

# Senate Bill 968

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

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

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

Requires court to consider certain factors as mitigation when sentencing person who was under 18 years of age at time of committing offense. Directs court to include in judgment document age of defendant at time of committing offense and fact that person is eligible for hearing and release after serving 15 years of sentence of imprisonment.

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

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to sentences for juvenile offenders; creating new provisions; amending ORS 137.707, 144.185,  
3 163.105, 163.115, 163.150 and 163.155; prescribing an effective date; and providing for criminal  
4 sentence reduction that requires approval by a two-thirds majority.

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

6 **SECTION 1. (1) A court may not impose a sentence of life imprisonment without the**  
7 **possibility of release or parole on a person who was under 18 years of age at the time of**  
8 **committing the offense.**

9 **(2) In determining the appropriate sentence for a person who was under 18 years of age**  
10 **at the time of committing the offense, if the court is provided information concerning the**  
11 **following circumstances, the court shall consider the circumstances as mitigating factors:**

12 **(a) The person's age, intellectual capacity and impetuosity at the time of the offense.**

13 **(b) The person's family and community environment, history of trauma and prior in-**  
14 **volvement in the juvenile dependency system at the time of the offense.**

15 **(c) The person's ability at the time of the offense to appreciate the risks and conse-**  
16 **quences of the conduct constituting the offense.**

17 **(d) The person's community involvement prior to the offense.**

18 **(e) Any peer or familial pressure to which the person was subjected at the time of the**  
19 **offense.**

20 **(f) Whether and to what extent an adult was involved in the commission of the offense.**

21 **(g) The person's capacity for rehabilitation.**

22 **(h) The person's school records and special education evaluations.**

23 **(i) Any other mitigating factors or circumstances presented by the person.**

24 **(3)(a) If the court is provided with a report of a mental health evaluation of the person,**  
25 **the court shall give the evaluation substantial weight in determining the existence of miti-**  
26 **gating factors if:**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (A) The evaluation was conducted by a psychiatrist or psychologist whose primary prac-  
 2 tice involves the treatment of adolescents; and

3 (B) The report includes the assessment of the person’s degree of insight, judgment,  
 4 self-awareness, emotional regulation and impulse control.

5 (b) Paragraph (a) of this subsection does not constitute a requirement that a person ob-  
 6 tain or submit an evaluation for sentencing.

7 (4) Under no circumstances may the court consider any circumstances listed in sub-  
 8 section (2) of this section or the report of an evaluation described in subsection (3) of this  
 9 section as an aggravating factor.

10 (5) When sentencing a person who was under 18 years of age at the time of committing  
 11 an offense to a term of imprisonment, the court shall indicate in the judgment:

12 (a) The age of the person at the time of committing the offense; and

13 (b) That the person is eligible for a hearing and release under section 2 of this 2019 Act.

14 **SECTION 2.** (1)(a) A person convicted of an offense or offenses committed when the  
 15 person was under 18 years of age, who is serving a sentence of imprisonment, is eligible for  
 16 release on parole or post-prison supervision as provided in this section after the person has  
 17 served 15 years of imprisonment.

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

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

23 (2) This section applies notwithstanding the fact that the person was:

24 (a) Sentenced to a minimum sentence under ORS 163.105, 163.115 or 163.155.

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

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

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

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

38 (5) During a hearing under this section, the board shall consider and give substantial  
 39 weight to:

40 (a) The following circumstances in all cases:

41 (A) The fact that a person under 18 years of age is incapable of the same reasoning and  
 42 impulse control as an adult.

43 (B) The diminished culpability of minors as compared to that of adults.

44 (b) The following mitigating circumstances, if relevant to the specific person and offense:

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

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

2 (C) The person's family and community circumstances at the time of the offense, in-  
3 cluding any history of abuse, trauma and involvement in the juvenile dependency system.

4 (D) The person's subsequent emotional growth and increased maturity during the  
5 person's imprisonment.

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

9 (F) A mental health diagnosis.

10 (G) Any other mitigating factors or circumstances presented by the person.

11 (6) Under no circumstances may the board consider the factors described in subsection  
12 (5) of this section as aggravating factors.

13 (7) If the board finds that, based on the consideration of the age and immaturity of the  
14 person at the time of the offense and the person's behavior thereafter, the person has dem-  
15 onstrated maturity and rehabilitation, the board shall release the person as follows:

16 (a) For a person sentenced under ORS 163.105, 163.115 or 163.155, the board shall set a  
17 release date that is not more than 60 days from the date of the hearing and, notwithstanding  
18 section 28, chapter 790, Oregon Laws 1989, the person shall be released on parole in accord-  
19 ance with ORS 144.125, 144.260 and 144.270.

20 (b) A person sentenced to a term of imprisonment under a provision of law other than  
21 ORS 163.105, 163.115 or 163.155 shall be released on post-prison supervision in accordance with  
22 ORS 144.096 and 144.098 within 60 days of the date of the hearing.

23 (8)(a) Unless the context requires otherwise, the provisions of ORS 144.260 to 144.380 ap-  
24 ply to a person released on parole under subsection (7)(a) of this section.

25 (b) Unless the context requires otherwise, the provisions of ORS 144.101, 144.102, 144.103,  
26 144.104, 144.106, 144.107 and 144.108 apply to a person released on post-prison supervision un-  
27 der subsection (7)(b) of this section.

28 (9) If the board determines that the person has not demonstrated maturity and rehabili-  
29 tation under subsection (7) of this section, the board may postpone a subsequent hearing to  
30 a date that is at least two years but no more than 10 years from the date of the hearing.

31 (10) The person may waive a hearing under this section. Notwithstanding waiver of the  
32 hearing, the board shall hold a hearing under this section upon the person's written request.

33 (11) The board shall provide notice of the hearing to:

34 (a) The district attorney of the county in which the person was convicted; and

35 (b) The victim of any offense for which the person is serving a sentence, if the victim  
36 requests to be notified and furnishes the board with a current address.

37 (12) A person has the right to counsel, including counsel appointed at board expense, at  
38 a hearing under this section.

39 (13) The board may adopt rules to carry out the provisions of this section.

40 **SECTION 3.** ORS 137.707 is amended to read:

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

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

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

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

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

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

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

- 
- 22
  - 23
  - 24 (a)(A) Murder, as defined in
  - 25       ORS 163.115 .....300 months
  - 26 (B) Attempt or conspiracy
  - 27       to commit aggravated
  - 28       murder, as defined
  - 29       in ORS 163.095 .....120 months
  - 30 (C) Attempt or conspiracy
  - 31       to commit murder, as
  - 32       defined in ORS 163.115 .....90 months
  - 33 (D) Manslaughter in the
  - 34       first degree, as defined
  - 35       in ORS 163.118 .....120 months
  - 36 (E) Manslaughter in the
  - 37       second degree, as defined
  - 38       in ORS 163.125 .....75 months
  - 39 (F) Assault in the first
  - 40       degree, as defined
  - 41       in ORS 163.185 .....90 months
  - 42 (G) Assault in the second
  - 43       degree, as defined
  - 44       in ORS 163.175 .....70 months
  - 45 (H) Kidnapping in the first

1 degree, as defined in  
 2 ORS 163.235 .....90 months  
 3 (I) Kidnapping in the second  
 4 degree, as defined in  
 5 ORS 163.225 .....70 months  
 6 (J) Rape in the first degree,  
 7 as defined in ORS 163.375 ....100 months  
 8 (K) Rape in the second  
 9 degree, as defined in  
 10 ORS 163.365 .....75 months  
 11 (L) Sodomy in the first  
 12 degree, as defined in  
 13 ORS 163.405 .....100 months  
 14 (M) Sodomy in the second  
 15 degree, as defined in  
 16 ORS 163.395 .....75 months  
 17 (N) Unlawful sexual  
 18 penetration in the first  
 19 degree, as defined  
 20 in ORS 163.411 .....100 months  
 21 (O) Unlawful sexual  
 22 penetration in the  
 23 second degree, as  
 24 defined in ORS 163.408. ....75 months  
 25 (P) Sexual abuse in the first  
 26 degree, as defined in  
 27 ORS 163.427 .....75 months  
 28 (Q) Robbery in the first  
 29 degree, as defined in  
 30 ORS 164.415 .....90 months  
 31 (R) Robbery in the second  
 32 degree, as defined in  
 33 ORS 164.405 .....70 months  
 34 (b)(A) Arson in the first degree,  
 35 as defined in  
 36 ORS 164.325, when  
 37 the offense represented  
 38 a threat of serious  
 39 physical injury. ....90 months  
 40 (B) Using a child in a display  
 41 of sexually explicit  
 42 conduct, as defined in  
 43 ORS 163.670 .....70 months  
 44 (C) Compelling prostitution,  
 45 as defined in ORS 167.017

- 1           (1)(a), (b) or (d).....70 months
- 2       (c)    Aggravated vehicular
- 3            homicide, as defined in
- 4            ORS 163.149.....240 months

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

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

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

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

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

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

21           (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
22 419C.067 and 419C.411.

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

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

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

28           (iii) Enter an order transferring the case to the juvenile court for disposition under ORS  
29 419C.067 and 419C.411.

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

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

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

1 jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains  
 2 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court  
 3 does not retain jurisdiction, the court shall:

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

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

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

9 **SECTION 4.** ORS 144.185 is amended to read:

10 144.185. Before making a determination regarding a prisoner's release on parole as provided by  
 11 ORS 144.125 **or section 2 of this 2019 Act**, the State Board of Parole and Post-Prison Supervision  
 12 may cause to be brought before it current records and information regarding the prisoner, including:

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

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

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

18 (4) The prisoner's parole plan; and

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

20 **SECTION 5.** ORS 163.105 is amended to read:

21 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

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

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

30 (c) If sentenced to life imprisonment, the court shall order that the defendant shall be confined  
 31 for a minimum of 30 years without possibility of parole[,] **or** release to post-prison supervision **ex-**  
 32 **cept as provided in section 2 of this 2019 Act, and without the possibility of** release on work  
 33 release or any form of temporary leave or employment at a forest or work camp.

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

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

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

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

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

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

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

15 **SECTION 6.** ORS 163.115 is amended to read:

16 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes mur-  
 17 der:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 defendant:

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

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

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

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

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

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

14 (5) Except as otherwise provided in ORS 163.155 **and section 2 of this 2019 Act:**

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

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

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

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

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

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

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

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

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

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

2 (6) As used in this section:

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

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

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

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

13 **SECTION 7.** ORS 163.155 is amended to read:

14 163.155. (1) When a defendant, who was at least 15 years of age at the time of committing the  
15 murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a) and the defendant  
16 knew that the victim was pregnant, the defendant shall be sentenced to life imprisonment without  
17 the possibility of release or parole **if the person was at least 18 years of age at the time of**  
18 **committing the offense** or to life imprisonment. The court shall conduct a sentencing proceeding  
19 to determine whether the defendant shall be sentenced to life imprisonment without the possibility  
20 of release or parole as described in subsection (4) of this section or to life imprisonment as described  
21 in subsection (5) of this section. If the defendant waives all rights to a jury sentencing proceeding,  
22 the court shall conduct the sentencing proceeding as the trier of fact. The procedure for the sen-  
23 tencing proceeding, whether before a court or a jury, shall follow the procedure of ORS 163.150  
24 (1)(a), as modified by this section.

25 (2) Following the presentation of evidence and argument under subsection (1) of this section, the  
26 court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment  
27 without the possibility of release or parole as described in subsection (4) of this section, unless after  
28 considering all of the evidence submitted, 10 or more members of the jury find there are sufficient  
29 mitigating circumstances to warrant life imprisonment with the possibility of release or parole as  
30 described in subsection (5) of this section. If 10 or more members of the jury do not find there are  
31 sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or  
32 parole, the trial court shall sentence the defendant to life imprisonment without the possibility of  
33 release or parole as described in subsection (4) of this section. If 10 or more members of the jury  
34 find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility  
35 of release or parole, the trial court shall sentence the defendant to life imprisonment as described  
36 in subsection (5) of this section.

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

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

1 the prisoner to participate in any sort of release or furlough program.

2 (5) If the defendant is sentenced to life imprisonment, the court shall order that the defendant  
3 be confined for a minimum of 30 years without possibility of parole[,] **or** release to post-prison  
4 supervision **except as provided in section 2 of this 2019 Act, and without the possibility of re-**  
5 lease on work release or any form of temporary leave or employment at a forest or work camp.

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

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

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

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

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

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

30 **SECTION 8.** ORS 163.150 is amended to read:

31 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, ex-  
32 cept as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing  
33 proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described  
34 in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in  
35 ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial  
36 jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror,  
37 the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the  
38 name of one of the alternate jurors, who shall then become a member of the jury for the sentencing  
39 proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt.  
40 If the defendant has pleaded guilty, the sentencing proceeding shall be conducted before a jury  
41 impaneled for that purpose. In the proceeding, evidence may be presented as to any matter that the  
42 court deems relevant to sentence including, but not limited to, victim impact evidence relating to  
43 the personal characteristics of the victim or the impact of the crime on the victim's family and any  
44 aggravating or mitigating evidence relevant to the issue in paragraph (b)(D) of this subsection;  
45 however, neither the state nor the defendant shall be allowed to introduce repetitive evidence that

1 has previously been offered and received during the trial on the issue of guilt. The court shall in-  
2 struct the jury that all evidence previously offered and received may be considered for purposes of  
3 the sentencing hearing. This paragraph shall not be construed to authorize the introduction of any  
4 evidence secured in violation of the Constitution of the United States or of the State of Oregon. The  
5 state and the defendant or the counsel of the defendant shall be permitted to present arguments for  
6 or against a sentence of death and for or against a sentence of life imprisonment with or without  
7 the possibility of release or parole.

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

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

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

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

16 (D) Whether the defendant should receive a death sentence.

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

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

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

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

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

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

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

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

1 of sentencing the defendant to death, the court:

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

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

13 (b) Following the presentation of evidence and argument under paragraph (a) of this subsection,  
14 the court shall instruct the jury that the trial court shall sentence the defendant to life  
15 imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b), unless  
16 after considering all of the evidence submitted, 10 or more members of the jury find there are suf-  
17 ficient mitigating circumstances to warrant life imprisonment with the possibility of parole as de-  
18 scribed in ORS 163.105 (1)(c). If 10 or more members of the jury find there are sufficient mitigating  
19 circumstances to warrant life imprisonment with the possibility of parole, the trial court shall sen-  
20 tence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

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

26 (4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant  
27 who has been sentenced to life imprisonment without possibility of release or parole will instead be  
28 sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS  
29 163.105 (2), the defendant shall be confined for a minimum of 30 years without possibility of parole,  
30 release on work release or any form of temporary leave or employment at a forest or work camp.  
31 Subsection (2) of this section shall apply only to trials commencing on or after July 19, 1989.

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

34 (a) Sentence the defendant to imprisonment for life in the custody of the Department of Cor-  
35 rections as provided in ORS 163.105 (1)(c); or

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

38 (A) Death;

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

41 (C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS  
42 163.105 (1)(c).

43 **SECTION 9. (1) Sections 1 and 2 of this 2019 Act and the amendments to ORS 137.707,**  
44 **144.185, 163.105, 163.115, 163.150 and 163.155 by sections 3 to 8 of this 2019 Act become opera-**  
45 **tive on January 1, 2020.**

1       **(2) The State Board of Parole and Post-Prison Supervision may take any action before**  
2 **the operative date specified in subsection (1) of this section that is necessary to enable the**  
3 **board to exercise, on and after the operative date specified in subsection (1) of this section,**  
4 **all of the duties, functions and powers conferred on the board by sections 1 and 2 of this 2019**  
5 **Act and the amendments to ORS 137.707, 144.185, 163.105, 163.115, 163.150 and 163.155 by**  
6 **sections 3 to 8 of this 2019 Act.**

7       **SECTION 10. Sections 1 and 2 of this 2019 Act and the amendments to ORS 137.707,**  
8 **144.185, 163.105, 163.115, 163.150 and 163.155 by sections 3 to 8 of this 2019 Act apply to sen-**  
9 **tences imposed on or after January 1, 2020.**

10       **SECTION 11. This 2019 Act takes effect on the 91st day after the date on which the 2019**  
11 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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