

# Enrolled Senate Bill 1013

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER .....

AN ACT

Relating to murder; creating new provisions; amending ORS 40.355, 133.705, 136.450, 137.635, 137.700, 137.707, 144.079, 144.085, 144.110, 161.005, 161.405, 161.535, 163.095, 163.098, 163.103, 163.115, 163.135, 163.150, 163.707, 342.143, 419A.260, 419C.349, 419C.352, 419C.501, 421.121, 443.004 and 671.610 and sections 25, 31 and 32, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008); repealing section 6, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008); and prescribing an effective date.

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

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

163.095. As used in ORS 163.105 and this section, “aggravated murder” means [*murder as defined in ORS 163.115 which*]:

**(1) Criminal homicide of two or more persons that is premeditated and committed intentionally** [*under, or accompanied by, any of the following circumstances*] **and with the intent to:**

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

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

**(c) Affect the conduct of a government through destruction of property, murder, kidnapping or aircraft piracy; or**

**(2) Murder in the second degree, as defined in ORS 163.115, that is:**

**(a)(A) Committed while the defendant was confined in a state, county or municipal penal or correctional facility or was otherwise in custody; and**

**(B) Committed after the defendant was previously convicted in any jurisdiction of any homicide, the elements of which constitute the crime of aggravated murder under this section or murder in the first degree under section 3 of this 2019 Act;**

**(b) Premeditated and committed intentionally against a person under 14 years of age;**

**(c) Premeditated, committed intentionally against a police officer as defined in ORS 801.395, and related to the performance of the victim’s official duties; or**

**(d) Premeditated, committed intentionally against a correctional, parole and probation officer or other person charged with the duty of custody, control or supervision of convicted persons, and related to the performance of the victim’s official duties.**

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

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

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

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

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

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

*[(2)(a) The victim was one of the following and the murder was related to the performance of the victim's official duties in the justice system:]*

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

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

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

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

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

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

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

*[(H) A regulatory specialist.]*

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

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

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

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

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

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

**SECTION 3.** (1) "Murder in the first degree" means murder in the second degree as defined in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(H) A regulatory specialist.**

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

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

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

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

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

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

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

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

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

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

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

**(b) If, upon hearing all of the evidence, the board, upon a unanimous vote of three board members or, if the chairperson requires all voting members to participate, a unanimous vote of all voting members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison supervision or work release, it shall enter an order to that ef-**

fect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise, the board shall deny the relief sought in the petition.

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

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

**SECTION 3a.** If Senate Bill 1008 becomes law, section 3 of this 2019 Act is amended to read:

**Sec. 3.** (1) "Murder in the first degree" means murder in the second degree as defined in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

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

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

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

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

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

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

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

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

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

(C) A member of the Oregon State Police;

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

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

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

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

(H) A regulatory specialist.

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

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

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

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

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

(2)(a) Except as otherwise provided in ORS 163.155 and paragraph (b) of this subsection, the court shall sentence a person convicted of murder in the first degree, who was at least 15 years of age at the time of committing the murder, to life imprisonment. The court shall order that the defendant be confined for a minimum of 30 years without possibility of parole[,] or release to post-prison supervision **except as provided in section 25, chapter \_\_\_\_\_, Oregon Laws 2019**

**(Enrolled Senate Bill 1008), and without the possibility of** release on work release or any form of temporary leave or employment at a forest or work camp.

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

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

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

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

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

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

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

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

**SECTION 3b.** If Senate Bill 1008 becomes law, section 31, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008), is amended to read:

**Sec. 31.** (1) Sections 24 and 25 [of this 2019 Act], chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008), and the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 and section 3 of this 2019 Act by sections 1 to 23 and 26 to 29 [of this 2019 Act], chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008), and section 3a of this 2019 Act become operative on January 1, 2020.

(2) The State Board of Parole and Post-Prison Supervision, the Oregon Youth Authority, the Department of Corrections and the Judicial Department may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board, authority or department to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board, authority or department by sections 24 and 25 [of this 2019 Act], chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008), and

the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 **and section 3 of this 2019 Act** by sections 1 to 23 and 26 to 29 [of this 2019 Act], **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008) and section 3a of this 2019 Act.**

**SECTION 3c.** If Senate Bill 1008 becomes law, section 32, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008), is amended to read:

**Sec. 32.** Sections 24 and 25 [of this 2019 Act], **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008)**, and the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 **and section 3 of this 2019 Act** by sections 1 to 23 and 26 to 29 [of this 2019 Act], **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008), and section 3a of this 2019 Act** apply to sentences imposed on or after January 1, 2020.

**SECTION 3d.** If Senate Bill 1008 becomes law, section 25, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008), is amended to read:

**Sec. 25.** (1)(a) A person convicted of an offense or offenses committed when the person was under 18 years of age, who is serving a sentence of imprisonment for the offense or offenses, is eligible for release on parole or post-prison supervision as provided in this section after the person has served 15 years of imprisonment.

(b) Nothing in this section is intended to prevent a person from being released prior to serving 15 years of imprisonment under any other provision of law.

(c) As used in this subsection, “served 15 years of imprisonment” means that 15 years have passed since the person began serving the sentence, including pretrial incarceration but not including any reduction in sentence under ORS 421.121 or any other statute.

(2) This section applies notwithstanding **ORS 144.110** or the fact that the person was:

(a) Sentenced to a minimum sentence under ORS 163.105, 163.115 or 163.155 **or section 3 of this 2019 Act.**

(b) Sentenced to a mandatory minimum sentence under ORS 137.700, 137.707 or 137.717, a determinate sentence under ORS 137.635 or a sentence required by any other provision of law.

(c) Sentenced to two or more consecutive sentences under ORS 137.123.

(3) When a person eligible for release on parole or post-prison supervision as described in subsection (1) of this section has served 15 years of imprisonment, the State Board of Parole and Post-Prison Supervision shall hold a hearing. The hearing must provide the person a meaningful opportunity to be released on parole or post-prison supervision.

(4) The board may require the person, before holding a hearing described in this section, to be examined by a psychiatrist or psychologist with expertise in adolescent development. Within 60 days of the evaluation, the examining psychiatrist or psychologist shall file a written report of the findings and conclusions of the examination with the board. A certified copy of the report shall be provided to the person and the person’s attorney.

(5) During a hearing under this section, the board shall consider and give substantial weight to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult and the diminished culpability of minors as compared to that of adults. The board shall also consider the following circumstances, if relevant to the specific person and offense:

(a) The age and immaturity of the person at the time of the offense.

(b) Whether and to what extent an adult was involved in the offense.

(c) The person’s family and community circumstances at the time of the offense, including any history of abuse, trauma and involvement in the juvenile dependency system.

(d) The person’s subsequent emotional growth and increased maturity during the person’s imprisonment.

(e) The person’s participation in rehabilitative and educational programs while in custody if such programs have been made available to the person and use of self-study for self-improvement.

- (f) A mental health diagnosis.
- (g) Any other mitigating factors or circumstances presented by the person.
- (6) Under no circumstances may the board consider the age of the person as an aggravating factor.
- (7) If the board finds that, based on the consideration of the age and immaturity of the person at the time of the offense and the person's behavior thereafter, the person has demonstrated maturity and rehabilitation, the board shall release the person as follows:
  - (a) For a person sentenced under ORS 163.105, 163.115 or 163.155 **or section 3 of this 2019 Act**, the board shall set a release date that is not more than 60 days from the date of the hearing and, notwithstanding section 28, chapter 790, Oregon Laws 1989, the person shall be released on parole in accordance with ORS 144.125, 144.260 and 144.270.
  - (b) A person sentenced to a term of imprisonment under a provision of law other than ORS 163.105, 163.115 or 163.155 **or section 3 of this 2019 Act** shall be released on post-prison supervision in accordance with ORS 144.096 and 144.098 within 60 days of the date of the hearing.
  - (8) Unless the context requires otherwise, the provisions of ORS 144.260 to 144.380 apply to a person released on parole under subsection (7)(a) of this section.
  - (9) If the board determines that the person has not demonstrated maturity and rehabilitation under subsection (7) of this section, the board may postpone a subsequent hearing to a date that is at least two years but no more than 10 years from the date of the hearing.
  - (10) The person may waive a hearing under this section. Notwithstanding waiver of the hearing, the board shall hold a hearing under this section upon the person's written request.
  - (11) The board shall provide notice of the hearing to:
    - (a) The district attorney of the county in which the person was convicted; and
    - (b) The victim of any offense for which the person is serving a sentence, if the victim requests to be notified and furnishes the board with a current address.
  - (12) A person has the right to counsel, including counsel appointed at board expense, at a hearing under this section.
  - (13) The board may adopt rules to carry out the provisions of this section.

**SECTION 3e. If Senate Bill 1008 becomes law, section 6, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 1008) (amending ORS 419C.349), is repealed and ORS 419C.349, as amended by section 23 of this 2019 Act, is amended to read:**

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

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

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

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

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

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

[*(b) (A) A Class A or Class B felony;*

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

[*(A) (i) Escape in the second degree under ORS 162.155;*

[*(B) (ii) Assault in the third degree under ORS 163.165;*

[*(C) (iii) Coercion under ORS 163.275 (1)(a);*

[*(D) (iv) Arson in the second degree under ORS 164.315; or*

[*(E) (v) Robbery in the third degree under ORS 164.395;*

[(d)] (C) Any Class C felony in which the youth used or threatened to use a firearm; or  
[(e)] (D) Any other [felony or any misdemeanor if the youth and the state stipulate to the waiver;] **crime that the state and the youth stipulate is subject to waiver.**

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

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

[(4)] (b) The juvenile court, after considering the following criteria, determines by a preponderance of the evidence that retaining jurisdiction will not serve the best interests of the youth and of society and therefore is not justified:

[(a)] (A) The amenability of the youth to treatment and rehabilitation given the techniques, facilities and personnel for rehabilitation available to the juvenile court and to the criminal court [which] **that** would have jurisdiction after transfer;

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

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

[(d)] (D) The previous history of the youth, including:

[(A)] (i) Prior treatment efforts and out-of-home placements; and

[(B)] (ii) The physical, emotional and mental health of the youth;

[(e)] (E) The youth's prior record of acts [which] **that** would be crimes if committed by an adult;

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

[(g)] (G) The prosecutive merit of the case against the youth; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

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

(5) Except as otherwise provided in ORS 163.155:

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

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

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

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

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

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

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

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

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

(6) As used in this section:

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

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

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

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

**SECTION 5.** ORS 163.150 is amended to read:

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

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

(A) Whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that death of the deceased or another would result;

[(B) *Whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society;*]

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

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

(c)(A) The court shall instruct the jury to consider, in determining the issues in paragraph (b) of this subsection, any mitigating circumstances offered in evidence, including but not limited to the defendant's age, the extent and severity of the defendant's prior criminal conduct and the extent of

the mental and emotional pressure under which the defendant was acting at the time the offense was committed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Death;

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

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

**SECTION 6.** ORS 40.355 is amended to read:

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

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

(b) Involved false statement or dishonesty.

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

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

(B) Menacing under ORS 163.190.

(C) Harassment under ORS 166.065.

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

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

(F) Strangulation under ORS 163.187.

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

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

(A) Aggravated murder under ORS 163.095.

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

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

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

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

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

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

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

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

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

~~[(J)] (K) Sodomy in the first degree under ORS 163.405 (1)(a).~~

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

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

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

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

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

[(P)] (Q) Coercion under ORS 163.275.

[(Q)] (R) Stalking under ORS 163.732.

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

[(S)] (T) Menacing under ORS 163.190.

[(T)] (U) Harassment under ORS 166.065.

[(U)] (V) Strangulation under ORS 163.187.

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

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

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

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

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

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

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

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

**SECTION 7.** ORS 133.705 is amended to read:

133.705. As used in ORS 133.705 to 133.717:

(1) "Biological evidence" means an individual's blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identified biological material. "Biological evidence" includes the contents of a sexual assault forensic evidence kit.

(2) "Convicted" includes a finding of guilty or responsible except for insanity and a finding that a person is within the jurisdiction of the juvenile court under ORS 419C.005.

(3) "Covered offense" means:

(a) Aggravated murder under ORS 163.095;

**(b) Murder in the first degree under section 3 of this 2019 Act;**

[(b)] (c) Murder in the second degree under ORS 163.115;

[(c)] (d) Manslaughter in the first degree under ORS 163.118;

[(d)] (e) Manslaughter in the second degree under ORS 163.125;

[(e)] (f) Aggravated vehicular homicide under ORS 163.149;

[(f)] (g) Rape in the first degree under ORS 163.375;

[(g)] (h) Sodomy in the first degree under ORS 163.405; or

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

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

(5) "DNA" means deoxyribonucleic acid.

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

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

(8) "Supervisory authority" has the meaning given that term in ORS 144.087.

(9) "Victim" has the meaning given that term in ORS 131.007.

**SECTION 8.** ORS 136.450 is amended to read:

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

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

**SECTION 9.** ORS 137.635 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 10.** ORS 137.700 is amended to read:

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

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

- (a)(A) **Murder in the second degree**, as defined in ORS 163.115.....300 months
- (B) Murder in the first degree, as defined in section 3 of this 2019 Act.....360 months**
- [(B)] (C) Attempt or conspiracy to commit aggravated murder, as defined in ORS 163.095.....120 months
- [(C)] (D) Attempt or conspiracy to commit murder[, *as*] [*defined in ORS 163.115*] **in any degree**.....90 months
- [(D)] (E) Manslaughter in the first degree, as defined in ORS 163.118.....120 months
- [(E)] (F) Manslaughter in the second degree, as defined in ORS 163.125.....75 months
- [(F)] (G) Assault in the first degree, as defined in ORS 163.185.....90 months
- [(G)] (H) Assault in the second degree, as defined in ORS 163.175.....70 months
- [(H)] (I) Except as provided in paragraph (b)(G) of this subsection, kidnapping in the first degree, as defined in ORS 163.235.....90 months
- [(I)] (J) Kidnapping in the second degree, as defined in ORS 163.225.....70 months
- [(J)] (K) Rape in the first degree, as defined in ORS 163.375 (1)(a), (c) or (d).....100 months
- [(K)] (L) Rape in the second degree, as defined in ORS 163.365.....75 months
- [(L)] (M) Sodomy in the first degree, as defined in ORS 163.405 (1)(a), (c) or (d).....100 months
- [(M)] (N) Sodomy in the second degree, as defined in ORS 163.395.....75 months
- [(N)] (O) Unlawful sexual penetration in the first degree, as defined in ORS 163.411

- (1)(a) or (c).....100 months
- [(O)] (P) Unlawful sexual penetration  
in the second degree, as  
defined in ORS 163.408.....75 months
- [(P)] (Q) Sexual abuse in the first  
degree, as defined in  
ORS 163.427.....75 months
- [(Q)] (R) Robbery in the first degree,  
as defined in  
ORS 164.415.....90 months
- [(R)] (S) Robbery in the second  
degree, as defined in  
ORS 164.405.....70 months
- (b)(A) Arson in the first degree,  
as defined in ORS 164.325,  
when the offense represented  
a threat of serious  
physical injury.....90 months
- (B) Using a child in a display  
of sexually explicit  
conduct, as defined in  
ORS 163.670.....70 months
- (C) Compelling prostitution,  
as defined in  
ORS 167.017.....70 months
- (D) Rape in the first degree,  
as defined in  
ORS 163.375 (1)(b).....300 months
- (E) Sodomy in the first degree,  
as defined in  
ORS 163.405 (1)(b).....300 months
- (F) Unlawful sexual penetration  
in the first degree, as  
defined in  
ORS 163.411 (1)(b).....300 months
- (G) Kidnapping in the first  
degree, as defined in  
ORS 163.235, when the  
offense is committed in  
furtherance of the commission  
or attempted commission of an  
offense listed in subparagraph  
(D), (E) or (F) of  
this paragraph.....300 months
- (c) Aggravated vehicular  
homicide, as defined in  
ORS 163.149.....240 months

**SECTION 11.** ORS 137.707 is amended to read:

137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggravated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is



15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c) of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

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

(2) When a person charged under this section is convicted of an offense listed in subsection (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for the offense in subsection (4) of this section. The court may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser term. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason under ORS 421.121 or any other provision of law. ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated murder under ORS 163.095 except that a person who was under 18 years of age at the time the offense was committed is not subject to a sentence of death.

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

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

- 
- (a)(A) **Murder in the second degree**, as defined in ORS 163.115.....300 months
  - (B) **Murder in the first degree, as defined in section 3 of this 2019 Act**.....360 months
  - [(B)] (C) Attempt or conspiracy to commit aggravated murder, as defined in ORS 163.095.....120 months
  - [(C)] (D) Attempt or conspiracy to commit murder[, *as*] [*defined in ORS 163.115*] **in any degree**.....90 months
  - [(D)] (E) Manslaughter in the first degree, as defined in ORS 163.118.....120 months
  - [(E)] (F) Manslaughter in the second degree, as defined in ORS 163.125.....75 months
  - [(F)] (G) Assault in the first degree, as defined in ORS 163.185.....90 months
  - [(G)] (H) Assault in the second degree, as defined in ORS 163.175.....70 months

- [(H)] (I) Kidnapping in the first degree, as defined in ORS 163.235.....90 months
- [(I)] (J) Kidnapping in the second degree, as defined in ORS 163.225.....70 months
- [(J)] (K) Rape in the first degree, as defined in ORS 163.375.....100 months
- [(K)] (L) Rape in the second degree, as defined in ORS 163.365.....75 months
- [(L)] (M) Sodomy in the first degree, as defined in ORS 163.405.....100 months
- [(M)] (N) Sodomy in the second degree, as defined in ORS 163.395.....75 months
- [(N)] (O) Unlawful sexual penetration in the first degree, as defined in ORS 163.411.....100 months
- [(O)] (P) Unlawful sexual penetration in the second degree, as defined in ORS 163.408.....75 months
- [(P)] (Q) Sexual abuse in the first degree, as defined in ORS 163.427.....75 months
- [(Q)] (R) Robbery in the first degree, as defined in ORS 164.415.....90 months
- [(R)] (S) Robbery in the second degree, as defined in ORS 164.405.....70 months
- (b)(A) Arson in the first degree, as defined in ORS 164.325, when the offense represented a threat of serious physical injury.....90 months
- (B) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.....70 months
- (C) Compelling prostitution, as defined in ORS 167.017 (1)(a), (b) or (d). ....70 months
- (c) Aggravated vehicular homicide, as defined in ORS 163.149.....240 months

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

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

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

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

(i) Order that a presentence report be prepared;

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

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

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

(i) Order that a presentence report be prepared;

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

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

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

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

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

(A) Order that a presentence report be prepared;

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

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

**SECTION 12.** 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.

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

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

**SECTION 13.** ORS 144.085 is amended to read:

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

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

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

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

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

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

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

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

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

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

(c) The offender's employment status;

(d) The offender's address;

(e) Treatment program outcome;

(f) Any new criminal activity; and

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

(4) After reviewing the report submitted under subsection (3) of this section, the board may extend the active supervision period or return the offender to active supervision status, not to exceed the supervision term imposed by the sentencing court under the rules of the Oregon Criminal Justice Commission and applicable laws, if it finds the offender has not substantially fulfilled the supervision conditions or has failed to complete payment of restitution.

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

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

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

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

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

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

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

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

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

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

**SECTION 15.** ORS 161.005 is amended to read:

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 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, 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 162.425, 162.465, 163.005, **163.095**, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196, 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 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 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, 164.886, 165.002 to 165.102, 165.109, 165.118, 165.805, 165.815, 166.005 to 166.095, 166.350, 166.382, 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 to 167.252, 167.310 to 167.340, 167.350, 167.810 and 167.820 **and section 3 of this 2019 Act** shall be known and may be cited as Oregon Criminal Code of 1971.

**SECTION 15a.** ORS 161.405 is amended to read:

161.405. (1) A person is guilty of an attempt to commit a crime when the person intentionally engages in conduct which constitutes a substantial step toward commission of the crime.

(2) An attempt is a:

(a) Class A felony if the offense attempted is **any degree of murder, aggravated murder or treason.**

(b) Class B felony if the offense attempted is a Class A felony.

(c) Class C felony if the offense attempted is a Class B felony.

(d) Class A misdemeanor if the offense attempted is a Class C felony or an unclassified felony.

(e) Class B misdemeanor if the offense attempted is a Class A misdemeanor.

(f) Class C misdemeanor if the offense attempted is a Class B misdemeanor.

(g) Violation if the offense attempted is a Class C misdemeanor or an unclassified misdemeanor.

**SECTION 16.** ORS 161.535 is amended to read:

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

(a) Class A felonies;

(b) Class B felonies;

(c) Class C felonies; and

(d) Unclassified felonies.

(2) The particular classification of each felony defined in the Oregon Criminal Code, except murder **in any degree** under ORS 163.115 **or section 3 of this 2019 Act** and treason under ORS 166.005, is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of ORS 161.525, shall be considered an unclassified felony.

**SECTION 17.** ORS 163.098 is amended to read:

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

**SECTION 18.** ORS 163.103 is amended to read:

163.103. (1) In a prosecution for [aggravated murder under ORS 163.095 (1)(c)] **murder in the first degree under section 3 (1)(c) of this 2019 Act**, the state shall plead the previous conviction,

and shall prove the previous conviction unless the defendant stipulates to that fact prior to trial. If the defendant so stipulates and the trial is by jury:

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

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

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

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

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

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

**SECTION 19.** ORS 163.135 is amended to read:

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

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

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

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

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

**SECTION 20.** ORS 163.707 is amended to read:

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

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

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

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

**SECTION 21.** ORS 342.143 is amended to read:

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

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

(3) Without limiting the powers of the Teacher Standards and Practices Commission under subsection (2) of this section:

(a) A teaching, personnel service or administrative license, or a public charter school registration, may not be issued to any person who:

(A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.432, 163.433, 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part), 163.680 (1993 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087, 167.007, 167.008, 167.012, 167.017, 167.057, 167.062, 167.075, 167.080, 167.090, 475.808, 475.810, 475.812, 475.818, 475.820, 475.822, 475.828, 475.830, 475.832, 475.848, 475.852, 475.868, 475.872, 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 or 475.906 **or section 3 of this 2019 Act**.

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

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

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

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

- (A) A crime involving the illegal use, sale or possession of controlled substances; or
- (B) A crime described in ORS 475B.010 to 475B.545.

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

**SECTION 22.** ORS 419A.260 is amended to read:

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

(a) “Contact” means any instance in which a person’s act or behavior, or alleged act or behavior, which could result in a juvenile court’s assumption of jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this subsection.

(b) “Expunction” means:



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

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

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

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

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

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

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

(D) Police and court records related to an order of waiver where the matter is still pending in the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;

(E) Records related to a support obligation;

(F) Medical records other than those related to a finding of responsible except for insanity under ORS 419C.411;

(G) Records of a proposed or adjudicated termination of parental rights and adoptions;

(H) Any law enforcement record of a person who currently does not qualify for expunction or of current investigations or cases waived to the adult court;

(I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;

(J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be within the jurisdiction of the court based upon the person's commission of an act which if done by an adult would constitute one of the following offenses:

(i) Aggravated murder under ORS 163.095;

(ii) Murder **in any degree** under ORS 163.115 **or section 3 of this 2019 Act**;

(iii) Attempt, solicitation or conspiracy to commit murder **in any degree** or aggravated murder;

(iv) Manslaughter in the first degree under ORS 163.118;

(v) Manslaughter in the second degree under ORS 163.125;

(vi) Criminally negligent homicide under ORS 163.145;

(vii) Assault in the first degree under ORS 163.185;

(viii) Criminal mistreatment in the first degree under ORS 163.205;

(ix) Kidnapping in the first degree under ORS 163.235;

(x) Rape in the third degree under ORS 163.355;

(xi) Rape in the second degree under ORS 163.365;

(xii) Rape in the first degree under ORS 163.375;

(xiii) Sodomy in the third degree under ORS 163.385;

(xiv) Sodomy in the second degree under ORS 163.395;

(xv) Sodomy in the first degree under ORS 163.405;

(xvi) Unlawful sexual penetration in the second degree under ORS 163.408;

(xvii) Unlawful sexual penetration in the first degree under ORS 163.411;

(xviii) Sexual abuse in the third degree under ORS 163.415;

(xix) Sexual abuse in the second degree under ORS 163.425;

(xx) Sexual abuse in the first degree under ORS 163.427;

- (xxi) Promoting prostitution under ORS 167.012;
- (xxii) Compelling prostitution under ORS 167.017;
- (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;
- (xxiv) Aggravated vehicular homicide under ORS 163.149; or
- (xxv) An attempt to commit a crime listed in this subparagraph other than manslaughter in the second degree and criminally negligent homicide;

(K) Blood samples, buccal samples and other physical evidence and identification information obtained, stored or maintained by the Department of State Police under authority of ORS 137.076, 181A.155 or 419C.473; or

(L) Records maintained in the Law Enforcement Data System under ORS 163A.035.

(e) "Termination" means:

(A) For a person who is the subject of a record kept by a juvenile court or juvenile department, the final disposition of a case by informal means, by a decision not to place the person on probation or make the person a ward of the court after the person has been found to be within the court's jurisdiction or by a discontinuance of probation, of the court's wardship or of the jurisdiction of the Psychiatric Security Review Board, the Oregon Health Authority or the Department of Human Services.

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

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

- (a) At any dispositional hearing or at the time of entering into a formal accountability agreement;
- (b) At the time of termination;
- (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile department or motion on a juvenile court; and
- (d) At the time of notice of execution of an expunction order.

**SECTION 23.** ORS 419C.349 is amended to read:

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

- (1) The youth is 15 years of age or older at the time of the commission of the alleged offense;
- (2) The youth, except as otherwise provided in ORS 419C.364 and 419C.370, is alleged to have committed a criminal offense constituting:
  - (a) Murder under ORS 163.115 **or section 3 of this 2019 Act** or any aggravated form thereof;
  - (b) A Class A or Class B felony;
  - (c) Any of the following Class C felonies:
    - (A) Escape in the second degree under ORS 162.155;
    - (B) Assault in the third degree under ORS 163.165;
    - (C) Coercion under ORS 163.275 (1)(a);
    - (D) Arson in the second degree under ORS 164.315; or
    - (E) Robbery in the third degree under ORS 164.395;
  - (d) Any Class C felony in which the youth used or threatened to use a firearm; or
  - (e) Any other felony or any misdemeanor if the youth and the state stipulate to the waiver;
- (3) The youth at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved; and

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

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

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

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

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

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

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

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

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

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

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

**SECTION 24.** ORS 419C.352 is amended to read:

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

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

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

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

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

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

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

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

**SECTION 25.** ORS 421.121 is amended to read:

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

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

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

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

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

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

**SECTION 26.** ORS 419C.501 is amended to read:

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

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

(b) Thirty days for an act that would constitute a Class C misdemeanor if committed by an adult;  
(c) Six months for an act that would constitute a Class B misdemeanor if committed by an adult;  
(d) Three hundred sixty-four days for an act that would constitute a Class A misdemeanor if committed by an adult;

(e) Five years for an act that would constitute a Class C felony if committed by an adult;  
(f) Ten years for an act that would constitute a Class B felony if committed by an adult;  
(g) Twenty years for an act that would constitute a Class A felony if committed by an adult;  
and

(h) Life for a young person who was found to have committed an act that, if committed by an adult would constitute murder or any aggravated form of murder under ORS 163.095 or 163.115 **or section 3 of this 2019 Act.**

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

**SECTION 27.** ORS 443.004 is amended to read:

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

(a) An employee of a residential facility or an adult foster home;  
(b) Any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of support services or a resident of an adult foster home or a residential facility; and

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

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

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

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

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

(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 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 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 3 of this 2019 Act;**

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

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

(d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

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

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

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

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

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

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

(8) As used in this section:

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

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

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

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

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

(A) A peer support specialist;

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

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

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

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

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

**SECTION 28.** ORS 443.004, as amended by section 24, chapter 75, Oregon Laws 2018, is amended to read:

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

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

(b) Any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of support services or a resident of an adult foster home or a residential facility; and

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

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

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

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

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

(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 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 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 3 of this 2019 Act**;

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

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

(d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

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

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

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

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

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

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

(8) As used in this section:

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

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

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

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

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

(A) A peer support specialist;

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

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

- (D) An individual who provides mental health treatment or services.
- (f) "Peer support specialist" has the meaning given that term in ORS 414.025.
- (g) "Personal support worker" has the meaning given that term in ORS 410.600.
- (h) "Residential facility" has the meaning given that term in ORS 443.400.

**SECTION 29.** ORS 671.610 is amended to read:

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

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

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

(c) Performs defective work.

(d) Furnishes defective materials.

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

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

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

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

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

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

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

(L) Performs work for which a permit is required under the state building code without obtaining the required permit, if the work results in the filing of a claim with the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Two sole proprietors;

(b) One partnership;

(c) One corporation; or

(d) One limited liability company.

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

**SECTION 30. Section 3 of this 2019 Act and the amendments to ORS 40.355, 133.705, 136.450, 137.635, 137.700, 137.707, 144.079, 144.085, 144.110, 161.005, 161.405, 161.535, 163.095, 163.098, 163.103, 163.115, 163.135, 163.150, 163.707, 342.143, 419A.260, 419C.349, 419C.352, 419C.501, 421.121, 443.004 and 671.610 by sections 1 and 4 to 29 of this 2019 Act apply to crimes committed before, on or after the effective date of this 2019 Act that are the subject of sentencing proceedings occurring on or after the effective date of this 2019 Act.**

**SECTION 31. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.**



**Passed by Senate May 21, 2019**

**Repassed by Senate June 29, 2019**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 19, 2019**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2019

**Approved:**

.....M.,....., 2019

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2019

.....  
Bev Clarno, Secretary of State