

## HOUSE AMENDMENTS TO HOUSE BILL 2335

By COMMITTEE ON JUDICIARY

May 6

1 On page 1 of the printed bill, line 2, after “144.228” delete the rest of the line and insert “,  
2 144.232, 163.105 and 163.115.”

3 Delete lines 4 through 30 and delete pages 2 through 4 and insert:

4 **“SECTION 1. (1)(a) If the State Board of Parole and Post-Prison Supervision denies a**  
5 **petition for a change in the terms of confinement filed by a prisoner convicted of aggravated**  
6 **murder or murder, the board may not grant the prisoner a subsequent hearing that is less**  
7 **than two years, or more than 10 years, from the date the petition is denied.**

8 **“(b) The board may not grant the prisoner a hearing that is more than two years from**  
9 **the date a petition is denied unless the board finds that it is not reasonable to expect that**  
10 **the prisoner would be granted a change in the terms of confinement before the date of the**  
11 **subsequent hearing.**

12 **“(c) The board shall determine the date of the subsequent hearing in accordance with**  
13 **rules adopted by the board. Rules adopted under this paragraph must be based on the foun-**  
14 **dition principles of criminal law described in section 15, Article I of the Oregon Constitution.**

15 **“(2) If the board grants the prisoner a hearing that is more than two years from the date**  
16 **a petition is denied, the prisoner may submit a request for an interim hearing not earlier**  
17 **than the date that is two years from the date the petition is denied and at intervals of not**  
18 **less than two years thereafter. If the board finds, based upon a request for an interim**  
19 **hearing, that there is reasonable cause to believe that the prisoner may be granted a change**  
20 **in the terms of confinement, the board shall conduct a hearing as soon as is reasonably**  
21 **convenient.**

22 **“(3) When the board grants a prisoner a hearing that is more than two years from the**  
23 **date a petition is denied and when the board denies a petition for an interim hearing, the**  
24 **board shall issue a final order. The order shall be accompanied by findings of fact and con-**  
25 **clusions of law. The findings of fact shall consist of a concise statement of the underlying**  
26 **facts supporting the findings as to each contested issue of fact and as to each ultimate fact**  
27 **required to support the board’s order. Unless the prisoner bears the burden of persuasion,**  
28 **the order shall include findings necessary to deny the prisoner a change in the terms of**  
29 **confinement for any period of time when the prisoner would be presumed to be eligible for**  
30 **a change in the terms of confinement.**

31 **“SECTION 2. (1)(a) If the State Board of Parole and Post-Prison Supervision denies**  
32 **parole to a prisoner sentenced for a crime committed prior to November 1, 1989, the board**  
33 **may not grant the prisoner a subsequent hearing that is less than two years, or more than**  
34 **10 years, from the date parole is denied, unless the two-year period would exceed the maxi-**  
35 **imum sentence imposed by the court.**

1       “(b) The board may not grant the prisoner a hearing that is more than two years from  
2 the date parole is denied unless the board finds that it is not reasonable to expect that the  
3 prisoner would be granted parole before the date of the subsequent hearing.

4       “(c) The board shall determine the date of the subsequent hearing pursuant to rules  
5 adopted by the board. Rules adopted under this paragraph must be based on the foundation  
6 principles of criminal law described in section 15, Article I of the Oregon Constitution.

7       “(2) If the board grants a prisoner a hearing that is more than two years from the date  
8 parole is denied, the prisoner may submit a request for an interim hearing not earlier than  
9 the date that is two years from the date parole is denied and at intervals of not less than  
10 two years thereafter. If the board finds, based upon a request for an interim hearing, that  
11 there is reasonable cause to believe that the prisoner may be granted parole, the board shall  
12 conduct a hearing as soon as is reasonably convenient.

13       “(3) When the board grants a prisoner a hearing that is more than two years from the  
14 date parole is denied and when the board denies a petition for an interim hearing, the board  
15 shall issue a final order. The order shall be accompanied by findings of fact and conclusions  
16 of law. The findings of fact shall consist of a concise statement of the underlying facts sup-  
17 porting the findings as to each contested issue of fact and as to each ultimate fact required  
18 to support the board’s order. Unless the prisoner bears the burden of persuasion, the order  
19 shall include findings necessary to deny the prisoner parole for any period of time when the  
20 prisoner would be presumed to be eligible for parole.

21       “**SECTION 3.** ORS 144.125 is amended to read:

22       “144.125. (1) Prior to the scheduled release of any prisoner on parole and prior to release re-  
23 scheduled under this section, the State Board of Parole and Post-Prison Supervision may upon re-  
24 quest of the Department of Corrections or on its own initiative interview the prisoner to review the  
25 prisoner’s parole plan and psychiatric or psychological report, if any, and the record of the prison-  
26 er’s conduct during confinement. To accommodate such review by the board, the Department of  
27 Corrections shall provide to the board any psychiatric or psychological reports held by the depart-  
28 ment regarding the prisoner. However, if the psychiatrist or psychologist who prepared any report  
29 or any treating psychiatrist or psychologist determines that disclosure to the prisoner of the con-  
30 tents of the report would be detrimental to the prisoner’s mental or emotional health, the psychia-  
31 trist or psychologist may indorse upon the report a recommendation that it not be disclosed to the  
32 prisoner. The department may withhold from the board any report so indorsed.

33       “(2) The board shall postpone a prisoner’s scheduled release date if it finds, after a hearing, that  
34 the prisoner engaged in serious misconduct during confinement. The board shall adopt rules defining  
35 serious misconduct and specifying periods of postponement for such misconduct.

36       “(3)(a) If the board finds the prisoner has a present severe emotional disturbance such as to  
37 constitute a danger to the health or safety of the community, the board may order the postponement  
38 of the scheduled parole release until a specified future date. **The board may not postpone a pris-  
39 oner’s scheduled release date to a date that is less than two years, or more than 10 years,  
40 from the date of the hearing, unless the prisoner would be held beyond the maximum sen-  
41 tence. The board shall determine the scheduled release date, and the prisoner may petition  
42 for interim review, in accordance with section 2 of this 2009 Act.**

43       “(b) If the board finds the prisoner has a present severe emotional disturbance such as to con-  
44 stitute a danger to the health or safety of the community, but also finds that the prisoner can be  
45 adequately controlled with supervision and mental health treatment and that the necessary super-

1 vision and treatment are available, the board may order the prisoner released on parole subject to  
2 conditions that are in the best interests of community safety and the prisoner's welfare.

3 “(4) Each prisoner shall furnish the board with a parole plan prior to the scheduled release of  
4 the prisoner on parole. The board shall adopt rules specifying the elements of an adequate parole  
5 plan and may defer release of the prisoner for not more than three months if it finds that the parole  
6 plan is inadequate. The Department of Corrections shall assist prisoners in preparing parole plans.

7 “**SECTION 4.** ORS 144.228 is amended to read:

8 “144.228. (1)(a) Within six months after commitment to the custody of the Department of Cor-  
9 rections of any person sentenced under ORS 161.725 and 161.735 as a dangerous offender, the State  
10 Board of Parole and Post-Prison Supervision shall set a date for a parole consideration hearing in-  
11 stead of an initial release date as otherwise required under ORS 144.120 and 144.125. The parole  
12 consideration hearing date shall be the time the prisoner would otherwise be eligible for parole  
13 under the board's rules.

14 “(b)(A) At the parole consideration hearing, the prisoner shall be given a release date in ac-  
15 cordance with the rules of the board if the board finds the prisoner no longer dangerous or finds  
16 that the prisoner remains dangerous but can be adequately controlled with supervision and mental  
17 health treatment and that the necessary resources for supervision and treatment are available to the  
18 prisoner. If the board is unable to make such findings, *[reviews]* **a review** will be conducted *[at least*  
19 *once every two years]* **no less than two years, and no more than 10 years, from the date of the**  
20 **previous review**, until the board is able to make such findings, at which time release on parole  
21 shall be ordered if the prisoner is otherwise eligible under the rules.

22 “(B) **The board may not grant the prisoner a review hearing that is more than two years**  
23 **from the date of the previous hearing unless the board finds that it is not reasonable to ex-**  
24 **pect that the prisoner would be granted a release date before the date of the subsequent**  
25 **hearing.**

26 “(C) **The board shall determine the date of the review hearing in accordance with rules**  
27 **adopted by the board. Rules adopted under this subparagraph must be based on the founda-**  
28 **tion principles of criminal law described in section 15, Article I of the Oregon Constitution.**

29 “(D) In no event shall the prisoner be held beyond the maximum sentence less good time credits  
30 imposed by the court.

31 “(c) Nothing in this section *[shall preclude]* **precludes** a prisoner from submitting a request for  
32 a parole consideration hearing prior to the earliest time the prisoner is eligible for parole *[or a*  
33 *two-year review]*. **If the board grants a prisoner a review hearing that is more than two years**  
34 **from the date of the previous hearing, the prisoner may submit a request for an interim**  
35 **review hearing not earlier than the date that is two years from the date of the previous**  
36 **hearing and at intervals of not less than two years thereafter.** Should the board find, based  
37 upon *[the]* **a request described in this paragraph**, that there is a reasonable cause to believe that  
38 the prisoner is no longer dangerous or that necessary supervision and treatment are available based  
39 upon the information provided in the request, it shall conduct a review as soon as is reasonably  
40 convenient.

41 “(d) **When the board grants a prisoner a review hearing that is more than two years from**  
42 **the date of the previous hearing and when the board denies a petition for an interim hearing,**  
43 **the board shall issue a final order. The order shall be accompanied by findings of fact and**  
44 **conclusions of law. The findings of fact shall consist of a concise statement of the underlying**  
45 **facts supporting the findings as to each contested issue of fact and as to each ultimate fact**

1 **required to support the board's order. Unless the prisoner bears the burden of persuasion,**  
2 **the order shall include findings necessary to deny the prisoner a release date for any period**  
3 **of time when the prisoner would be presumed to be eligible for a release date.**

4 “(2) For the parole consideration hearing, the board shall cause to be brought before it and  
5 consider all information regarding such person. The information shall include:

6 “(a) The written report of the examining psychiatrist or psychologist which shall contain all the  
7 facts necessary to assist the State Board of Parole and Post-Prison Supervision in making its de-  
8 termination. The report of the examining psychiatrist or psychologist shall be made within two  
9 months of the date of its consideration; and

10 “(b) A written report to be made by the executive officer of the Department of Corrections in-  
11 stitution in which the person has been confined. The executive officer's report shall contain:

12 “(A) A detailed account of the person's conduct while confined, all infractions of rules and dis-  
13 cipline, all punishment meted out to the person and the circumstances connected therewith, as well  
14 as the extent to which the person has responded to the efforts made in the institution to improve  
15 the person's mental and moral condition.

16 “(B) A statement as to the person's present attitude towards society, towards the sentencing  
17 judge, towards the prosecuting district attorney, towards the arresting police officer and towards the  
18 person's previous criminal career.

19 “(C) The work and program record of the person while in or under the supervision of the De-  
20 partment of Corrections. The program history shall include a summary of any psychological or sub-  
21 stance abuse treatment and other activities that will assist the board in understanding the  
22 psychological adjustment and social skills and habits of the person and that will assist the board in  
23 determining the likelihood for successful community reentry.

24 “**SECTION 5.** ORS 144.232 is amended to read:

25 “144.232. (1) A person sentenced under ORS 161.725 and 161.735 as a dangerous offender for  
26 felonies committed on or after November 1, 1989, shall be considered for release to post-prison  
27 supervision. The offender is eligible for release to post-prison supervision after having served the  
28 required incarceration term established under ORS 161.737.

29 “(2) The State Board of Parole and Post-Prison Supervision shall hold a release hearing no later  
30 than 10 days prior to the date on which the offender becomes eligible for release on post-prison  
31 supervision as provided in subsection (1) of this section.

32 “(3) The dangerous offender's eligibility for and release to post-prison supervision shall be de-  
33 termined in a manner consistent with the procedures and criteria required by ORS 144.228 for the  
34 parole determination process applicable to dangerous offenders sentenced for crimes committed prior  
35 to November 1, 1989.

36 “(4) An offender released under this section shall serve the remainder of the sentence term im-  
37 posed under ORS 161.725, 161.735 and 161.737 on post-prison supervision, however:

38 “(a) Notwithstanding ORS 137.010 or the rules of the Oregon Criminal Justice Commission, the  
39 State Board of Parole and Post-Prison Supervision may sanction an offender to the supervision of  
40 the local authority for a maximum period of 180 days for any supervision violation. The sanction  
41 may be imposed repeatedly during the term of post-prison supervision for subsequent supervision  
42 violations.

43 “(b) After release under this section, the board may at any time return the offender to prison  
44 and require the offender to submit to a psychiatric or psychological examination as provided for in  
45 ORS 144.226. If the board finds that the offender's dangerousness has returned and cannot be ade-

1 quately controlled with supervision and mental and physical health treatment, or that resources for  
2 supervision and treatment are not available to the offender, the board may defer the offender's re-  
3 lease from prison for an indefinite period of time. An offender returned to prison under this para-  
4 graph is entitled to periodic reviews [*once every two years*] for possible release to post-prison  
5 supervision as provided by subsection (3) of this section.

6 **"SECTION 6.** ORS 163.105 is amended to read:

7 "163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

8 "(1)(a) Except as otherwise provided in ORS 137.700, when a defendant is convicted of aggra-  
9 vated murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150,  
10 to death, life imprisonment without the possibility of release or parole or life imprisonment.

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

16 "(c) If sentenced to life imprisonment, the court shall order that the defendant shall be confined  
17 for a minimum of 30 years without possibility of parole, release to post-prison supervision, release  
18 on work release or any form of temporary leave or employment at a forest or work camp.

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

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

26 "(b) The right, if the prisoner is without sufficient funds to employ an attorney, to be repres-  
27 ented by legal counsel, appointed by the board, at board expense; and

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

31 "(3) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members,  
32 finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement  
33 should be changed to life imprisonment with the possibility of parole, release to post-prison super-  
34 vision or work release, it shall enter an order to that effect and the order shall convert the terms  
35 of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-  
36 prison supervision or work release and may set a release date. Otherwise the board shall deny the  
37 relief sought in the petition.

38 **"(4) If the board denies the relief sought in the petition, the board shall determine the**  
39 **date of the subsequent hearing, and the prisoner may petition for an interim hearing, in ac-**  
40 **cordance with section 1 of this 2009 Act.**

41 "[4] (5) The board's final order shall be accompanied by findings of fact and conclusions of law.  
42 The findings of fact shall consist of a concise statement of the underlying facts supporting the  
43 findings as to each contested issue of fact and as to each ultimate fact required to support the  
44 board's order.

45 "[5] *Not less than two years after the denial of the relief sought in a petition under this section,*

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

3 **“SECTION 7.** ORS 163.115 is amended to read:

4 **“163.115.** (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes  
5 murder:

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

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

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

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

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

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

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

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

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

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

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

22 **“(J)** Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of  
23 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under  
24 14 years of age; or

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

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

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

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

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

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

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

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

39 **“(d)** Had no reasonable ground to believe that any other participant was armed with a danger-  
40 ous or deadly weapon; and

41 **“(e)** Had no reasonable ground to believe that any other participant intended to engage in con-  
42 duct likely to result in death.

43 **“(4)** It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that  
44 the child or dependent person was under care or treatment solely by spiritual means pursuant to the  
45 religious beliefs or practices of the child or person or the parent or guardian of the child or person.

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

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

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

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

14           “(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be repres-  
15 ented by legal counsel, appointed by the board, at board expense; and

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

19           “(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members,  
20 finds that the prisoner is capable of rehabilitation and that the terms of the prisoner’s confinement  
21 should be changed to life imprisonment with the possibility of parole, release to post-prison super-  
22 vision or work release, it shall enter an order to that effect and the order shall convert the terms  
23 of the prisoner’s confinement to life imprisonment with the possibility of parole, release to post-  
24 prison supervision or work release and may set a release date. Otherwise, the board shall deny the  
25 relief sought in the petition.

26           **“(e) If the board denies the relief sought in the petition, the board shall determine the**  
27 **date of the subsequent hearing, and the prisoner may petition for an interim hearing, in ac-**  
28 **cordance with section 1 of this 2009 Act.**

29           “[(e)] (f) The board’s final order shall be accompanied by findings of fact and conclusions of law.  
30 The findings of fact shall consist of a concise statement of the underlying facts supporting the  
31 findings as to each contested issue of fact and as to each ultimate fact required to support the  
32 board’s order.

33           “[(f) *Not less than two years after the denial of the relief sought in a petition under paragraph (c)*  
34 *of this subsection, the prisoner may petition again for a change in the terms of confinement. Further*  
35 *petitions for a change may be filed at intervals of not less than two years thereafter.*]

36           “(6) As used in this section:

37           “(a) ‘Assault’ means to intentionally, knowingly or recklessly cause physical injury to another  
38 person. ‘Assault’ does not include the causing of physical injury in a motor vehicle accident that  
39 occurs by reason of the reckless conduct of a defendant.

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

44           “(c) ‘Pattern or practice’ means one or more previous episodes.

45           “(d) ‘Torture’ means to intentionally inflict intense physical pain upon an unwilling victim as a

1 separate objective apart from any other purpose.

2 **“SECTION 8. (1) Section 1 of this 2009 Act applies to prisoners convicted of aggravated**  
3 **murder or murder that was committed before, on or after the effective date of this 2009 Act**  
4 **and whose petition for a change in the terms of confinement is denied on or after the effec-**  
5 **tive date of this 2009 Act.**

6 **“(2) Section 2 of this 2009 Act applies to prisoners sentenced for a crime committed prior**  
7 **to November 1, 1989, and who are denied parole on or after the effective date of this 2009**  
8 **Act.**

9 **“(3) The amendments to ORS 144.125, 144.228 and 144.232 by sections 3 to 5 of this 2009**  
10 **Act apply to prisoners:**

11 **“(a) Whose release date is postponed under ORS 144.125 on or after the effective date of**  
12 **this 2009 Act.**

13 **“(b) For whom the State Board of Parole and Post-Prison Supervision is unable to set a**  
14 **release date under ORS 144.228 or 144.232 on or after the effective date of this 2009 Act.”.**