

A-Engrossed Senate Bill 78

Ordered by the Senate April 29
Including Senate Amendments dated April 29

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SUMMARY

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

Prohibits prisoners sentenced to death from requesting reset or advance of release date.

Authorizes State Board of Parole and Post-Prison Supervision to advance release date of prisoner sentenced for crime, other than aggravated murder or murder, committed on or after November 1, 1989, who *[is severely ill or]* **suffers from severe medical condition, including terminal illness, that has caused impairment and will likely not improve or who is elderly and permanently incapacitated.**

Takes effect only if Senate Joint Resolution 3 (2011) is approved by people at next regular general election. Takes effect on effective date of constitutional amendment proposed in Senate Joint Resolution 3 (2011).

A BILL FOR AN ACT

1
2 Relating to compassionate release of prisoners; amending ORS 137.635, 137.700, 137.707, 144.122,
3 144.126, 144.232 and 161.737; prescribing an effective date; and providing for criminal sentence
4 reduction that requires approval by a two-thirds majority.

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

6 **SECTION 1.** ORS 144.122 is amended to read:

7 144.122. (1) *[After the initial parole release date has been set under ORS 144.120 and after a*
8 *minimum period of time established by the State Board of Parole and Post-Prison Supervision under*
9 *subsection (2)(a) of this section, the]* **A** prisoner may request that the **prisoner's** parole release date
10 be reset to an earlier date~~].~~:

11 **(a) For a prisoner eligible for an initial parole release date under ORS 144.120, after the**
12 **initial parole release date has been set and after a minimum period of time established by**
13 **the State Board of Parole and Post-Prison Supervision under subsection (3)(a) of this section.**

14 **(b) For a prisoner not eligible for an initial parole release date under ORS 144.120, after**
15 **a minimum period of time established by the board under subsection (3)(a) of this section.**

16 **(2)** The board may grant the request upon a determination by the board that:

17 **(a)** Continued incarceration **of the prisoner** is cruel and inhumane *[and that]*;

18 **(b)** Resetting the release date to an earlier date is not incompatible with the best interests of
19 the prisoner and society *[and that]*; **and**

20 **(c)** The prisoner:

21 *[(a)]* **(A)** Has demonstrated an extended course of conduct indicating outstanding reformation;

22 *[(b)]* *Suffers from a severe medical condition including terminal illness; or]*

23 **(B) Suffers from a severe medical condition, including terminal illness, that has caused**

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

1 **substantial physical or cognitive impairment or incapacity for which there is no reasonable**
2 **expectation of significant improvement; or**

3 [(c)] (C) Is elderly and is permanently incapacitated in such a manner that the prisoner is unable
4 to move from place to place without the assistance of another person.

5 [(2)] (3) The Advisory Commission on Prison Terms and Parole Standards may propose to the
6 board and the board shall adopt rules:

7 (a) Establishing minimum periods of time to be served by prisoners before application may be
8 made for a reset of release date under subsection (1) of this section;

9 (b) Detailing the criteria set forth under subsection [(1)] (2) of this section for the resetting of
10 a parole release date; and

11 (c) Establishing criteria for parole release plans for prisoners released under this section that,
12 *at a minimum, must insure* **ensure** appropriate supervision and services for the person released.

13 [(3) *The provisions of subsection (1)(b) of this section apply to prisoners sentenced in accordance*
14 *with ORS 161.610.*]

15 (4) The provisions of this section do not apply to prisoners sentenced to **death or** life
16 imprisonment without the possibility of release or parole [*under ORS 138.012 or 163.150*].

17 **SECTION 2.** ORS 144.126 is amended to read:

18 144.126. (1) The State Board of Parole and Post-Prison Supervision may advance the release date
19 of a prisoner who was sentenced [*in accordance with rules of the Oregon Criminal Justice Commission*
20 *or ORS 161.610*] **for a crime, other than aggravated murder or murder, committed on or after**
21 **November 1, 1989.**

22 (2) The release date may be advanced if the board determines that:

23 (a) Continued incarceration **of the prisoner** is cruel and inhumane [*and that*];

24 (b) Advancing the release date of the prisoner is not incompatible with the best interests of the
25 prisoner and society [*and that*]; **and**

26 (c) The prisoner [*is*]:

27 [(a) *Suffering from a severe medical condition including terminal illness; or*]

28 (A) **Suffers from a severe medical condition, including terminal illness, that has caused**
29 **substantial physical or cognitive impairment or incapacity for which there is no reasonable**
30 **expectation of significant improvement; or**

31 [(b)] (B) [*Elderly and*] **Is elderly and is** permanently incapacitated in such a manner that the
32 prisoner is unable to move from place to place without the assistance of another person.

33 [(2)] (3) The board shall adopt rules establishing criteria for release plans for prisoners released
34 under this section that, *at a minimum, must insure* **ensure** appropriate supervision and services for
35 the person released.

36 [(3)] (4) The provisions of this section do not apply to prisoners sentenced to **death or** life
37 imprisonment without the possibility of release or parole [*under ORS 138.012 or 163.150*].

38 **SECTION 3.** ORS 137.635 is amended to read:

39 137.635. (1)(a) When, in the case of a felony described in subsection (2) of this section, a court
40 sentences a convicted defendant who has previously been convicted of any felony designated in
41 subsection (2) of this section, the sentence [*shall*] **may** not be an indeterminate sentence to which
42 the defendant otherwise would be subject under ORS 137.120, but, unless it imposes a death penalty
43 under ORS 163.105, the court shall impose a determinate sentence, the length of which the court
44 shall determine, to the custody of the Department of Corrections. Any mandatory minimum sentence
45 otherwise provided by law [*shall apply*] **applies**. The sentence [*shall*] **may** not exceed the maximum

1 sentence otherwise provided by law [*in such cases*]. The convicted defendant who is subject to this
2 section [*shall not be*] **is not** eligible for probation.

3 **(b)** [*The convicted defendant shall*] **Except as provided by ORS 144.126, a convicted defendant**
4 **who is subject to this section must** serve the entire sentence imposed by the court and [*shall*
5 *not,*] **is not:**

6 **(A)** During the service of such a sentence, [*be*] eligible for parole or any form of temporary leave
7 from custody[. *The person shall not*]; **or**

8 **(B)** [*Be*] Eligible for any reduction in sentence pursuant to ORS 421.120 or for any reduction in
9 term of incarceration pursuant to ORS 421.121.

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

11 (a) Murder, as defined in ORS 163.115, and any aggravated form [*thereof*] **of murder.**

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

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

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

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

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

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

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

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

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

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

23 **SECTION 4.** ORS 137.700 is amended to read:

24 137.700. (1)(a) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses
25 listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995,
26 or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on
27 or after October 4, 1997, or of the offense described in subsection (2)(c) of this section and the of-
28 fense was committed on or after January 1, 2008, the court shall impose[, *and the person shall*
29 *serve,*] at least the entire term of imprisonment listed in subsection (2) of this section.

30 **(b)** [*The person*] **Except as provided in ORS 144.126, a person sentenced under this section**
31 **must serve the entire term of imprisonment imposed by the court and** is not[,]:

32 **(A)** During the service of the term of imprisonment, eligible for release on post-prison super-
33 vision or any form of temporary leave from custody[. *The person is not*]; **or**

34 **(B)** Eligible for any reduction in[, *or based on,*] the minimum sentence [*for any reason whatsoever*
35 *under ORS 421.121 or any other statute*].

36 **(c)** The court may impose a greater sentence if otherwise permitted by law, but may not impose
37 a lower sentence than the sentence specified in subsection (2) of this section.

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

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- 41
- 42 (a)(A) Murder, as defined in
43 ORS 163.115300 months
- 44 (B) Attempt or conspiracy
45 to commit aggravated

1 murder, as defined
 2 in ORS 163.095.....120 months
 3 (C) Attempt or conspiracy
 4 to commit murder, as
 5 defined in ORS 163.115.90 months
 6 (D) Manslaughter in the
 7 first degree, as defined
 8 in ORS 163.118.....120 months
 9 (E) Manslaughter in the
 10 second degree, as defined
 11 in ORS 163.125.....75 months
 12 (F) Assault in the first
 13 degree, as defined in
 14 ORS 163.185.....90 months
 15 (G) Assault in the second
 16 degree, as defined in
 17 ORS 163.175.....70 months
 18 (H) Except as provided in
 19 paragraph (b)(G) of
 20 this subsection,
 21 kidnapping in the first
 22 degree, as defined
 23 in ORS 163.235.....90 months
 24 (I) Kidnapping in the second
 25 degree, as defined in
 26 ORS 163.225.....70 months
 27 (J) Rape in the first degree,
 28 as defined in ORS 163.375
 29 (1)(a), (c) or (d).....100 months
 30 (K) Rape in the second degree,
 31 as defined in ORS 163.365.....75 months
 32 (L) Sodomy in the first degree,
 33 as defined in ORS 163.405
 34 (1)(a), (c) or (d).....100 months
 35 (M) Sodomy in the second
 36 degree, as defined in
 37 ORS 163.395.....75 months
 38 (N) Unlawful sexual penetration
 39 in the first degree, as
 40 defined in ORS 163.411
 41 (1)(a) or (c).100 months
 42 (O) Unlawful sexual penetration
 43 in the second degree, as
 44 defined in ORS 163.408.75 months
 45 (P) Sexual abuse in the first

- 1 degree, as defined in
- 2 ORS 163.427.75 months
- 3 (Q) Robbery in the first degree,
- 4 as defined in ORS 164.415.90 months
- 5 (R) Robbery in the second
- 6 degree, as defined in
- 7 ORS 164.405.70 months
- 8 (b)(A) Arson in the first degree,
- 9 as defined in ORS 164.325,
- 10 when the offense represented
- 11 a threat of serious
- 12 physical injury.90 months
- 13 (B) Using a child in a display
- 14 of sexually explicit
- 15 conduct, as defined in
- 16 ORS 163.670.70 months
- 17 (C) Compelling prostitution,
- 18 as defined in ORS 167.017.70 months
- 19 (D) Rape in the first degree,
- 20 as defined in
- 21 ORS 163.375 (1)(b).300 months
- 22 (E) Sodomy in the first degree,
- 23 as defined in
- 24 ORS 163.405 (1)(b).300 months
- 25 (F) Unlawful sexual penetration
- 26 in the first degree, as
- 27 defined in
- 28 ORS 163.411 (1)(b).300 months
- 29 (G) Kidnapping in the first
- 30 degree, as defined in
- 31 ORS 163.235, when the
- 32 offense is committed in
- 33 furtherance of the commission
- 34 or attempted commission of an
- 35 offense listed in subparagraph
- 36 (D), (E) or (F) of
- 37 this paragraph.300 months
- 38 (c) Aggravated vehicular
- 39 homicide, as defined in
- 40 ORS 163.149.240 months

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SECTION 5. ORS 137.707 is amended to read:

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

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

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

12 (2)(a) When a person charged under this section is convicted of an offense listed in subsection
13 (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for
14 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
15 otherwise permitted by law, but may not impose a lesser term. [The person is not,]

16 **(b) Except as provided in ORS 144.126, a person sentenced under this section is not:**

17 **(A)** During the service of the term of imprisonment, eligible for release on post-prison super-
18 vision or any form of temporary leave from custody[. *The person is not*]; **or**

19 **(B)** Eligible for any reduction in[, or based on,] the minimum sentence [for any reason under
20 ORS 421.121 or any other provision of law].

21 **(c)** ORS 138.012, 163.105 and 163.150 apply to sentencing a person prosecuted under this section
22 and convicted of aggravated murder under ORS 163.095 except that a person who was under 18
23 years of age at the time the offense was committed is not subject to a sentence of death.

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

26 (4) The offenses to which this section applies and the presumptive sentences are:
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- 28
 - 29 (a)(A) Murder, as defined in
 - 30 ORS 163.115.....300 months
 - 31 (B) Attempt or conspiracy
 - 32 to commit aggravated
 - 33 murder, as defined
 - 34 in ORS 163.095.....120 months
 - 35 (C) Attempt or conspiracy
 - 36 to commit murder, as
 - 37 defined in ORS 163.11590 months
 - 38 (D) Manslaughter in the
 - 39 first degree, as defined
 - 40 in ORS 163.118.....120 months
 - 41 (E) Manslaughter in the
 - 42 second degree, as defined
 - 43 in ORS 163.125.....75 months
 - 44 (F) Assault in the first
 - 45 degree, as defined

1		in ORS 163.185.....	90 months
2	(G)	Assault in the second	
3		degree, as defined	
4		in ORS 163.175.....	70 months
5	(H)	Kidnapping in the first	
6		degree, as defined in	
7		ORS 163.235.....	90 months
8	(I)	Kidnapping in the second	
9		degree, as defined in	
10		ORS 163.225.....	70 months
11	(J)	Rape in the first degree,	
12		as defined in ORS 163.375....	100 months
13	(K)	Rape in the second	
14		degree, as defined in	
15		ORS 163.365.....	75 months
16	(L)	Sodomy in the first	
17		degree, as defined in	
18		ORS 163.405.....	100 months
19	(M)	Sodomy in the second	
20		degree, as defined in	
21		ORS 163.395.....	75 months
22	(N)	Unlawful sexual	
23		penetration in the first	
24		degree, as defined	
25		in ORS 163.411.....	100 months
26	(O)	Unlawful sexual	
27		penetration in the	
28		second degree, as	
29		defined in ORS 163.408	75 months
30	(P)	Sexual abuse in the first	
31		degree, as defined in	
32		ORS 163.427.....	75 months
33	(Q)	Robbery in the first	
34		degree, as defined in	
35		ORS 164.415.....	90 months
36	(R)	Robbery in the second	
37		degree, as defined in	
38		ORS 164.405.....	70 months
39	(b)(A)	Arson in the first degree,	
40		as defined in	
41		ORS 164.325, when	
42		the offense represented	
43		a threat of serious	
44		physical injury.	90 months
45	(B)	Using a child in a display	

- 1 of sexually explicit
- 2 conduct, as defined in
- 3 ORS 163.670.....70 months
- 4 (C) Compelling prostitution,
- 5 as defined in ORS 167.017.....70 months
- 6 (c) Aggravated vehicular
- 7 homicide, as defined in
- 8 ORS 163.149.....240 months

10

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

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

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

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

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

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

25 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 26 419C.067 and 419C.411.

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

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

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

32 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
 33 419C.067 and 419C.411.

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

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

45 (b) If a person charged and tried as provided in subsection (6) of this section is not found guilty

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

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

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

11 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
 12 419C.067 and 419C.411.

13 **SECTION 6.** ORS 144.232 is amended to read:

14 144.232. (1) A person sentenced under ORS 161.725 and 161.735 as a dangerous offender for fel-
 15 onies committed on or after November 1, 1989, shall be considered for release to post-prison super-
 16 vision. **Except as provided in ORS 144.126**, the offender is **not** eligible for release to post-prison
 17 supervision [*after*] **before** having served the required incarceration term established under ORS
 18 161.737.

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

22 (3) The dangerous offender's eligibility for and release to post-prison supervision shall be deter-
 23 mined in a manner consistent with the procedures and criteria required by ORS 144.228 for the
 24 parole determination process applicable to dangerous offenders sentenced for crimes committed prior
 25 to November 1, 1989.

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

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

33 (b) After release under this section, the board may at any time return the offender to prison and
 34 require the offender to submit to a psychiatric or psychological examination as provided for in ORS
 35 144.226. If the board finds that the offender's dangerousness has returned and cannot be adequately
 36 controlled with supervision and mental and physical health treatment, or that resources for super-
 37 vision and treatment are not available to the offender, the board may defer the offender's release
 38 from prison for an indefinite period of time. An offender returned to prison under this paragraph is
 39 entitled to periodic reviews for possible release to post-prison supervision as provided by subsection
 40 (3) of this section.

41 **SECTION 7.** ORS 161.737 is amended to read:

42 161.737. (1) A sentence imposed under ORS 161.725 and 161.735 for felonies committed on or af-
 43 ter November 1, 1989, shall constitute a departure from the sentencing guidelines created by rules
 44 of the Oregon Criminal Justice Commission. The findings made to classify the defendant as a dan-
 45 gerous offender under ORS 161.725 and 161.735 shall constitute substantial and compelling reasons

1 to depart from the presumptive sentence as provided by rules of the Oregon Criminal Justice Com-
2 mission.

3 (2) When the sentence is imposed, the sentencing judge shall indicate on the record the reasons
4 for the departure and shall impose, in addition to the indeterminate sentence imposed under ORS
5 161.725, a required incarceration term that, **except as provided in ORS 144.126**, the offender must
6 serve before release to post-prison supervision. If the presumptive sentence that would have been
7 imposed if the court had not imposed the sentence under ORS 161.725 and 161.735 as a departure
8 is a prison sentence, the required incarceration term shall be no less than the presumptive
9 incarceration term and no more than twice the maximum presumptive incarceration term. If the
10 presumptive sentence for the offense is probation, the required incarceration term shall be no less
11 than the maximum incarceration term provided by the rule of the Oregon Criminal Justice Com-
12 mission that establishes incarceration terms for dispositional departures and no more than twice
13 that amount. However, the indeterminate sentence imposed under this section and ORS 161.725 is
14 not subject to any guideline rule establishing limitations on the duration of departures.

15 **SECTION 8. This 2011 Act does not take effect unless the amendment to the Oregon**
16 **Constitution proposed by Senate Joint Resolution 3 (2011) is approved by the people at the**
17 **next regular general election held throughout this state. This 2011 Act takes effect on the**
18 **effective date of that constitutional amendment.**

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