166.065.

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

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

30 (F) Strangulation under ORS 163.187.

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

32 (b) Evidence may be admitted into evidence for the purpose of attacking the credibility of a
 33 defendant under the provisions of this subsection only if the defendant is charged with committing
 34 one or more of the following crimes against a family or household member, as defined in ORS
 35 135.230:

36 (A) Aggravated murder under ORS 163.095.

37 **(B) Murder in the first degree under section 3 of this 2019 Act.**

38 ~~[(B)]~~ (C) Murder in the second degree under ORS 163.115.

39 ~~[(C)]~~ (D) Manslaughter in the first degree under ORS 163.118.

40 ~~[(D)]~~ (E) Manslaughter in the second degree under ORS 163.125.

41 ~~[(E)]~~ (F) Assault in the first degree under ORS 163.185.

42 ~~[(F)]~~ (G) Assault in the second degree under ORS 163.175.

43 ~~[(G)]~~ (H) Assault in the third degree under ORS 163.165.

44 ~~[(H)]~~ (I) Assault in the fourth degree under ORS 163.160.

45 ~~[(I)]~~ (J) Rape in the first degree under ORS 163.375 (1)(a).

- 1 [(J)] **(K)** Sodomy in the first degree under ORS 163.405 (1)(a).
 2 [(K)] **(L)** Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).
 3 [(L)] **(M)** Sexual abuse in the first degree under ORS 163.427 (1)(a)(B).
 4 [(M)] **(N)** Kidnapping in the first degree under ORS 163.235.
 5 [(N)] **(O)** Kidnapping in the second degree under ORS 163.225.
 6 [(O)] **(P)** Burglary in the first degree under ORS 164.225.
 7 [(P)] **(Q)** Coercion under ORS 163.275.
 8 [(Q)] **(R)** Stalking under ORS 163.732.
 9 [(R)] **(S)** Violating a court’s stalking protective order under ORS 163.750.
 10 [(S)] **(T)** Menacing under ORS 163.190.
 11 [(T)] **(U)** Harassment under ORS 166.065.
 12 [(U)] **(V)** Strangulation under ORS 163.187.
 13 [(V)] **(W)** Attempting to commit a crime listed in this paragraph.
 14 (3) Evidence of a conviction under this section is not admissible if:
 15 (a) A period of more than 15 years has elapsed since the date of the conviction or of the release
 16 of the witness from the confinement imposed for that conviction, whichever is the later date; or
 17 (b) The conviction has been expunged by pardon, reversed, set aside or otherwise rendered
 18 nugatory.
 19 (4) When the credibility of a witness is attacked by evidence that the witness has been convicted
 20 of a crime, the witness shall be allowed to explain briefly the circumstances of the crime or former
 21 conviction; once the witness explains the circumstances, the opposing side shall have the opportu-
 22 nity to rebut the explanation.
 23 (5) The pendency of an appeal therefrom does not render evidence of a conviction inadmissible.
 24 Evidence of the pendency of an appeal is admissible.
 25 (6) An adjudication by a juvenile court that a child is within its jurisdiction is not a conviction
 26 of a crime.
 27 (7) A conviction of any of the statutory counterparts of offenses designated as violations as de-
 28 scribed in ORS 153.008 may not be used to impeach the character of a witness in any criminal or
 29 civil action or proceeding.
- 30 **SECTION 6.** ORS 133.705 is amended to read:
 31 133.705. As used in ORS 133.705 to 133.717:
 32 (1) “Biological evidence” means an individual’s blood, semen, hair, saliva, skin tissue, fingernail
 33 scrapings, bone, bodily fluids or other identified biological material. “Biological evidence” includes
 34 the contents of a sexual assault forensic evidence kit.
 35 (2) “Convicted” includes a finding of guilty or responsible except for insanity and a finding that
 36 a person is within the jurisdiction of the juvenile court under ORS 419C.005.
 37 (3) “Covered offense” means:
 38 (a) Aggravated murder under ORS 163.095;
 39 **(b) Murder in the first degree under section 3 of this 2019 Act;**
 40 [(b)] **(c) Murder in the second degree** under ORS 163.115;
 41 [(c)] **(d) Manslaughter in the first degree** under ORS 163.118;
 42 [(d)] **(e) Manslaughter in the second degree** under ORS 163.125;
 43 [(e)] **(f) Aggravated vehicular homicide** under ORS 163.149;
 44 [(f)] **(g) Rape in the first degree** under ORS 163.375;
 45 [(g)] **(h) Sodomy in the first degree** under ORS 163.405; or

1 *[(h)]* (i) Unlawful sexual penetration in the first degree under ORS 163.411.

2 (4) “Custodian” means a law enforcement agency as defined in ORS 131.550, or any other person
 3 or public body as defined in ORS 174.109, that is charged with the collection, preservation or re-
 4 trieval of evidence in connection with a criminal investigation or criminal prosecution.
 5 “Custodian” does not include a court.

6 (5) “DNA” means deoxyribonucleic acid.

7 (6) “DNA profile” means the unique identifier of an individual that is derived from DNA.

8 (7) “Sentence” means a term of incarceration in a correctional or juvenile detention facility, a
 9 period of probation, parole or post-prison supervision and the period of time during which a person
 10 is under the jurisdiction of the Psychiatric Security Review Board.

11 (8) “Supervisory authority” has the meaning given that term in ORS 144.087.

12 (9) “Victim” has the meaning given that term in ORS 131.007.

13 **SECTION 7.** ORS 136.450 is amended to read:

14 136.450. *[(1) Except as otherwise provided in subsection (2) of this section,]* The verdict of a trial
 15 jury in a criminal action shall be by concurrence of at least 10 of 12 jurors.

16 *[(2) Except when the state requests a unanimous verdict, a verdict of guilty for murder or aggra-
 17 vated murder shall be by concurrence of at least 11 of 12 jurors.]*

18 **SECTION 8.** ORS 137.635 is amended to read:

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

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

32 (a) Murder **in any degree**, as defined in ORS 163.115 **or section 3 of this 2019 Act**, and any
 33 aggravated form thereof.

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

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

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

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

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

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

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

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

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

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

45 **SECTION 9.** ORS 137.700 is amended to read:

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

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

-
- 14
 15
 16 (a)(A) **Murder in the second**
 17 **degree**, as defined in
 18 ORS 163.115.....300 months
 19 (B) **Murder in the first**
 20 **degree, as defined**
 21 **in section 3 of this**
 22 **2019 Act.....360 months**
 23 [(B)] (C) Attempt or conspiracy
 24 to commit aggravated
 25 murder, as defined
 26 in ORS 163.095.....120 months
 27 [(C)] (D) Attempt or conspiracy
 28 to commit murder[, *as*]
 29 [*defined in ORS 163.115*]
 30 **in any degree.....90 months**
 31 [(D)] (E) Manslaughter in the
 32 first degree, as defined
 33 in ORS 163.118.....120 months
 34 [(E)] (F) Manslaughter in the
 35 second degree, as defined
 36 in ORS 163.125.....75 months
 37 [(F)] (G) Assault in the first
 38 degree, as defined in
 39 ORS 163.185.....90 months
 40 [(G)] (H) Assault in the second
 41 degree, as defined in
 42 ORS 163.175.....70 months
 43 [(H)] (I) Except as provided in
 44 paragraph (b)(G) of
 45 this subsection,

- 1 kidnapping in the first
- 2 degree, as defined
- 3 in ORS 163.235.....90 months
- 4 [(I)] (J) Kidnapping in the second
- 5 degree, as defined in
- 6 ORS 163.225.....70 months
- 7 [(J)] (K) Rape in the first degree,
- 8 as defined in ORS 163.375
- 9 (1)(a), (c) or (d).....100 months
- 10 [(K)] (L) Rape in the second degree,
- 11 as defined in
- 12 ORS 163.365.....75 months
- 13 [(L)] (M) Sodomy in the first degree,
- 14 as defined in ORS 163.405
- 15 (1)(a), (c) or (d).....100 months
- 16 [(M)] (N) Sodomy in the second
- 17 degree, as defined in
- 18 ORS 163.395.....75 months
- 19 [(N)] (O) Unlawful sexual penetration
- 20 in the first degree, as
- 21 defined in ORS 163.411
- 22 (1)(a) or (c).....100 months
- 23 [(O)] (P) Unlawful sexual penetration
- 24 in the second degree, as
- 25 defined in ORS 163.408.75 months
- 26 [(P)] (Q) Sexual abuse in the first
- 27 degree, as defined in
- 28 ORS 163.427.....75 months
- 29 [(Q)] (R) Robbery in the first degree,
- 30 as defined in
- 31 ORS 164.415.....90 months
- 32 [(R)] (S) Robbery in the second
- 33 degree, as defined in
- 34 ORS 164.405.....70 months
- 35 (b)(A) Arson in the first degree,
- 36 as defined in ORS 164.325,
- 37 when the offense represented
- 38 a threat of serious
- 39 physical injury.90 months
- 40 (B) Using a child in a display
- 41 of sexually explicit
- 42 conduct, as defined in
- 43 ORS 163.670.....70 months
- 44 (C) Compelling prostitution,
- 45 as defined in

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

24

25

26 **SECTION 10.** ORS 137.707 is amended to read:

27 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
 28 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
 29 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
 30 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
 31 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
 32 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)
 33 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is
 34 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

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

39 (2) When a person charged under this section is convicted of an offense listed in subsection (4)
 40 of this section, the court shall impose at least the presumptive term of imprisonment provided for
 41 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
 42 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
 43 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
 44 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-
 45 tence for any reason under ORS 421.121 or any other provision of law. ORS 138.052, 163.105 and

1 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated
2 murder under ORS 163.095 except that a person who was under 18 years of age at the time the of-
3 fense was committed is not subject to a sentence of death.

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

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

-
- 9 (a)(A) **Murder in the second**
10 **degree**, as defined in
11 ORS 163.115.....300 months
 - 12 (B) **Murder in the first**
13 **degree, as defined**
14 **in section 3 of this**
15 **2019 Act.....360 months**
 - 16 [(B)] (C) Attempt or conspiracy
17 to commit aggravated
18 murder, as defined
19 in ORS 163.095.....120 months
 - 20 [(C)] (D) Attempt or conspiracy
21 to commit murder[, as]
22 [defined in ORS 163.115]
23 **in any degree.....90 months**
 - 24 [(D)] (E) Manslaughter in the
25 first degree, as defined
26 in ORS 163.118.....120 months
 - 27 [(E)] (F) Manslaughter in the
28 second degree, as defined
29 in ORS 163.125.....75 months
 - 30 [(F)] (G) Assault in the first
31 degree, as defined
32 in ORS 163.185.....90 months
 - 33 [(G)] (H) Assault in the second
34 degree, as defined
35 in ORS 163.175.....70 months
 - 36 [(H)] (I) Kidnapping in the first
37 degree, as defined in
38 ORS 163.235.....90 months
 - 39 [(I)] (J) Kidnapping in the second
40 degree, as defined in
41 ORS 163.225.....70 months
 - 42 [(J)] (K) Rape in the first degree,
43 as defined in
44 ORS 163.375.....100 months
 - 45 [(K)] (L) Rape in the second

1 degree, as defined in
 2 ORS 163.365.....75 months
 3 [(L)] (M) Sodomy in the first
 4 degree, as defined in
 5 ORS 163.405.....100 months
 6 [(M)] (N) Sodomy in the second
 7 degree, as defined in
 8 ORS 163.395.....75 months
 9 [(N)] (O) Unlawful sexual
 10 penetration in the first
 11 degree, as defined
 12 in ORS 163.411.....100 months
 13 [(O)] (P) Unlawful sexual
 14 penetration in the
 15 second degree, as
 16 defined in ORS 163.408.....75 months
 17 [(P)] (Q) Sexual abuse in the first
 18 degree, as defined in
 19 ORS 163.427.....75 months
 20 [(Q)] (R) Robbery in the first
 21 degree, as defined in
 22 ORS 164.415.....90 months
 23 [(R)] (S) Robbery in the second
 24 degree, as defined in
 25 ORS 164.405.....70 months
 26 (b)(A) Arson in the first degree,
 27 as defined in
 28 ORS 164.325, when
 29 the offense represented
 30 a threat of serious
 31 physical injury.....90 months
 32 (B) Using a child in a display
 33 of sexually explicit
 34 conduct, as defined in
 35 ORS 163.670.....70 months
 36 (C) Compelling prostitution,
 37 as defined in ORS 167.017
 38 (1)(a), (b) or (d).70 months
 39 (c) Aggravated vehicular
 40 homicide, as defined in
 41 ORS 163.149.....240 months
 42

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

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

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

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

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

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

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

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

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

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

20 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 21 419C.067 and 419C.411.

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

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

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

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

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

44 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
 45 419C.067 and 419C.411.

SECTION 11. ORS 144.079 is amended to read:

144.079. (1)(a) If a prisoner is sentenced to terms of imprisonment that are consecutive to one another and result from crimes committed during the period before the prisoner's first initial parole hearing, or if a prisoner is sentenced to terms of imprisonment that are consecutive to one another and result from crimes committed during the period between any two initial parole hearings, the total term resulting from the crimes committed during each such separate period shall be determined by the State Board of Parole and Post-Prison Supervision as follows, except as provided in subsection (2) of this section, and the total terms so determined shall then be summed as provided in ORS 144.783 (1):

(A) First, the board shall establish the appropriate range for the felony determined by the board, according to its rules, to be the most serious of the felonies committed during the period. If two or more felonies are determined to be equally the most serious, the board shall establish the appropriate range under this paragraph only for one of those felonies.

(B) Second, the board shall establish a range for each of the remaining felonies committed during the same period. For purposes of establishing the ranges for the remaining felonies under this paragraph, the board shall not consider prior criminal history.

(C) Third, the board shall determine the total range applicable in the offender's case for crimes committed during the same period by summing the ranges established under subparagraph (B) of this paragraph with the range established under subparagraph (A) of this paragraph and shall determine an appropriate term within that range.

(D) Finally, the board shall vary the term determined under subparagraph (C) of this paragraph according to rules established under ORS 144.785 (1), if the board finds aggravating or mitigating factors in the case. The board shall consider as an aggravating factor the fact that the prisoner has been sentenced to consecutive terms of imprisonment.

(b) Whenever a prisoner is committed to the custody of the Department of Corrections for a crime that was committed during a period already considered at an initial parole hearing and upon a sentence consecutive to any sentence imposed for crimes committed during that period, the board shall conduct a hearing to consider the previously unconsidered crime. The hearing shall be a hearing supplemental to the original initial hearing concerning crimes committed during the period. Time limitations and other procedural provisions applicable to initial hearings shall apply to a supplemental hearing under this subsection. Upon conclusion of the supplemental hearing, the board shall redetermine the appropriate total term for the period. The redetermination shall be conducted de novo under the provisions of subsection (2) of this section.

(2) The method established by this section for determining, where applicable, the total term resulting from the summing of consecutive sentences shall apply only if none of the crimes involved is:

- (a) Murder **in any degree**, as defined in ORS 163.115 **or section 3 of this 2019 Act**, or any aggravated form thereof;
- (b) Assault in the first degree, as defined in ORS 163.185;
- (c) Kidnapping in the first degree, as defined in ORS 163.235;
- (d) Rape in the first degree, as defined in ORS 163.375;
- (e) Sodomy in the first degree, as defined in ORS 163.405;
- (f) Unlawful sexual penetration, as defined in ORS 163.411;
- (g) Arson in the first degree, as defined in ORS 164.325; or
- (h) Treason, as defined in ORS 166.005.

1 (3) The duration of imprisonment pursuant to consecutive sentences may be less than the sum
 2 of the terms under subsection (1) of this section if the board finds, by affirmative vote of a majority
 3 of three board members or, if the chairperson requires all voting members to participate, a majority
 4 of all voting members, that consecutive sentences are not appropriate penalties for the criminal of-
 5 fenses involved and that the combined terms of imprisonment are not necessary to protect commu-
 6 nity security.

7 (4) The board shall use the method set forth in subsections (1) to (3) of this section to determine
 8 the parole release date for any person serving a sentence in the custody of the Department of Cor-
 9 rections for crimes committed before or after July 11, 1987.

10 **SECTION 12.** ORS 144.085 is amended to read:

11 144.085. (1) All prisoners sentenced to prison for more than 12 months shall serve active periods
 12 of parole or post-prison supervision as follows:

13 (a) Six months of active parole or post-prison supervision for crimes in crime categories one to
 14 three;

15 (b) Twelve months of active parole or post-prison supervision for crimes in crime categories four
 16 to 10;

17 (c) Prisoners sentenced as dangerous offenders under ORS 161.725 and 161.735, for aggravated
 18 murder under ORS 163.105 or for murder **in any degree** under ORS 163.115 **or section 3 of this**
 19 **2019 Act** shall serve at least three years of active parole or post-prison supervision;

20 (d) Prisoners sentenced for violating or attempting to violate ORS 163.365, 163.375, 163.395,
 21 163.405, 163.408, 163.411, 163.425 or 163.427 shall serve a term of active parole that extends for the
 22 entire term of the offender's sentence or a term of active post-prison supervision as provided in ORS
 23 144.103; and

24 (e) Prisoners sentenced for robbery in the first degree under ORS 164.415 or for arson in the
 25 first degree under ORS 164.325 shall serve three years of active parole or post-prison supervision.

26 (2) Except as authorized in subsections (3) and (4) of this section, when an offender has served
 27 the active period of parole or post-prison supervision established under subsection (1)(a) or (b) of this
 28 section, the supervisory authority shall place the offender on inactive supervision status.

29 (3) No sooner than 30 days prior to the expiration of an offender's active parole or post-prison
 30 supervision period as provided in subsection (1) of this section, the supervisory authority may send
 31 to the State Board of Parole and Post-Prison Supervision a report requesting the board to extend
 32 the active supervision period or to return the offender to active supervision status, not to exceed
 33 the supervision term imposed by the sentencing court under the rules of the Oregon Criminal Justice
 34 Commission and applicable laws, if the offender has not substantially fulfilled the supervision con-
 35 ditions or has failed to complete payment of restitution. The report shall include:

36 (a) An evaluation of the offender's compliance with supervision conditions;

37 (b) The status of the offender's court-ordered monetary obligations, including fines and
 38 restitution, if any;

39 (c) The offender's employment status;

40 (d) The offender's address;

41 (e) Treatment program outcome;

42 (f) Any new criminal activity; and

43 (g) A recommendation that the board extend the supervision period or return the offender to
 44 active supervision status.

45 (4) After reviewing the report submitted under subsection (3) of this section, the board may ex-

1 tend the active supervision period or return the offender to active supervision status, not to exceed
 2 the supervision term imposed by the sentencing court under the rules of the Oregon Criminal Justice
 3 Commission and applicable laws, if it finds the offender has not substantially fulfilled the supervision
 4 conditions or has failed to complete payment of restitution.

5 (5) During the pendency of any violation proceedings, the running of the supervision period and
 6 the sentence is stayed, and the board has jurisdiction over the offender until the proceedings are
 7 resolved.

8 (6) The board shall send written notification to the supervised offender of the expiration of the
 9 sentence.

10 **SECTION 13.** ORS 144.110 is amended to read:

11 144.110. (1) In any felony case, the court may impose a minimum term of imprisonment of up to
 12 one-half of the sentence it imposes.

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

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

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

19 (A) Who has been convicted of murder defined as aggravated murder under the provisions of
 20 ORS 163.095, except as provided in ORS 163.105; [or]

21 **(B) Who has been convicted of murder in the first degree under the provisions of section**
 22 **3 of this 2019 Act, except as provided in ORS 163.155 (6) to (8) or section 3 (2)(c) to (f) of this**
 23 **2019 Act; or**

24 [(B)] (C) Who has been convicted of murder **in the second degree** under the provisions of ORS
 25 163.115, except as provided in ORS 163.115 (5)(c) to (f) or 163.155 (6) to (8).

26 **SECTION 14.** ORS 161.005 is amended to read:

27 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
 28 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
 29 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
 30 162.425, 162.465, 163.005, **163.095**, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196,
 31 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432,
 32 163.433, 163.472, 163.505 to 163.575, 163.665 to 163.693, 163.700, 163.701, 163.715, 164.005, 164.015 to
 33 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857,
 34 164.886, 165.002 to 165.102, 165.109, 165.118, 165.805, 165.815, 166.005 to 166.095, 166.350, 166.382,
 35 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203
 36 to 167.252, 167.310 to 167.340, 167.350, 167.810 and 167.820 **and section 3 of this 2019 Act** shall be
 37 known and may be cited as Oregon Criminal Code of 1971.

38 **SECTION 15.** ORS 161.535 is amended to read:

39 161.535. (1) Felonies are classified for the purpose of sentence into the following categories:

40 (a) Class A felonies;

41 (b) Class B felonies;

42 (c) Class C felonies; and

43 (d) Unclassified felonies.

44 (2) The particular classification of each felony defined in the Oregon Criminal Code, except
 45 murder **in any degree** under ORS 163.115 **or section 3 of this 2019 Act** and treason under ORS

1 166.005, is expressly designated in the section defining the crime. An offense defined outside this
 2 code which, because of the express sentence provided is within the definition of ORS 161.525, shall
 3 be considered an unclassified felony.

4 **SECTION 16.** ORS 163.098 is amended to read:

5 163.098. Notwithstanding [ORS 163.095] **section 3 of this 2019 Act**, when an element of a crime
 6 charged is that the victim of the crime is a police officer as defined in ORS 181A.355 and the crime
 7 was related to the officer’s performance of official duties, the state may alternatively prove that the
 8 victim of the crime is a certified reserve officer or a reserve officer, as those terms are defined in
 9 ORS 181A.355, and the crime was related to the officer’s performance of official duties.

10 **SECTION 17.** ORS 163.103 is amended to read:

11 163.103. (1) In a prosecution for [aggravated murder under ORS 163.095 (1)(c)] **murder in the**
 12 **first degree under section 3 (1)(c) of this 2019 Act**, the state shall plead the previous conviction,
 13 and shall prove the previous conviction unless the defendant stipulates to that fact prior to trial.
 14 If the defendant so stipulates and the trial is by jury:

15 (a) The court shall accept the stipulation regardless of whether or not the state agrees to it;

16 (b) The defendant’s stipulation to the previous conviction constitutes a judicial admission to that
 17 element of the accusatory instrument. The stipulation shall be made a part of the record of the case,
 18 but shall not be offered or received in the presence of the jury;

19 (c) For the purpose of establishing the prior conviction solely as an element of the crime under
 20 [ORS 163.095 (1)(c)] **section 3 (1)(c) of this 2019 Act**, neither the court nor the state shall reveal
 21 to the jury the previous conviction, but the previous conviction is established in the record by the
 22 defendant’s stipulation; and

23 (d) The court shall not submit the accusatory instrument or evidence of the previous conviction
 24 to the jury.

25 (2) In a proceeding under [ORS 163.095 (1)(c)] **section 3 (1)(c) of this 2019 Act**, the state may
 26 offer, and the court may receive and submit to the jury, evidence of the previous conviction for
 27 impeachment of the defendant or another purpose, other than establishing the conviction as an ele-
 28 ment of the offense, when the evidence of the previous conviction is otherwise admissible for that
 29 purpose. When evidence of the previous conviction has been admitted by the court, the state may
 30 comment upon, and the court may give instructions about, the evidence of the previous conviction
 31 only to the extent that the comments or instructions relate to the purpose for which the evidence
 32 was admitted.

33 (3) When the defendant stipulates to the prior conviction required as an element of
 34 [aggravated] murder **in the first degree** under [ORS 163.095 (1)(c)] **section 3 (1)(c) of this 2019**
 35 **Act**, if the jury finds the defendant guilty upon instruction regarding the balance of the elements
 36 of the crime, the court shall enter a judgment of guilty of [aggravated] murder **in the first degree**.

37 **SECTION 18.** ORS 163.135 is amended to read:

38 163.135. (1) It is an affirmative defense to murder **in the second degree** for purposes of ORS
 39 163.115 (1)(a) that the homicide was committed under the influence of extreme emotional disturbance
 40 if the disturbance is not the result of the person’s own intentional, knowing, reckless or criminally
 41 negligent act and if there is a reasonable explanation for the disturbance. The reasonableness of the
 42 explanation for the disturbance must be determined from the standpoint of an ordinary person in the
 43 actor’s situation under the circumstances that the actor reasonably believed them to be. Extreme
 44 emotional disturbance does not constitute a defense to a prosecution for, or preclude a conviction
 45 of, manslaughter in the first degree or any other crime.

1 (2) The defendant may not introduce in the defendant’s case in chief expert testimony regarding
 2 extreme emotional disturbance under this section unless the defendant gives notice of the
 3 defendant’s intent to do so.

4 (3) The notice required must be in writing and must be filed at the time the defendant pleads
 5 not guilty. The defendant may file the notice at any time after the defendant pleads but before trial
 6 if the court determines that there was just cause for failure to file the notice at the time of the
 7 defendant’s plea.

8 (4) If the defendant fails to file notice, the defendant may not introduce evidence for the purpose
 9 of proving extreme emotional disturbance under ORS 163.115 unless the court, in its discretion, de-
 10 termines that there was just cause for failure to file notice.

11 (5) After the defendant files notice as provided in this section, the state may have at least one
 12 psychiatrist or licensed psychologist of its selection examine the defendant in the same manner and
 13 subject to the same provisions as provided in ORS 161.315.

14 **SECTION 19.** ORS 163.707 is amended to read:

15 163.707. (1) A motor vehicle used by the owner in a drive-by shooting is subject to civil in rem
 16 forfeiture.

17 (2) Seizure and forfeiture proceedings under this section shall be conducted in accordance with
 18 ORS chapter 131A.

19 (3) As used in this section, “drive-by shooting” means discharge of a firearm from a motor ve-
 20 hicle while committing or attempting to commit:

- 21 (a) Aggravated murder under ORS 163.095;
- 22 (b) Murder **in any degree** under ORS 163.115 **or section 3 of this 2019 Act**;
- 23 (c) Manslaughter in any degree under ORS 163.118 or 163.125;
- 24 (d) Assault in any degree under ORS 163.160, 163.165, 163.175 or 163.185;
- 25 (e) Menacing under ORS 163.190;
- 26 (f) Recklessly endangering another person under ORS 163.195;
- 27 (g) Assaulting a public safety officer under ORS 163.208; or
- 28 (h) Intimidation in any degree under ORS 166.155 or 166.165.

29 **SECTION 20.** ORS 342.143 is amended to read:

30 342.143. (1) A teaching, personnel service or administrative license, or public charter school
 31 registration, may not be issued to any person until the person has attained the age of 18 years and
 32 has furnished satisfactory evidence of proper educational training.

33 (2) The Teacher Standards and Practices Commission may require an applicant for a teaching,
 34 personnel service or administrative license or for registration as a public charter school teacher or
 35 administrator to furnish evidence satisfactory to the commission of good moral character, mental
 36 and physical health, and such other evidence as the commission may deem necessary to establish
 37 the applicant’s fitness to serve as a teacher or administrator.

38 (3) Without limiting the powers of the Teacher Standards and Practices Commission under sub-
 39 section (2) of this section:

40 (a) A teaching, personnel service or administrative license, or a public charter school registra-
 41 tion, may not be issued to any person who:

- 42 (A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355,
 43 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.432, 163.433,
 44 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part),
 45 163.680 (1993 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087,

1 167.007, 167.008, 167.012, 167.017, 167.057, 167.062, 167.075, 167.080, 167.090, 475.808, 475.810, 475.812,
 2 475.818, 475.820, 475.822, 475.828, 475.830, 475.832, 475.848, 475.852, 475.868, 475.872, 475.878, 475.880,
 3 475.882, 475.888, 475.890, 475.892, 475.904 or 475.906 **or section 3 of this 2019 Act.**

4 (B) Has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed in
 5 subparagraph (A) of this paragraph.

6 (C) Has been convicted in another jurisdiction of a crime that is substantially equivalent, as
 7 defined by rule, to any of the crimes listed in subparagraphs (A) and (B) of this paragraph.

8 (D) Has had a teaching, personnel service or administrative license, or a public charter school
 9 registration, revoked in another jurisdiction for a reason that is substantially equivalent, as defined
 10 by rule, to a reason described in ORS 342.175 and the revocation is not subject to further appeal.
 11 A person whose right to apply for a license or registration is denied under this subparagraph may
 12 apply for reinstatement of the right as provided in ORS 342.175 (4).

13 (b) The Teacher Standards and Practices Commission may refuse to issue a license or registra-
 14 tion to any person who has been convicted of:

15 (A) A crime involving the illegal use, sale or possession of controlled substances; or

16 (B) A crime described in ORS 475B.010 to 475B.545.

17 (4) In denying the issuance of a license or registration under this section, the commission shall
 18 follow the procedure set forth in ORS 342.176 and 342.177.

19 **SECTION 21.** ORS 419A.260 is amended to read:

20 419A.260. (1) As used in this section and ORS 419A.262:

21 (a) "Contact" means any instance in which a person's act or behavior, or alleged act or behav-
 22 ior, which could result in a juvenile court's assumption of jurisdiction under ORS 419B.100 (1)(a) to
 23 (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this sub-
 24 section.

25 (b) "Expunction" means:

26 (A) The removal and destruction or sealing of a judgment or order related to a contact and all
 27 records and references; and

28 (B) Where a record is kept by the Department of Human Services or the Oregon Youth Au-
 29 thority, either the sealing of such record by the department or the Oregon Youth Authority or, in
 30 a multiperson file, the affixing to the front of the file, by the department or the youth authority, a
 31 stamp or statement identifying the name of the individual, the date of expunction and instruction
 32 that no further reference shall be made to the material that is subject to the expunction order ex-
 33 cept upon an order of a court of competent jurisdiction.

34 (c) "Person" includes a person under 18 years of age.

35 (d) "Record" includes a fingerprint or photograph file, report, exhibit or other material which
 36 contains information relating to a person's contact with any law enforcement agency, juvenile court
 37 or juvenile department, the Psychiatric Security Review Board, the Department of Human Services
 38 or the Oregon Health Authority and is kept manually, through the use of electronic data processing
 39 equipment, or by any other means by a law enforcement or public investigative agency, a juvenile
 40 court or juvenile department or an agency of the State of Oregon. "Record" does not include:

41 (A) A transcript of a student's Youth Corrections Education Program academic record;

42 (B) Material on file with a public agency which is necessary for obtaining federal financial
 43 participation regarding financial assistance or services on behalf of a person who has had a contact;

44 (C) Records kept or disseminated by the Department of Transportation, State Marine Board and
 45 State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation;

- 1 (D) Police and court records related to an order of waiver where the matter is still pending in
 2 the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;
- 3 (E) Records related to a support obligation;
- 4 (F) Medical records other than those related to a finding of responsible except for insanity under
 5 ORS 419C.411;
- 6 (G) Records of a proposed or adjudicated termination of parental rights and adoptions;
- 7 (H) Any law enforcement record of a person who currently does not qualify for expunction or
 8 of current investigations or cases waived to the adult court;
- 9 (I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;
- 10 (J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be
 11 within the jurisdiction of the court based upon the person's commission of an act which if done by
 12 an adult would constitute one of the following offenses:
- 13 (i) Aggravated murder under ORS 163.095;
- 14 (ii) Murder **in any degree** under ORS 163.115 **or section 3 of this 2019 Act**;
- 15 (iii) Attempt, solicitation or conspiracy to commit murder **in any degree** or aggravated murder;
- 16 (iv) Manslaughter in the first degree under ORS 163.118;
- 17 (v) Manslaughter in the second degree under ORS 163.125;
- 18 (vi) Criminally negligent homicide under ORS 163.145;
- 19 (vii) Assault in the first degree under ORS 163.185;
- 20 (viii) Criminal mistreatment in the first degree under ORS 163.205;
- 21 (ix) Kidnapping in the first degree under ORS 163.235;
- 22 (x) Rape in the third degree under ORS 163.355;
- 23 (xi) Rape in the second degree under ORS 163.365;
- 24 (xii) Rape in the first degree under ORS 163.375;
- 25 (xiii) Sodomy in the third degree under ORS 163.385;
- 26 (xiv) Sodomy in the second degree under ORS 163.395;
- 27 (xv) Sodomy in the first degree under ORS 163.405;
- 28 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
- 29 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 30 (xviii) Sexual abuse in the third degree under ORS 163.415;
- 31 (xix) Sexual abuse in the second degree under ORS 163.425;
- 32 (xx) Sexual abuse in the first degree under ORS 163.427;
- 33 (xxi) Promoting prostitution under ORS 167.012;
- 34 (xxii) Compelling prostitution under ORS 167.017;
- 35 (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;
- 36 (xxiv) Aggravated vehicular homicide under ORS 163.149; or
- 37 (xxv) An attempt to commit a crime listed in this subparagraph other than manslaughter in the
 38 second degree and criminally negligent homicide;
- 39 (K) Blood samples, buccal samples and other physical evidence and identification information
 40 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
 41 181A.155 or 419C.473; or
- 42 (L) Records maintained in the Law Enforcement Data System under ORS 163A.035.
- 43 (e) "Termination" means:
- 44 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,
 45 the final disposition of a case by informal means, by a decision not to place the person on probation

1 or make the person a ward of the court after the person has been found to be within the court's
 2 jurisdiction or by a discontinuance of probation, of the court's wardship or of the jurisdiction of the
 3 Psychiatric Security Review Board, the Oregon Health Authority or the Department of Human Ser-
 4 vices.

5 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
 6 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
 7 disposition of the person's most recent contact with a law enforcement agency.

8 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
 9 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or
 10 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
 11 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the
 12 legal effect of an expunction order and the procedures for seeking relief from the duty to report as
 13 a sex offender provided under ORS 163A.130, at the following times:

14 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-
 15 ment;

16 (b) At the time of termination;

17 (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile
 18 department or motion on a juvenile court; and

19 (d) At the time of notice of execution of an expunction order.

20 **SECTION 22.** ORS 419C.349 is amended to read:

21 419C.349. The juvenile court, after a hearing except as otherwise provided in ORS 419C.364 or
 22 419C.370, may waive a youth to a circuit, justice or municipal court of competent jurisdiction for
 23 prosecution as an adult if:

24 (1) The youth is 15 years of age or older at the time of the commission of the alleged offense;

25 (2) The youth, except as otherwise provided in ORS 419C.364 and 419C.370, is alleged to have
 26 committed a criminal offense constituting:

27 (a) Murder under ORS 163.115 **or section 3 of this 2019 Act** or any aggravated form thereof;

28 (b) A Class A or Class B felony;

29 (c) Any of the following Class C felonies:

30 (A) Escape in the second degree under ORS 162.155;

31 (B) Assault in the third degree under ORS 163.165;

32 (C) Coercion under ORS 163.275 (1)(a);

33 (D) Arson in the second degree under ORS 164.315; or

34 (E) Robbery in the third degree under ORS 164.395;

35 (d) Any Class C felony in which the youth used or threatened to use a firearm; or

36 (e) Any other felony or any misdemeanor if the youth and the state stipulate to the waiver;

37 (3) The youth at the time of the alleged offense was of sufficient sophistication and maturity to
 38 appreciate the nature and quality of the conduct involved; and

39 (4) The juvenile court, after considering the following criteria, determines by a preponderance
 40 of the evidence that retaining jurisdiction will not serve the best interests of the youth and of so-
 41 ciety and therefore is not justified:

42 (a) The amenability of the youth to treatment and rehabilitation given the techniques, facilities
 43 and personnel for rehabilitation available to the juvenile court and to the criminal court which
 44 would have jurisdiction after transfer;

45 (b) The protection required by the community, given the seriousness of the offense alleged;

1 (c) The aggressive, violent, premeditated or willful manner in which the offense was alleged to
 2 have been committed;

3 (d) The previous history of the youth, including:

4 (A) Prior treatment efforts and out-of-home placements; and

5 (B) The physical, emotional and mental health of the youth;

6 (e) The youth's prior record of acts which would be crimes if committed by an adult;

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

8 (g) The prosecutive merit of the case against the youth; and

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

10 **SECTION 23.** ORS 419C.352 is amended to read:

11 419C.352. The juvenile court, after a hearing, except as provided in ORS 419C.364 or 419C.370,
 12 may waive a youth under 15 years of age at the time the act was committed to circuit court for
 13 prosecution as an adult if:

14 (1) The youth is represented by counsel during the waiver proceedings;

15 (2) The juvenile court makes the findings required under ORS 419C.349 (3) and (4); and

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

18 (a) Murder or any aggravated form thereof under ORS 163.095 or 163.115 **or section 3 of this**
 19 **2019 Act;**

20 (b) Rape in the first degree under ORS 163.375 (1)(a);

21 (c) Sodomy in the first degree under ORS 163.405 (1)(a); or

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

23 **SECTION 24.** ORS 421.121 is amended to read:

24 421.121. (1) Except as provided in ORS 137.635, 137.700, 137.707, 163.105 and 163.115 **and section**
 25 **3 of this 2019 Act,** each inmate sentenced to the custody of the Department of Corrections for fel-
 26 onies committed on or after November 1, 1989, is eligible for a reduction in the term of incarceration
 27 for:

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

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

30 (2) The maximum amount of time credits earned for appropriate institutional behavior or for
 31 participation in the adult basic skills development program described in ORS 421.084 may not exceed
 32 20 percent of the total term of incarceration in a Department of Corrections institution.

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

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

38 **SECTION 25.** ORS 419C.501 is amended to read:

39 419C.501. (1) The court shall fix the duration of any disposition made pursuant to this chapter
 40 and the duration may be for an indefinite period. Any placement in the legal custody of the De-
 41 partment of Human Services or the Oregon Youth Authority under ORS 419C.478 or placement un-
 42 der the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529 shall be for an
 43 indefinite period. However, the period of institutionalization or commitment may not exceed:

44 (a) The period of time specified in the statute defining the crime for an act that would constitute
 45 an unclassified misdemeanor if committed by an adult;

- 1 (b) Thirty days for an act that would constitute a Class C misdemeanor if committed by an adult;
- 2 (c) Six months for an act that would constitute a Class B misdemeanor if committed by an adult;
- 3 (d) Three hundred sixty-four days for an act that would constitute a Class A misdemeanor if
- 4 committed by an adult;
- 5 (e) Five years for an act that would constitute a Class C felony if committed by an adult;
- 6 (f) Ten years for an act that would constitute a Class B felony if committed by an adult;
- 7 (g) Twenty years for an act that would constitute a Class A felony if committed by an adult; and
- 8 (h) Life for a young person who was found to have committed an act that, if committed by an
- 9 adult would constitute murder or any aggravated form of murder under ORS 163.095 or 163.115 **or**
- 10 **section 3 of this 2019 Act.**

11 (2) Except as provided in subsection (1)(h) of this section, the period of any disposition may not
 12 extend beyond the date on which the young person or youth offender becomes 25 years of age.

13 **SECTION 26.** ORS 443.004 is amended to read:

14 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
 15 a criminal records check under ORS 181A.195 on:

- 16 (a) An employee of a residential facility or an adult foster home;
- 17 (b) Any individual who is paid directly or indirectly with public funds who has or will have
- 18 contact with a recipient of support services or a resident of an adult foster home or a residential
- 19 facility; and
- 20 (c) A home care worker registering with the Home Care Commission or renewing a registration
- 21 with the Home Care Commission.

22 (2)(a) A home health agency shall conduct a criminal background check before hiring or con-
 23 tracting with an individual and before allowing an individual to volunteer to provide services on
 24 behalf of the home health agency, if the individual will have direct contact with a patient of the
 25 home health agency.

26 (b) An in-home care agency shall conduct a criminal background check before hiring or con-
 27 tracting with an individual and before allowing an individual to volunteer to provide services on
 28 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-
 29 home care agency.

30 (c) The authority shall prescribe by rule the process for conducting a criminal background
 31 check.

32 (3) Public funds may not be used to support, in whole or in part, the employment in any capacity
 33 having contact with a recipient of support services or a resident of a residential facility or an adult
 34 foster home, of an individual, other than a mental health or substance abuse treatment provider,
 35 who has been convicted:

36 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
 37 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
 38 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or
 39 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
 40 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 3 of this 2019 Act;**

41 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
 42 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
 43 five years immediately preceding employment in any capacity of an individual, other than a mental
 44 health or substance abuse treatment provider, having contact with a recipient of support services,
 45 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-

1 dent is 65 years of age or older;

2 (c) Of a crime listed in ORS 163A.005;

3 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-
4 stance;

5 (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to
6 (d) of this subsection; or

7 (f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a
8 crime described in paragraphs (a) to (e) of this subsection.

9 (4) If the criminal background check conducted by a home health agency or in-home care agency
10 under subsection (2) of this section reveals that the individual who is subject to the criminal back-
11 ground check has been convicted of any of the crimes described in subsection (3) of this section, the
12 home health agency or in-home care agency may not employ the individual.

13 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-
14 pacity having contact with a recipient of support services or a resident of a residential facility or
15 an adult foster home, of a mental health or substance abuse treatment provider who has been con-
16 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-
17 scribed in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427 **or section 3 of this 2019 Act.**

18 (6) Upon the request of a mental health or substance abuse treatment provider, the department
19 or authority shall maintain a record of the results of any fitness determination made under ORS
20 181A.195 (10). The department or authority may disclose the record only to a person the provider
21 specifically authorizes, by a written release, to receive the information.

22 (7) If the department or authority has a record of substantiated abuse committed by an employee
23 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
24 tial facility, regardless of whether criminal charges were filed, the department or authority shall
25 notify, in writing, the employer and the employee or potential employee.

26 (8) As used in this section:

27 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

28 (b) "Home care worker" has the meaning given that term in ORS 410.600.

29 (c) "Home health agency" has the meaning given that term in ORS 443.014.

30 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

31 (e) "Mental health or substance abuse treatment provider" means:

32 (A) A peer support specialist;

33 (B) An employee of a residential treatment facility or a residential treatment home that is li-
34 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

35 (C) An individual who provides treatment or services for persons with substance use disorders;
36 or

37 (D) An individual who provides mental health treatment or services.

38 (f) "Peer support specialist" has the meaning given that term in ORS 414.025.

39 (g) "Residential facility" has the meaning given that term in ORS 443.400.

40 **SECTION 27.** ORS 443.004, as amended by section 24, chapter 75, Oregon Laws 2018, is
41 amended to read:

42 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
43 a criminal records check under ORS 181A.195 on:

44 (a) An employee of a residential facility or an adult foster home;

45 (b) Any individual who is paid directly or indirectly with public funds who has or will have

1 contact with a recipient of support services or a resident of an adult foster home or a residential
2 facility; and

3 (c) A home care worker or personal support worker registering with the Home Care Commission
4 or renewing a registration with the Home Care Commission.

5 (2)(a) A home health agency shall conduct a criminal background check before hiring or con-
6 tracting with an individual and before allowing an individual to volunteer to provide services on
7 behalf of the home health agency, if the individual will have direct contact with a patient of the
8 home health agency.

9 (b) An in-home care agency shall conduct a criminal background check before hiring or con-
10 tracting with an individual and before allowing an individual to volunteer to provide services on
11 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-
12 home care agency.

13 (c) The authority shall prescribe by rule the process for conducting a criminal background
14 check.

15 (3) Public funds may not be used to support, in whole or in part, the employment in any capacity
16 having contact with a recipient of support services or a resident of a residential facility or an adult
17 foster home, of an individual, other than a mental health or substance abuse treatment provider,
18 who has been convicted:

19 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
20 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
21 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or
22 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
23 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 3 of this 2019 Act**;

24 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
25 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
26 five years immediately preceding employment in any capacity of an individual, other than a mental
27 health or substance abuse treatment provider, having contact with a recipient of support services,
28 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
29 dent is 65 years of age or older;

30 (c) Of a crime listed in ORS 163A.005;

31 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-
32 stance;

33 (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to
34 (d) of this subsection; or

35 (f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a
36 crime described in paragraphs (a) to (e) of this subsection.

37 (4) If the criminal background check conducted by a home health agency or in-home care agency
38 under subsection (2) of this section reveals that the individual who is subject to the criminal back-
39 ground check has been convicted of any of the crimes described in subsection (3) of this section, the
40 home health agency or in-home care agency may not employ the individual.

41 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-
42 pacity having contact with a recipient of support services or a resident of a residential facility or
43 an adult foster home, of a mental health or substance abuse treatment provider who has been con-
44 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-
45 scribed in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427 **or section 3 of this 2019 Act**.

1 (6) Upon the request of a mental health or substance abuse treatment provider, the department
 2 or authority shall maintain a record of the results of any fitness determination made under ORS
 3 181A.195 (10). The department or authority may disclose the record only to a person the provider
 4 specifically authorizes, by a written release, to receive the information.

5 (7) If the department or authority has a record of substantiated abuse committed by an employee
 6 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
 7 tial facility, regardless of whether criminal charges were filed, the department or authority shall
 8 notify, in writing, the employer and the employee or potential employee.

9 (8) As used in this section:

10 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

11 (b) "Home care worker" has the meaning given that term in ORS 410.600.

12 (c) "Home health agency" has the meaning given that term in ORS 443.014.

13 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

14 (e) "Mental health or substance abuse treatment provider" means:

15 (A) A peer support specialist;

16 (B) An employee of a residential treatment facility or a residential treatment home that is li-
 17 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

18 (C) An individual who provides treatment or services for persons with substance use disorders;
 19 or

20 (D) An individual who provides mental health treatment or services.

21 (f) "Peer support specialist" has the meaning given that term in ORS 414.025.

22 (g) "Personal support worker" has the meaning given that term in ORS 410.600.

23 (h) "Residential facility" has the meaning given that term in ORS 443.400.

24 **SECTION 28.** ORS 671.610 is amended to read:

25 671.610. (1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape
 26 Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape con-
 27 struction professional or landscape contracting business that does any of the following:

28 (a) Obtains or attempts to obtain a license under ORS 671.510 to 671.760 by fraud or material
 29 misrepresentation.

30 (b) Makes a material misrepresentation about the quality of any material or service the person
 31 provides.

32 (c) Performs defective work.

33 (d) Furnishes defective materials.

34 (e) Makes misleading statements when advertising services or materials.

35 (f) Violates a provision of ORS 671.510 to 671.760.

36 (g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termi-
 37 nation, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS
 38 671.690.

39 (h) Fails to maintain public liability, personal injury and property damage insurance as required
 40 by ORS 671.565 throughout a licensing period.

41 (i) Fails to comply with ORS 671.527 or 671.562.

42 (j) Fails to provide evidence of workers' compensation coverage as described in ORS 671.565.

43 (k) Violates a voluntary compliance agreement entered into under ORS 336.184 and 646.605 to
 44 646.652.

45 (L) Performs work for which a permit is required under the state building code without obtain-

1 ing the required permit, if the work results in the filing of a claim with the board.

2 (m) Violates a rule or order of the board.

3 (n) Refuses to comply with a subpoena issued by the board.

4 (o) Fails to pay in full any amount owed to a claimant under a final order of the board or an
5 arbitration award, or under a judgment rendered in this or any other state.

6 (p) Does not make payment, including any interest due, for labor or materials contracted for by
7 the person pursuant to a contract for a public improvement within 90 days after the date the person
8 receives payment from a public contracting agency or, if the person is a subcontractor, from the
9 contractor.

10 (q) Engages in conduct as a landscape construction professional or landscape contracting busi-
11 ness that is dishonest or fraudulent or that the board finds injurious to the welfare of the public.

12 (r) Fails to comply with the requirements of ORS 652.120.

13 (s) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365, 163.375,
14 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or
15 164.415 **or section 3 of this 2019 Act**, provided that the facts supporting the conviction and all in-
16 tervening circumstances make the determination to suspend, revoke or refuse to issue or renew the
17 license consistent with ORS 670.280.

18 (2) The board may suspend or refuse to renew the license of a landscape construction profes-
19 sional or landscape contracting business without prior hearing if, after investigating and setting
20 forth in writing the facts supporting the action, the board determines that continued activity by the
21 landscape construction professional or landscape contracting business poses an imminent threat of
22 serious harm to the public welfare. Facts sufficient to support a suspension or refusal to renew un-
23 der this subsection include, but are not limited to:

24 (a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;

25 (b) The lack of public liability, personal injury or property damage insurance required under
26 ORS 671.565;

27 (c) The lack of workers' compensation insurance that is required of the licensee under ORS
28 671.562;

29 (d) The hiring of employees while licensed as exempt under ORS 671.525;

30 (e) Conduct as a landscape construction professional or a landscape contracting business that
31 is dishonest;

32 (f) Operation of a landscape contracting business that does not employ at least one licensed
33 landscape construction professional; or

34 (g) The failure to notify the board of any unpaid court judgment, arbitration award or adminis-
35 trative agency final order as required by ORS 671.563.

36 (3) A person whose license is suspended or refused renewal under subsection (2) of this section
37 may request a hearing within 90 days after receiving the notice of the suspension or refusal to re-
38 new. Except as provided in this subsection, the board shall give a contested case hearing requested
39 under this subsection priority over other hearings and schedule the hearing for the earliest practi-
40 cable date. If a citation is issued to the person and the order of suspension or refusal to renew will
41 terminate by its terms if a court renders a final judgment regarding the citation in favor of the
42 person, the person may request that the board hold the requested contested case hearing in abey-
43 ance until after the court has rendered a final judgment.

44 (4) A person whose license is revoked under this section is not eligible to apply for a license
45 under ORS 671.510 to 671.760 until two years after the effective date of the revocation.

1 (5) The board may suspend, revoke or refuse to reissue the license of a landscape contracting
2 business, and may impose a civil penalty, all as provided under ORS 671.997 (4), if the board deter-
3 mines, after notice and opportunity for a hearing, that the landscape contracting business was
4 working with other landscape contracting businesses on the same task and work site where one of
5 the landscape contracting businesses is licensed as an exempt independent contractor under ORS
6 671.525 (2)(b) and the total number of landscape contracting businesses working on the task ex-
7 ceeded:

- 8 (a) Two sole proprietors;
- 9 (b) One partnership;
- 10 (c) One corporation; or
- 11 (d) One limited liability company.

12 (6) The board shall provide by rule a process and criteria that must be met for restoration of
13 a license that has not been permanently revoked.

14 **SECTION 29. (1) Section 3 of this 2019 Act and the amendments to ORS 40.355, 133.705,**
15 **136.450, 137.635, 137.700, 137.707, 144.079, 144.085, 144.110, 161.005, 161.535, 163.095, 163.098,**
16 **163.103, 163.115, 163.135, 163.707, 342.143, 419A.260, 419C.349, 419C.352, 419C.501, 421.121, 443.004**
17 **and 671.610 by sections 1 and 4 to 28 of this 2019 Act apply to crimes committed before, on**
18 **or after the effective date of this 2019 Act that are the subject of sentencing proceedings**
19 **occurring on or after the effective date of this 2019 Act.**

20 (2) Within one year of the effective date of this 2019 Act, a person who was sentenced
21 to death in this state prior to the effective date of this 2019 Act shall receive a new sen-
22 tencing proceeding before the trial court.

23 (3) A trial court resentencing a defendant under this section shall sentence the defendant
24 to imprisonment for life without the possibility of release or parole as provided in ORS
25 163.105 (1)(b).

26 **SECTION 30. This 2019 Act takes effect on the 91st day after the date on which the 2019**
27 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

28