

Requested by Representative WILLIAMS

**PROPOSED AMENDMENTS TO
HOUSE BILL 2825**

1 On page 1 of the printed bill, line 2, after “ORS” insert “137.635,”.

2 In line 3, delete “144.397,” and insert “144.110,” and after “161.620,” insert
3 “163.107, 163.115, 163.155,” and delete “and 421.168” and insert “, 421.168 and
4 475.930”.

5 Delete lines 6 through 28 and delete pages 2 through 20 and insert:

6

7

“SENTENCING MITIGATION FINDINGS

8

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

11 **“(a) The defendant was subjected to physical, sexual or psycholog-
12 ical abuse by an intimate partner or a family or household member;**

13 **“(b) The abuse was a contributing factor to the defendant’s criminal
14 behavior; and**

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

19 **“(2) If court finds that the three circumstances described in sub-
20 section (1) of this section have been established by the defendant by
21 a preponderance of the evidence, the finding shall constitute substan-**

1 **tial and compelling reasons justifying a downward dispositional de-**
2 **parture or a downward durational departure under the rules of the**
3 **Oregon Criminal Justice Commission.**

4 **“(3) The Oregon Criminal Justice Commission shall adopt rules in**
5 **accordance with this section.**

6 **“(4) As used in this section, ‘family or household member’ has the**
7 **meaning given that term in ORS 135.230.**

8 **“SECTION 2. ORS 137.635 is amended to read:**

9 **“137.635. (1) When, in the case of a felony described in subsection (2) of**
10 **this section, a court sentences a convicted defendant who has previously**
11 **been convicted of any felony designated in subsection (2) of this section, the**
12 **sentence shall not be an indeterminate sentence to which the defendant**
13 **otherwise would be subject under ORS 137.120, but, unless it imposes a death**
14 **penalty under ORS 163.105, the court shall impose a determinate sentence,**
15 **the length of which the court shall determine, to the custody of the Depart-**
16 **ment of Corrections. Any mandatory minimum sentence otherwise provided**
17 **by law shall apply. The sentence shall not exceed the maximum sentence**
18 **otherwise provided by law in such cases. The convicted defendant who is**
19 **subject to this section shall not be eligible for probation. The convicted de-**
20 **fendant shall serve the entire sentence imposed by the court and shall not,**
21 **during the service of such a sentence, be eligible for parole or any form of**
22 **temporary leave from custody. The person shall not be eligible for any re-**
23 **duction in sentence pursuant to ORS 421.120 or for any reduction in term**
24 **of incarceration pursuant to ORS 421.121.**

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

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

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

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

1 “(d) Kidnapping in the first degree, as defined in ORS 163.235.
2 “(e) Rape in the first degree, as defined in ORS 163.375.
3 “(f) Sodomy in the first degree, as defined in ORS 163.405.
4 “(g) Unlawful sexual penetration in the first degree, as defined in ORS
5 163.411.
6 “(h) Burglary in the first degree, as defined in ORS 164.225.
7 “(i) Arson in the first degree, as defined in ORS 164.325.
8 “(j) Robbery in the first degree, as defined in ORS 164.415.
9 “(3) When the court imposes a sentence under this section, the court shall
10 indicate in the judgment that the defendant is subject to this section.
11 **“(4) Notwithstanding any other provision of this section, when a
12 person is convicted of one of the offenses listed in subsection (2) of this
13 section and the court finds substantial and compelling reasons justi-
14 fying a lesser sentence under section 1 of this 2021 Act, the court is
15 not obligated to impose the sentence described in subsection (1) of this
16 section and may instead impose any sentence in accordance with the
17 rules of the Oregon Criminal Justice Commission. If the court imposes
18 a sentence under this subsection, unless the court orders otherwise
19 under ORS 137.750, the person is eligible for a reduction in sentence
20 under ORS 421.121 and any form of temporary leave from custody,
21 work release or program of conditional or supervised release.**
22 **“SECTION 3.** ORS 137.700 is amended to read:
23 “137.700. (1)(a) Notwithstanding ORS 161.605, when a person is convicted
24 of one of the offenses listed in subsection (2)(a) of this section and the of-
25 fense was committed on or after April 1, 1995, or of one of the offenses listed
26 in subsection (2)(b) of this section and the offense was committed on or after
27 October 4, 1997, or of the offense described in subsection (2)(c) of this section
28 and the offense was committed on or after January 1, 2008, the court shall
29 impose, and the person shall serve, at least the entire term of imprisonment
30 listed in subsection (2) of this section. The person is not, during the service

1 of the term of imprisonment, eligible for release on post-prison supervision
2 or any form of temporary leave from custody. The person is not eligible for
3 any reduction in[, or based on,] the minimum sentence for any reason what-
4 soever under ORS 421.121 or any other statute. The court may impose a
5 greater sentence if otherwise permitted by law, but may not impose a lower
6 sentence than the sentence specified in subsection (2) of this section.

7 **“(b) Notwithstanding any other provision of this section, when a**
8 **person is convicted of one of the offenses listed in subsection (2) of this**
9 **section and the court finds substantial and compelling reasons justi-**
10 **fying a lesser sentence under section 1 of this 2021 Act, the court is**
11 **not obligated to sentence the defendant to the sentence specified in**
12 **subsection (2) of this section and may instead impose any sentence in**
13 **accordance with the rules of the Oregon Criminal Justice Commission.**
14 **If the court imposes a sentence under this paragraph, unless the court**
15 **orders otherwise under ORS 137.750, the person is eligible for a re-**
16 **duction in sentence under ORS 421.121 and any form of temporary**
17 **leave from custody, work release or program of conditional or super-**
18 **vised release.**

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

- 21 “ _____
- 22 (a)(A) Murder in the second
 - 23 degree, as defined in
 - 24 ORS 163.115.....300 months
 - 25 (B) Murder in the first
 - 26 degree, as defined
 - 27 in ORS 163.107.....360 months
 - 28 (C) Attempt or conspiracy
 - 29 to commit aggravated
 - 30 murder, as defined

1 in ORS 163.095.....120 months

2 (D) Attempt or conspiracy

3 to commit murder

4 in any degree.90 months

5 (E) Manslaughter in the

6 first degree, as defined

7 in ORS 163.118.....120 months

8 (F) Manslaughter in the

9 second degree, as defined

10 in ORS 163.125.....75 months

11 (G) Assault in the first

12 degree, as defined in

13 ORS 163.185.....90 months

14 (H) Assault in the second

15 degree, as defined in

16 ORS 163.175.....70 months

17 (I) Except as provided in

18 paragraph (b)(G) of

19 this subsection,

20 kidnapping in the first

21 degree, as defined

22 in ORS 163.235.....90 months

23 (J) Kidnapping in the second

24 degree, as defined in

25 ORS 163.225.....70 months

26 (K) Rape in the first degree,

27 as defined in ORS 163.375

28 (1)(a), (c) or (d).....100 months

29 (L) Rape in the second degree,

30 as defined in

1 ORS 163.365.....75 months

2 (M) Sodomy in the first degree,

3 as defined in ORS 163.405

4 (1)(a), (c) or (d).....100 months

5 (N) Sodomy in the second

6 degree, as defined in

7 ORS 163.395.....75 months

8 (O) Unlawful sexual penetration

9 in the first degree, as

10 defined in ORS 163.411

11 (1)(a) or (c).....100 months

12 (P) Unlawful sexual penetration

13 in the second degree, as

14 defined in ORS 163.408.75 months

15 (Q) Sexual abuse in the first

16 degree, as defined in

17 ORS 163.427.....75 months

18 (R) Robbery in the first degree,

19 as defined in

20 ORS 164.415.....90 months

21 (S) Robbery in the second

22 degree, as defined in

23 ORS 164.405.....70 months

24 (b)(A) Arson in the first degree,

25 as defined in ORS 164.325,

26 when the offense represented

27 a threat of serious

28 physical injury.90 months

29 (B) Using a child in a display

30 of sexually explicit

1 conduct, as defined in
2 ORS 163.670.....70 months
3 (C) Compelling prostitution,
4 as defined in
5 ORS 167.017.....70 months
6 (D) Rape in the first degree,
7 as defined in
8 ORS 163.375 (1)(b).300 months
9 (E) Sodomy in the first degree,
10 as defined in
11 ORS 163.405 (1)(b).300 months
12 (F) Unlawful sexual penetration
13 in the first degree, as
14 defined in
15 ORS 163.411 (1)(b).300 months
16 (G) Kidnapping in the first
17 degree, as defined in
18 ORS 163.235, when the
19 offense is committed in
20 furtherance of the commission
21 or attempted commission of an
22 offense listed in subparagraph
23 (D), (E) or (F) of
24 this paragraph.....300 months
25 (c) Aggravated vehicular
26 homicide, as defined in
27 ORS 163.149.....240 months

28 “
29 **“SECTION 4.** ORS 137.707 is amended to read:
30 **“137.707. (1)(a)** When a person waived under ORS 419C.349 (1)(a) is con-

1 victed of an offense listed in subsection (4) of this section, the court shall
2 impose at least the presumptive term of imprisonment provided for the of-
3 fense in subsection (4) of this section. The court may impose a greater
4 presumptive term if otherwise permitted by law, but may not impose a lesser
5 term. The person is not, during the service of the term of imprisonment, el-
6 igible for release on post-prison supervision or any form of temporary leave
7 from custody. The person is not eligible for any reduction in the minimum
8 sentence for any reason under ORS 421.121 or any other provision of law.
9 The person is eligible for a hearing and conditional release under ORS
10 420A.203 and 420A.206.

11 **“(b) Notwithstanding any other provision of this section, when a**
12 **person is convicted of one of the offenses listed in subsection (4) of this**
13 **section and the court finds substantial and compelling reasons justi-**
14 **fyng a lesser sentence under section 1 of this 2021 Act, the court is**
15 **not obligated to sentence the defendant to the sentence specified in**
16 **subsection (4) of this section and may instead impose any sentence in**
17 **accordance with the rules of the Oregon Criminal Justice Commission.**
18 **If the court imposes a sentence under this paragraph, unless the court**
19 **orders otherwise under ORS 137.750, the person is eligible for a re-**
20 **duction in sentence under ORS 421.121 and any form of temporary**
21 **leave from custody, work release or program of conditional or super-**
22 **vised release.**

23 “(2) ORS 138.052, 163.105 and 163.150 apply to sentencing a person prose-
24 cuted under this section and convicted of aggravated murder under ORS
25 163.095 except that a person who was under 18 years of age at the time the
26 offense was committed is not subject to a sentence of death or life
27 imprisonment without the possibility of release or parole.

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

30 “(4) The offenses to which this section applies and the presumptive sen-

1 tences are:

2 “

3 (a)(A) Murder in the second degree, as defined in

4 ORS 163.115.....300 months

5 (B) Murder in the first

6 degree, as defined

7 in ORS 163.107.....360 months

8 (C) Attempt or conspiracy

9 to commit aggravated

10 murder, as defined

11 in ORS 163.095.....120 months

12 (D) Attempt or conspiracy

13 to commit murder

14 in any degree.....90 months

15 (E) Manslaughter in the

16 first degree, as defined

17 in ORS 163.118.....120 months

18 (F) Manslaughter in the

19 second degree, as defined

20 in ORS 163.125.....75 months

21 (G) Assault in the first

22 degree, as defined

23 in ORS 163.185.....90 months

24 (H) Assault in the second

25 degree, as defined

26 in ORS 163.175.....70 months

27 (I) Kidnapping in the first

28 degree, as defined in

29 ORS 163.235.....90 months

30 (J) Kidnapping in the second

1 degree, as defined in
2 ORS 163.225.....70 months

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

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

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

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

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

18 (P) Unlawful sexual
19 penetration in the
20 second degree, as
21 defined in ORS 163.408.75 months

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

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

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

- 1 (b)(A) Arson in the first degree,
- 2 as defined in
- 3 ORS 164.325, when
- 4 the offense represented
- 5 a threat of serious
- 6 physical injury.90 months
- 7 (B) Using a child in a display
- 8 of sexually explicit
- 9 conduct, as defined in
- 10 ORS 163.670.70 months
- 11 (C) Compelling prostitution,
- 12 as defined in ORS 167.017
- 13 (1)(a), (b) or (d).70 months
- 14 (c) Aggravated vehicular
- 15 homicide, as defined in
- 16 ORS 163.149.240 months

17 “ _____

18 “(5) If a person charged with an offense under this section is found guilty

19 of a lesser included offense and the lesser included offense is:

20 “(a) An offense listed in subsection (4) of this section, the court shall

21 sentence the person as provided in subsections (1) and (2) of this section.

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

23 “(A) But constitutes an offense for which waiver is authorized under ORS

24 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a

25 hearing to determine whether to retain jurisdiction or to transfer the case

26 to juvenile court for disposition. In determining whether to retain jurisdic-

27 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the

28 court retains jurisdiction, the court shall sentence the person as an adult

29 under sentencing guidelines. If the court does not retain jurisdiction, the

30 court shall:

1 “(i) Order that a presentence report be prepared;

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

4 “(iii) Enter an order transferring the case to the juvenile court for dis-
5 position under ORS 419C.067 and 419C.411; and

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

9 “(B) And is not an offense for which waiver is authorized under ORS
10 419C.349 (1)(b), the court may not sentence the person. The court shall:

11 “(i) Order that a presentence report be prepared;

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

14 “(iii) Enter an order transferring the case to the juvenile court for dis-
15 position under ORS 419C.067 and 419C.411; and

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

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

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

1 (4) of this section as provided in subsections (1) and (2) of this section and
2 shall impose sentences for the other offenses as otherwise provided by law.

3 “(b) If a person charged and tried as provided in subsection (6) of this
4 section is not found guilty of aggravated murder or an offense listed in
5 subsection (4) of this section, but is found guilty of one of the other charges
6 that constitutes an offense for which waiver is authorized under ORS
7 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a
8 hearing to determine whether to retain jurisdiction or to transfer the case
9 to juvenile court for disposition. In determining whether to retain jurisdic-
10 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the
11 court retains jurisdiction, the court shall sentence the person as an adult
12 under sentencing guidelines. If the court does not retain jurisdiction, the
13 court shall:

14 “(A) Order that a presentence report be prepared;

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

17 “(C) Enter an order transferring the case to the juvenile court for dispo-
18 sition under ORS 419C.067 and 419C.411; and

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

22 **“SECTION 5.** ORS 137.717 is amended to read:

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

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

29 “(A) A previous conviction for aggravated theft in the first degree under
30 ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the

1 third degree under ORS 164.395, robbery in the second degree under ORS
2 164.405, robbery in the first degree under ORS 164.415 or aggravated identity
3 theft under ORS 165.803;

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

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

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

22 “(A) A previous conviction for aggravated theft in the first degree under
23 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in
24 the first degree under ORS 164.225, robbery in the third degree under ORS
25 164.395, robbery in the second degree under ORS 164.405, robbery in the first
26 degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300,
27 trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft
28 under ORS 165.803;

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

1 “(C) A previous conviction for a crime listed in subsection (2) of this
2 section, if the current crime of conviction was committed while the defendant
3 was on supervision for the previous conviction or less than three years after
4 the date the defendant completed the period of supervision for the previous
5 conviction.

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

10 “(A) A previous conviction for aggravated theft in the first degree under
11 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in
12 the first degree under ORS 164.225, robbery in the second degree under ORS
13 164.405, robbery in the first degree under ORS 164.415, possession of a stolen
14 vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310
15 or aggravated identity theft under ORS 165.803; or

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

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

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

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

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

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

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

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

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

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

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

28 “(j) Computer crime under ORS 164.377;

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

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

1 “(m) Criminal possession of a forged instrument in the second degree un-
2 der ORS 165.017;

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

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

6 “(p) Identity theft under ORS 165.800;

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

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

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

10 “(3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this
11 section shall be increased by two months for each previous conviction the
12 person has that:

13 “(A) Was for any of the crimes listed in subsection (1) or (2) of this sec-
14 tion; and

15 “(B) Was not used as a predicate for the presumptive sentence described
16 in subsection (1)(a) or (b) of this section.

17 “(b) Previous convictions may not increase a presumptive sentence de-
18 scribed in subsection (1)(a) or (b) of this section by more than 12 months
19 under this subsection.

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

22 “(a) A longer term of incarceration that is otherwise required or author-
23 ized by law; or

24 “(b) A departure sentence authorized by the rules of the Oregon Criminal
25 Justice Commission based upon findings of substantial and compelling rea-
26 sons. Unless the law or the rules of the Oregon Criminal Justice Commission
27 allow for imposition of a longer sentence, the maximum departure allowed
28 for a person sentenced under this subsection is double the presumptive sen-
29 tence provided in subsection (1) or (3) of this section.

30 “(5) Notwithstanding subsection (4)(b) of this section, the court may not

1 sentence a person under subsection (4) of this section to a term of incarceration
2 ation that exceeds the period of time described in ORS 161.605.

3 “(6) The court shall sentence a person under this section to at least the
4 presumptive sentence described in subsection (1)(a) or (b) or (3) of this section,
5 unless the parties stipulate otherwise, **the court finds substantial**
6 **and compelling reasons justifying a downward departure under section**
7 **1 of this 2021 Act**, or the court finds that:

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

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

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

15 “(d) In consideration of the nature of the offense and the harm to the
16 victim, a downward departure will:

17 “(A) Increase public safety;

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

19 “(C) Not unduly reduce the appropriate punishment.

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

26 “(8)(a) For a crime committed on or after November 1, 1989, a conviction
27 is considered to have occurred upon the pronouncement of sentence in open
28 court. However, when sentences are imposed for two or more convictions
29 arising out of the same conduct or criminal episode, none of the convictions
30 is considered to have occurred prior to any of the other convictions arising

1 out of the same conduct or criminal episode.

2 “(b) For a crime committed prior to November 1, 1989, a conviction is
3 considered to have occurred upon the pronouncement in open court of a
4 sentence or upon the pronouncement in open court of the suspended imposi-
5 tion of a sentence.

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

8 “(10) As used in this section:

9 “(a) ‘Downward departure’ means a downward dispositional departure or
10 a downward durational departure under the rules of the Oregon Criminal
11 Justice Commission.

12 “(b) ‘Previous conviction’ includes:

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

14 “(B) Convictions entered in any other state or federal court for compa-
15 rable offenses.

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

18 “137.717. (1) When a court sentences a person convicted of:

19 “(a) Aggravated theft in the first degree under ORS 164.057, burglary in
20 the first degree under ORS 164.225, robbery in the third degree under ORS
21 164.395 or aggravated identity theft under ORS 165.803, the presumptive
22 sentence is 24 months of incarceration, unless the rules of the Oregon
23 Criminal Justice Commission prescribe a longer presumptive sentence, if the
24 person has:

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

30 “(B) Two or more previous convictions for any combination of the crimes

1 listed in subsection (2) of this section; or

2 “(C) A previous conviction for a crime listed in subsection (2) of this
3 section, if the current crime of conviction was committed while the defendant
4 was on supervision for the previous conviction or less than three years after
5 the date the defendant completed the period of supervision for the previous
6 conviction.

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

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

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

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

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

5 “(A) A previous conviction for aggravated theft in the first degree under
6 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in
7 the first degree under ORS 164.225, robbery in the second degree under ORS
8 164.405, robbery in the first degree under ORS 164.415, possession of a stolen
9 vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310
10 or aggravated identity theft under ORS 165.803; or

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

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

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

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

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

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

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

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

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

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

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

23 “(j) Computer crime under ORS 164.377;

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

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

26 “(m) Criminal possession of a forged instrument in the second degree un-
27 der ORS 165.017;

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

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

1 “(p) Identity theft under ORS 165.800;
2 “(q) Possession of a stolen vehicle under ORS 819.300;
3 “(r) Trafficking in stolen vehicles under ORS 819.310; and
4 “(s) Any attempt to commit a crime listed in this subsection.
5 “(3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this
6 section shall be increased by two months for each previous conviction the
7 person has that:
8 “(A) Was for any of the crimes listed in subsection (1) or (2) of this sec-
9 tion; and
10 “(B) Was not used as a predicate for the presumptive sentence described
11 in subsection (1)(a) or (b) of this section.
12 “(b) Previous convictions may not increase a presumptive sentence de-
13 scribed in subsection (1)(a) or (b) of this section by more than 12 months
14 under this subsection.
15 “(4) The court may impose a sentence other than the sentence provided
16 by subsection (1) or (3) of this section if the court imposes:
17 “(a) A longer term of incarceration that is otherwise required or author-
18 ized by law; or
19 “(b) A departure sentence authorized by the rules of the Oregon Criminal
20 Justice Commission based upon findings of substantial and compelling rea-
21 sons. Unless the law or the rules of the Oregon Criminal Justice Commission
22 allow for imposition of a longer sentence, the maximum departure allowed
23 for a person sentenced under this subsection is double the presumptive sen-
24 tence provided in subsection (1) or (3) of this section.
25 “(5) Notwithstanding subsection (4)(b) of this section, the court may not
26 sentence a person under subsection (4) of this section to a term of incarcer-
27 ation that exceeds the period of time described in ORS 161.605.
28 “(6) The court shall sentence a person under this section to at least the
29 presumptive sentence described in subsection (1)(a) or (b) or (3) of this sec-
30 tion, unless the parties stipulate otherwise, **the court finds substantial**

1 **and compelling reasons justifying a downward departure under section**
2 **1 of this 2021 Act**, or the court finds that:

3 “(a) The person was not on probation, parole or post-prison supervision
4 for a crime listed in subsection (1) of this section at the time of the com-
5 mission of the current crime of conviction;

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

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

10 “(d) In consideration of the nature of the offense and the harm to the
11 victim, a downward departure will:

12 “(A) Increase public safety;

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

14 “(C) Not unduly reduce the appropriate punishment.

15 “(7) When the court imposes a sentence of probation for a conviction for
16 theft in the first degree or identity theft or under subsection (6) of this sec-
17 tion, the supervisory authority as defined in ORS 144.087 may require the
18 person to receive a high level of supervision for at least 12 months, and may
19 extend the period of high-level supervision for all or part of the remaining
20 probationary term.

21 “(8)(a) For a crime committed on or after November 1, 1989, a conviction
22 is considered to have occurred upon the pronouncement of sentence in open
23 court. However, when sentences are imposed for two or more convictions
24 arising out of the same conduct or criminal episode, none of the convictions
25 is considered to have occurred prior to any of the other convictions arising
26 out of the same conduct or criminal episode.

27 “(b) For a crime committed prior to November 1, 1989, a conviction is
28 considered to have occurred upon the pronouncement in open court of a
29 sentence or upon the pronouncement in open court of the suspended imposi-
30 tion of a sentence.

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

3 “(10) As used in this section:

4 “(a) ‘Downward departure’ means a downward dispositional departure or
5 a downward durational departure under the rules of the Oregon Criminal
6 Justice Commission.

7 “(b) ‘Previous conviction’ includes:

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

9 “(B) Convictions entered in any other state or federal court for compa-
10 rable offenses.

11 **“SECTION 7.** ORS 163.107 is amended to read:

12 “163.107. (1) ‘Murder in the first degree’ means murder in the second de-
13 gree as defined in ORS 163.115 which is committed under, or accompanied
14 by, any of the following circumstances:

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

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

21 “(c) The defendant committed murder after having been convicted previ-
22 ously in any jurisdiction of any homicide, the elements of which constitute
23 the crime of aggravated murder as defined in ORS 163.095, murder in the first
24 degree under this section, murder in the second degree as defined in ORS
25 163.115 or manslaughter in the first degree as defined in ORS 163.118.

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

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

30 “(f) The victim of the intentional homicide was a person under the age

1 of 14 years.

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

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

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

7 “(C) A member of the Oregon State Police;

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

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

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

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

12 or

13 “(H) A regulatory specialist.

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

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

18 “(j) Notwithstanding ORS 163.115 (1)(b), the defendant personally and in-
19 tentionally committed the homicide under the circumstances set forth in ORS
20 163.115 (1)(b).

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

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

26 “(2)(a) Except as otherwise provided in ORS 163.155 and [*paragraph (b)*]
27 **paragraphs (b) and (c)** of this subsection, the court shall sentence a person
28 convicted of murder in the first degree, who was at least 15 years of age at
29 the time of committing the murder, to life imprisonment. The court shall
30 order that the defendant be confined for a minimum of 30 years without

1 possibility of parole or release to post-prison supervision except as provided
2 in ORS 144.397, and without the possibility of release on work release or any
3 form of temporary leave or employment at a forest or work camp.

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

14 **“(c) If the court finds substantial and compelling reasons justifying**
15 **a lesser sentence under section 1 of this 2021 Act, the court is not ob-**
16 **ligated to sentence the defendant to the sentence specified in para-**
17 **graphs (a) and (b) of this subsection and may instead impose any**
18 **sentence in accordance with the rules of the Oregon Criminal Justice**
19 **Commission.**

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

27 “(A) The burden of proving by a preponderance of the evidence the like-
28 lihood of rehabilitation within a reasonable period of time;

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

1 expense; and

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

6 “(b) If, upon hearing all of the evidence, the board, upon a unanimous
7 vote of three board members or, if the chairperson requires all voting mem-
8 bers to participate, a unanimous vote of all voting members, finds that the
9 prisoner is capable of rehabilitation and that the terms of the prisoner’s
10 confinement should be changed to life imprisonment with the possibility of
11 parole, release to post-prison supervision or work release, it shall enter an
12 order to that effect and the order shall convert the terms of the prisoner’s
13 confinement to life imprisonment with the possibility of parole, release to
14 post-prison supervision or work release and may set a release date. Other-
15 wise, the board shall deny the relief sought in the petition.

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

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

23 **“SECTION 8.** ORS 163.115 is amended to read:

24 “163.115. (1) Except as provided in ORS 163.095, 163.118 and 163.125,
25 criminal homicide constitutes murder in the second degree:

26 “(a) When it is committed intentionally, except that it is an affirmative
27 defense that, at the time of the homicide, the defendant was under the in-
28 fluence of an extreme emotional disturbance;

29 “(b) When it is committed by a person, acting either alone or with one
30 or more persons, who commits or attempts to commit any of the following

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

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

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

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

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

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

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

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

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

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

15 “(J) Assault in the first degree, as defined in ORS 163.185, and the victim
16 is under 14 years of age, or assault in the second degree, as defined in ORS
17 163.175 (1)(a) or (b), and the victim is under 14 years of age; or

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

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

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

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

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

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

30 “(b) Did not commit the homicidal act or in any way solicit, request,

1 command, importune, cause or aid in the commission thereof;

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

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

5 “(e) Had no reasonable ground to believe that any other participant in-
6 tended to engage in conduct likely to result in death.

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

12 “(5) Except as otherwise provided in ORS 144.397 and 163.155 **and sub-**
13 **section (6) of this section:**

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

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

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

29 “(A) The burden of proving by a preponderance of the evidence the like-
30 lihood of rehabilitation within a reasonable period of time;

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

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

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

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

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

25 “**(6) If the court finds substantial and compelling reasons justifying**
26 **a lesser sentence under section 1 of this 2021 Act, the court is not ob-**
27 **ligated to sentence the defendant to the sentence specified in sub-**
28 **section (5) of this section and may instead impose any sentence in**
29 **accordance with the rules of the Oregon Criminal Justice Commission.**

30 “[6] (7) As used in this section:

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

5 “(b) ‘Neglect or maltreatment’ means a violation of ORS 163.535, 163.545
6 or 163.547 or a failure to provide adequate food, clothing, shelter or medical
7 care that is likely to endanger the health or welfare of a child under 14 years
8 of age or a dependent person. This paragraph is not intended to replace or
9 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
12 upon an unwilling victim as a separate objective apart from any other pur-
13 pose.

14 **“SECTION 9.** ORS 163.155 is amended to read:

15 “163.155. (1) **Except as provided in subsection (3) of this section,** when
16 a defendant, who was at least 15 years of age at the time of committing the
17 murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a)
18 and the defendant knew that the victim was pregnant, the defendant shall
19 be sentenced to life imprisonment without the possibility of release or parole
20 if the person was at least 18 years of age at the time of committing the of-
21 fense or to life imprisonment. The court shall conduct a sentencing pro-
22 ceeding to determine whether the defendant shall be sentenced to life
23 imprisonment without the possibility of release or parole as described in
24 subsection [(4)] **(5)** of this section, **sentenced** [*or*] to life imprisonment as
25 described in subsection [(5)] **(6)** of this section **or sentenced under sub-**
26 **section (3) of this section.** If the defendant waives all rights to a jury
27 sentencing proceeding, the court shall conduct the sentencing proceeding as
28 the trier of fact. The procedure for the sentencing proceeding, whether before
29 a court or a jury, shall follow the procedure of ORS 163.150 (1)(a), as modi-
30 fied by this section.

1 “(2) Following the presentation of evidence and argument under sub-
2 section (1) of this section, the court shall instruct the jury that the trial
3 court shall sentence the defendant to life imprisonment without the possi-
4 bility of release or parole as described in subsection [(4)] (5) of this section,
5 unless **the court sentences the person under subsection (3) of this sec-**
6 **tion, or unless,** after considering all of the evidence submitted, 10 or more
7 members of the jury find there are sufficient mitigating circumstances to
8 warrant life imprisonment with the possibility of release or parole as de-
9 scribed in subsection [(5)] (6) of this section. If 10 or more members of the
10 jury do not find there are sufficient mitigating circumstances to warrant life
11 imprisonment with the possibility of release or parole, the trial court shall
12 sentence the defendant to life imprisonment without the possibility of release
13 or parole as described in subsection [(4)] (5) of this section, **unless the**
14 **court sentences the defendant under subsection (3) of this section.** If
15 10 or more members of the jury find there are sufficient mitigating circum-
16 stances to warrant life imprisonment with the possibility of release or parole,
17 the trial court shall sentence the defendant to life imprisonment as described
18 in subsection [(5)] (6) of this section, **unless the court sentences the de-**
19 **fendant under subsection (3) of this section.**

20 “(3) **Notwithstanding any jury finding under subsection (2) of this**
21 **section, if the court finds substantial and compelling reasons justify-**
22 **ing a lesser sentence under section 1 of this 2021 Act, the court is not**
23 **obligated to sentence the defendant to any sentence otherwise required**
24 **by this section and may instead impose any sentence in accordance**
25 **with the rules of the Oregon Criminal Justice Commission.**

26 “[(3)] (4) Nothing in this section precludes the court from sentencing the
27 defendant to life imprisonment, as described in subsection [(5)] (6) of this
28 section, or life imprisonment without the possibility of release or parole, as
29 described in subsection [(4)] (5) of this section, pursuant to a stipulation of
30 sentence or stipulation of sentencing facts agreed to and offered by both

1 parties if the defendant waives all rights to a jury sentencing proceeding.

2 “[4] (5) A sentence of life imprisonment without the possibility of re-
3 lease or parole under this section may not be suspended, deferred or com-
4 muted by any judicial officer, and the State Board of Parole and Post-Prison
5 Supervision may neither parole the prisoner nor reduce the period of con-
6 finement in any manner whatsoever. The Department of Corrections or any
7 executive official may not permit the prisoner to participate in any sort of
8 release or furlough program.

9 “[5] (6) If the defendant is sentenced to life imprisonment, the court
10 shall order that the defendant be confined for a minimum of 30 years without
11 possibility of parole or release to post-prison supervision except as provided
12 in ORS 144.397, and without the possibility of release on work release or any
13 form of temporary leave or employment at a forest or work camp.

14 “[6] (7) At any time after completion of the minimum period of con-
15 finement pursuant to subsection [(5)] (6) of this section, the board, upon the
16 petition of a prisoner so confined, shall hold a hearing to determine if the
17 prisoner is likely to be rehabilitated within a reasonable period of time. The
18 sole issue shall be whether the prisoner is likely to be rehabilitated within
19 a reasonable period of time. The proceeding shall be conducted in the manner
20 prescribed for a contested case hearing under ORS chapter 183, except that:

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

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

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

30 “[7] (8) If, upon hearing all of the evidence, the board, upon a unani-

1 mous vote of three board members or, if the chairperson requires all voting
2 members to participate, a unanimous vote of all voting members, finds that
3 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
5 parole, release on post-prison supervision or work release, it shall enter an
6 order to that effect and the order shall convert the terms of the prisoner’s
7 confinement to life imprisonment with the possibility of parole, release on
8 post-prison supervision or work release and may set a release date. Otherwise
9 the board shall deny the relief sought in the petition.

10 “[8] (9) Not less than two years after the denial of the relief sought in
11 a petition under this section, the prisoner may petition again for a change
12 in the terms of confinement. Further petitions for a change may be filed at
13 intervals of not less than two years thereafter.

14 **“SECTION 10.** ORS 475.930 is amended to read:

15 “475.930. (1) **Except as provided in subsection (3) of this section,** when
16 a court sentences a person under ORS 164.061, 475.907, 475.924 *[and]* **or**
17 475.925:

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

21 “(A) ORS 475.925 (1) shall be determined utilizing crime category 10 of the
22 sentencing guidelines grid.

23 “(B) ORS 475.907 (1) and 475.925 (2) shall be determined utilizing crime
24 category 9 of the sentencing guidelines grid.

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

27 “(b)(A) Notwithstanding ORS 161.605, the court shall impose the sentence
28 described in ORS 164.061, 475.907, 475.924 *[and]* **or** 475.925 and may not im-
29 pose a sentence of optional probation or grant a downward dispositional de-
30 parture or a downward durational departure under the rules of the

1 commission.

2 “(B) The court may impose a sentence other than the sentence described
3 in ORS 164.061, 475.907, 475.924 [*and*] or 475.925 if the court imposes a longer
4 term of incarceration that is otherwise required or authorized by law.

5 “(2) A person sentenced under ORS 164.061, 475.907, 475.924 [*and*] or
6 475.925 may not receive a reduction in the term of incarceration for appro-
7 priate institutional behavior that exceeds 20 percent of the sentence imposed.

8 “(3) **Notwithstanding ORS 164.061, 475.907, 475.924 and 475.925, when**
9 **a court sentences a person under ORS 164.061, 475.907, 475.924 or 475.925**
10 **and the court finds substantial and compelling reasons justifying a**
11 **lesser sentence under section 1 of this 2021 Act, the court is not obli-**
12 **gated to sentence the person to the sentence specified in ORS 164.061,**
13 **475.907, 475.924 or 475.925 and may instead impose any sentence in ac-**
14 **cordance with the rules of the Oregon Criminal Justice Commission.**

15

16 **“PROCEDURE FOR PERSONS PREVIOUSLY SENTENCED**

17

18 **“SECTION 11. (1) Except as provided in subsection (9) of this sub-**
19 **section, a person serving a sentence of imprisonment after conviction**
20 **of a felony is eligible to be resentenced under this section if:**

21 **“(a) The person was sentenced to, and is currently serving, a term**
22 **of imprisonment for the felony conviction;**

23 **“(b) At the time the crime was committed, the person had been**
24 **subjected to physical, sexual or psychological abuse by an intimate**
25 **partner or a family or household member;**

26 **“(c) The abuse was a contributing factor to the person’s criminal**
27 **behavior; and**

28 **“(d) The sentence the person received is unduly harsh in light of**
29 **the circumstances of the crime, the circumstances of the person, the**
30 **abuse the person suffered and the likely sentence the person would**

1 receive if the person were sentenced under current law and sentencing
2 philosophy.

3 “(2)(a) A person described in subsection (1) of this section may file
4 a petition for resentencing in the county in which the person was or-
5 iginally convicted and sentenced.

6 “(b) The petition shall include:

7 “(A) The specific counts for which the person is requesting resen-
8 tencing; and

9 “(B) A factual statement explaining how the person meets the el-
10 igibility requirements described in subsection (1) of this section.

11 “(3)(a) Upon filing the petition, the person shall serve a copy of the
12 petition on the district attorney.

13 “(b) Upon receipt of the petition, the district attorney shall make
14 reasonable efforts to inform the victim:

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

16 “(B) Of the victim’s rights implicated by the resentencing; and

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

19 “(4)(a) Upon receiving the petition, the sentencing court shall de-
20 termine whether the facts stated in the petition, assuming those facts
21 are established in court by a preponderance of evidence and uncon-
22 tested, are sufficient to support a finding that the person meets the
23 eligibility requirements described in subsection (1) of this section.

24 “(b) If the court determines that the facts stated in the petition are
25 sufficient, the court shall set a resentencing hearing within 60 days
26 of the date the petition is filed with the court, unless the court finds
27 good cause to hold the hearing at a later date.

28 “(c) If the court determines that the facts stated in the petition are
29 insufficient, the court shall enter an order denying the petition and
30 shall cause a copy of the order to be provided to the person.

1 “(d) If a petition is denied under paragraph (c) of this subsection,
2 upon the request of the person, the court shall appoint counsel for the
3 person for the purpose of assisting the person in preparing an amended
4 petition. Pursuant to ORS 151.216 and 151.219, the Public Defense Ser-
5 vices Commission shall provide for the representation of a person for
6 whom counsel is appointed under this paragraph.

7 “(5)(a) When the court sets a resentencing hearing under subsection
8 (4) of this section, the court shall appoint counsel for the person and
9 notify the person, the person’s counsel, the Department of Corrections
10 and the district attorney of the hearing date. Upon receipt of the no-
11 tice, the district attorney shall make reasonable efforts to inform the
12 victim of:

13 “(A) The hearing date; and

14 “(B) The victim’s rights implicated in the resentencing hearing.

15 “(b) Pursuant to ORS 151.216 and 151.219, the Public Defense Ser-
16 vices Commission shall provide for the representation of a person for
17 whom counsel is appointed under this subsection.

18 “(6)(a) At the hearing, the person has the burden of proving by a
19 preponderance of the evidence that:

20 “(A) At the time the crime was committed, the person had been
21 subjected to physical, sexual or psychological abuse by an intimate
22 partner or a family or household member;

23 “(B) The abuse was a contributing factor to the person’s criminal
24 behavior; and

25 “(C) The sentence the person received is unduly harsh in light of
26 the circumstances of the crime, the circumstances of the person, the
27 abuse the person suffered and the likely sentence the person would
28 receive if the person were sentenced under current law and sentencing
29 philosophy.

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

1 “(c) Upon the conclusion of the hearing, if the court finds that the
2 person has met the burden of proof, the court shall find that there
3 exists substantial and compelling reasons justifying a downward du-
4 rational departure or a downward dispositional departure from any
5 presumptive or mandatory sentence and shall resentence the defend-
6 ant to an appropriate sentence under the rules of the Oregon Criminal
7 Justice Commission.

8 “(d) The court may not resentence a person under this section to
9 a more severe sentence than originally imposed.

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

12 “(f) The sentencing court has jurisdiction to modify its judgment
13 and resentence the defendant as provided in this subsection.

14 “(7) Unless the court orders otherwise, a person shall appear at a
15 hearing described in subsection (6) of this section by simultaneous
16 electronic transmission as defined in ORS 131.045.

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

22 “(a) Evidence that did not exist at the time the previous petition
23 was filed; or

24 “(b) Evidence that existed at the time the previous petition was
25 filed, but could not have been discovered with reasonable diligence.

26 “(9) A person serving a sentence for aggravated murder as defined
27 in ORS 163.095 is not eligible to file a petition under this section unless
28 the conduct leading to the conviction would constitute murder in the
29 first degree under ORS 163.107 or murder in the second degree under
30 ORS 163.115 under current law.

1 or no contest under ORS 135.335.

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

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

9 “(7) Except as otherwise provided in subsections (8) and (9) of this sec-
10 tion, the appellate court has authority to review any sentence to determine
11 whether the trial court failed to comply with requirements of law in impos-
12 ing or failing to impose a sentence.

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

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

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

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

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

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

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

1 “(B) Constitute substantial and compelling reasons for departure.

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

4 “(A) In ranking the crime seriousness classification of the current crime
5 or in determining the appropriate classification of a prior conviction or ju-
6 venile adjudication for criminal history purposes.

7 “(B) In imposing or failing to impose a minimum sentence prescribed by
8 ORS 137.700 (1)(a) or 137.707 (1)(a).

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

12 “(10)(a) On appeal from a corrected or amended judgment that is entered
13 before expiration of the applicable period under ORS 138.071 (1) or (2) during
14 which the original judgment can be appealed, the appellate court has au-
15 thority to review the judgment, including the corrections or amendments, as
16 provided in this section.

17 “(b) On appeal from a corrected or amended judgment that is entered after
18 expiration of the applicable period under ORS 138.071 (1) or (2) during which
19 the original judgment was or could have been appealed, the appellate court
20 has authority to review, as provided in this section, only the corrected or
21 amended part of the judgment, any part of the judgment affected by the
22 correction or amendment, or the trial court’s decision under ORS 137.172 not
23 to correct or amend the judgment.

24 “(c) As used in this subsection, ‘judgment’ means any appealable judgment
25 or order.

26 “(11)(a) On a defendant’s cross-appeal under ORS 138.035 (5), the appellate
27 court may, in its discretion, limit review to any decision by the trial court
28 that is inextricably linked, either factually or legally, to the state’s appeal.

29 “(b) The failure to file a cross-appeal under ORS 138.035 (5) does not
30 waive a defendant’s right to assign error to a particular ruling of the trial

1 court on appeal from a judgment.

2 **“SECTION 13.** ORS 138.115 is amended to read:

3 “138.115. (1) On appeal by the state, the appellate court has authority to
4 review the judgment or order being appealed, subject to the provisions of this
5 section.

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

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

11 “(4)(a) Except as provided in paragraph (b) of this subsection, on appeal
12 from a judgment of conviction of any felony, the appellate court has au-
13 thority to review only the sentence as provided by subsections (5) and (6) of
14 this section.

15 “(b) The appellate court has authority to review whether the trial court
16 erred in merging determinations of guilt of two or more offenses, unless the
17 merger of determinations of guilt resulted from an agreement between the
18 state and the defendant.

19 “(5) Except as otherwise provided in subsections (6) and (7) of this sec-
20 tion, the appellate court has authority to review the sentence imposed on
21 conviction of any felony to determine whether the trial court failed to com-
22 ply with requirements of law in imposing or failing to impose a sentence.

23 “(6) Except as otherwise provided in subsection (7) of this section, for a
24 sentence imposed on conviction of a felony committed on or after November
25 1, 1989:

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

27 “(A) A sentence that is within the presumptive sentence prescribed by the
28 rules of the Oregon Criminal Justice Commission.

29 “(B) A sentence of probation when the rules of the Oregon Criminal
30 Justice Commission prescribe a presumptive sentence of imprisonment but

1 allow a sentence of probation without departure.

2 “(C) A sentence of imprisonment when the rules of the Oregon Criminal
3 Justice Commission prescribe a presumptive sentence of imprisonment but
4 allow a sentence of probation without departure.

5 “(b) If the trial court imposed a sentence that departs from the
6 presumptive sentence prescribed by the rules of the Oregon Criminal Justice
7 Commission, the appellate court’s authority to review is limited to whether
8 the trial court’s findings of fact and reasons justifying a departure from the
9 sentence prescribed by the rules of the Oregon Criminal Justice Commission:

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

11 “(B) Constitute substantial and compelling reasons for departure.

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

14 “(A) In ranking the crime seriousness classification of the current crime
15 or in determining the appropriate classification of a prior conviction or ju-
16 venile adjudication for criminal history purposes.

17 “(B) In imposing or failing to impose a minimum sentence prescribed by
18 ORS 137.700 (1)(a) or 137.707 (1)(a).

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

22 “(8)(a) On appeal from a corrected or amended judgment that is entered
23 before expiration of the applicable period under ORS 138.071 (1) or (2) during
24 which the original judgment can be appealed, the appellate court has au-
25 thority to review the judgment, including the corrections or amendments, as
26 provided in this section.

27 “(b) On appeal from a corrected or amended judgment that is entered after
28 expiration of the applicable period under ORS 138.071 (1) or (2) during which
29 the original judgment was or could have been appealed, the appellate court
30 has authority to review, as provided in this section, only the corrected or

1 amended part of the judgment, any part of the judgment affected by the
2 correction or amendment, or the trial court's decision under ORS 137.172 not
3 to correct or amend the judgment.

4 “(c) As used in this subsection, ‘judgment’ means any appealable judgment
5 or order.

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

7 “144.110. (1) In any felony case, the court may impose a minimum term
8 of imprisonment of up to one-half of the sentence it imposes.

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

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

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

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

18 “(B) Who has been convicted of murder in the first degree under the
19 provisions of ORS 163.107, except as provided in ORS 163.107 (3) or 163.155
20 [(6) to (8)] **(7) to (9)**; or

21 “(C) Who has been convicted of murder in the second degree under the
22 provisions of ORS 163.115, except as provided in ORS 163.115 (5)(c) to (f) or
23 163.155 [(6) to (8)] **(7) to (9)**.

24 **“(3) This section does not apply to a person sentenced under ORS**
25 **163.107 (2)(c), 163.115 (6) or 163.155 (3).**

26 **“SECTION 15.** ORS 161.620 is amended to read:

27 “161.620. Notwithstanding any other provision of law, a sentence imposed
28 upon any person waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370
29 shall not include any sentence of death or life imprisonment without the
30 possibility of release or parole nor imposition of any mandatory minimum

1 sentence except that a mandatory minimum sentence under:

2 “(1) ORS 137.707 (1)(a) shall be imposed, except as provided in ORS
3 137.712;

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

5 “(3) ORS 161.610 may be imposed.

6 **“SECTION 16.** ORS 420.240 is amended to read:

7 “420.240. (1) The Oregon Youth Authority may establish and administer
8 a work release program in which persons who are committed to the custody
9 of the Department of Corrections and placed in the physical custody of the
10 youth authority under ORS 137.124 or other statute may be authorized to
11 leave assigned quarters for the purpose of:

12 “(a) Participating in private, gainful employment;

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

16 “(c) Obtaining in this state additional education, including but not lim-
17 ited to vocational, technical and general education;

18 “(d) Participating in alcohol or drug treatment programs;

19 “(e) Participating in mental health programs;

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

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

22 “(2) After consulting with the Department of Corrections, the youth au-
23 thority shall adopt rules to carry out the provisions of ORS 420.240 to
24 420.265.

25 “(3) The provisions of this section do not apply to persons sentenced un-
26 der ORS 137.635 (1), 137.700 (1)(a) or 137.707 (1)(a) or any other provision
27 of law that prohibits eligibility for any form of temporary leave from cus-
28 tody.

29 **“SECTION 17.** ORS 421.121 is amended to read:

30 “421.121. (1) Except as **otherwise** provided in ORS 137.635, 137.700,

1 137.707, 163.105, 163.107 and 163.115, each adult in custody sentenced to the
2 custody of the Department of Corrections for felonies committed on or after
3 November 1, 1989, is eligible for a reduction in the term of incarceration for:

4 “(a) Appropriate institutional behavior, as defined by rule of the Depart-
5 ment of Corrections; and

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

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

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

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

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

19 “421.168. (1) The Department of Corrections shall establish a short-term
20 transitional leave program. The program shall provide adults in custody with
21 an opportunity to secure appropriate transitional support when necessary for
22 successful reintegration into the community prior to the adult’s discharge to
23 post-prison supervision.

24 “(2) The Department of Corrections shall identify each adult in custody
25 who is eligible for the short-term transitional leave program and shall, in
26 conjunction with the supervisory authority for the county to which the adult
27 in custody will be released, assist each eligible adult in custody in preparing
28 a transition plan and in identifying and applying for an employment, educa-
29 tional or other transitional opportunity in the community.

30 “(3) If the transition plan for the adult in custody is approved by the de-

1 partment and is an essential part of successful reintegration into the com-
2 munity, the department may grant a transitional leave no more than 120 days
3 before the discharge date of the adult in custody.

4 “(4) An adult in custody is not eligible for transitional leave before hav-
5 ing served six months of prison incarceration.

6 “(5) The department shall adopt rules to carry out the provisions of this
7 section. The rules must include a set of release conditions for adults in
8 custody released on transitional leave status. An adult in custody on tran-
9 sitional leave status is subject to immediate return to prison for any vio-
10 lation of the conditions of release.

11 “(6) The provisions of this section do not apply to adults in custody whose
12 sentences were imposed under ORS 137.635 (1), 137.690, 137.700 (1)(a), 137.707
13 (1)(a), 164.061, 475.907, 475.925, 475.930 (1) or 813.011 or under a provision
14 of law that prohibits release on any form of temporary leave from custody.

15

16

“MISCELLANEOUS

17

18 **“SECTION 19. (1) Section 1 of this 2021 Act and the amendments to**
19 **ORS 137.635, 137.700, 137.707, 137.717, 138.105, 138.115, 144.110, 161.620,**
20 **163.107, 163.115, 163.155, 420.240, 421.121, 421.168 and 475.930 by sections**
21 **2 to 10 and 12 to 18 of this 2021 Act apply to sentences imposed on or**
22 **after the effective date of this 2021 Act, including resentencings under**
23 **section 11 of this 2021 Act or any other law.**

24 **“(2) Section 11 of this 2021 Act applies to persons serving sentences**
25 **imposed before, on or after the effective date of this 2021 Act.**

26 **“SECTION 20. The unit captions used in this 2021 Act are provided**
27 **only for the convenience of the reader and do not become part of the**
28 **statutory law of this state or express any legislative intent in the**
29 **enactment of this 2021 Act.**

30

