
MEMORANDUM

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To: *Public Safety Subcommittee*

From: *Tim Walker, Legislative Fiscal Office*
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Date: *June 22, 2015*

Subject: *HB 2320*
Work Session

HB 2320 requires the State Board of Parole and Post-Prison Supervision (BPPPS) to adopt a sex offender risk assessment methodology to classify sex offenders into risk levels. Previously, HB 2549 (2013) required the Department of Corrections (DOC) to conduct these assessments on individuals incarcerated and the BPPPS to conduct the assessments on individuals already registered. The measure also requires the Board to have five members, and allows a minimum of three Board members to make and review certain decisions.

The Work Session packet, including measure, staff measure summary, and amendment are available on the Oregon Legislative Information System (OLIS). The measure has a revenue impact and a fiscal impact.

Proposed Budget Note:

The Board is directed to report to the February 2016 Session of the Legislative Assembly on the hiring and implementation process to meet the requirements of House Bill 2320. In addition, the Board should report to the Legislative Assembly on progress in reducing the backlog of Static 99 reviews, reviews for female and juvenile offenders, and a forecast on current offenders eligible for appeal of their status.

Accept LFO Recommendation

Move the LFO recommended budget note

OR

Change the LFO recommendation – any changes must be approved by the co-chairs

Move the LFO recommended budget note, with modifications

Amendment

The –A8 amendment combines the contents of HB 3436 and adds an appropriation of \$3,163,183 GF to the Board for the purposes of the the bill. HB 3436 Increases Board of Parole and Post-Prison Supervision (“Board”) to five members, requires Board hearings consist of panel of at least three members, hearings can consist of full Board at request of Board chair, establishes voting procedures based on size of panel, and requires certain board decisions to be in writing.

Motion #1: Move the –A8 amendment to HB 2320.

The measure is recommended to be moved to the full Committee on Joint Ways and Means.

Motion #2: Move HB 2320 to the full committee with a “do pass”, as amended, recommendation.

Chair to assign carriers:

Full: _____

House: _____

Senate: _____

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2320**

1 On page 1 of the printed A-engrossed bill, line 2, after “137.225,” delete
2 the rest of the line and insert “144.005, 144.015, 144.025, 144.035, 144.054,
3 144.079, 144.110, 144.641, 144.783, 163.105, 163.115, 163.155, 163.476.”

4 In line 3, delete “181.807.”

5 On page 7, delete lines 29 through 36 and insert:

6 “(c) Notwithstanding paragraphs (a) and (b) of this subsection, during the
7 period of supervision or custody authorized by law, the Oregon Youth Au-
8 thority may register a youth offender committed to its supervision and cus-
9 tody by order of the juvenile court or a person placed in its physical custody
10 under ORS 137.124 or any other provision of law.”

11 In line 44, delete “county juvenile department.”

12 On page 8, delete lines 7 through 45 and insert:

13 “**NOTE:** Section 6 was deleted by amendment. Subsequent sections were
14 not renumbered.”

15 On page 9, delete lines 1 through 19.

16 On page 13, delete lines 2 through 9 and insert:

17 “(8) Notwithstanding subsections (2) and (3) of this section:

18 “(a) The Oregon Youth Authority may register a youth offender commit-
19 ted to its custody and supervision by order of the juvenile court or a person
20 placed in its physical custody under ORS 137.124 or any other provision of
21 law.

22 “(b) A county juvenile department may register a youth offender or young

1 person, as those terms are defined in ORS 419A.004.”

2 In line 22, delete “or”.

3 After line 22, insert:

4 “(h) Fails or refuses to participate in a sex offender risk assessment as
5 directed by the State Board of Parole and Post-Prison Supervision, Psychi-
6 atric Security Review Board, Oregon Health Authority or supervisory au-
7 thority; or”.

8 In line 23, delete “(h)” and insert “(i)”.

9 In line 28, delete the boldfaced material.

10 In lines 33 and 34, delete the boldfaced material.

11 In lines 38 and 39, delete the boldfaced material.

12 In lines 43 and 44, delete the boldfaced material.

13 On page 14, after line 1, insert:

14 “(e) It is an affirmative defense to a charge of failure to report under
15 subsection (1) of this section by a person required to report under ORS
16 181.806 (3) that the person reported to the Oregon Youth Authority if the
17 person establishes that the authority registered the person under ORS
18 181.806 (3)(c).

19 “(f) It is an affirmative defense to a charge of failure to report under
20 subsection (1) of this section by a person required to report under ORS
21 181.809 (2) or (3) that the person reported to the Oregon Youth Authority or
22 a county juvenile department if the person establishes that the authority or
23 department registered the person under ORS 181.809 (8).”.

24 In line 40, before “agency” insert “supervising agency or the”.

25 On page 15, line 3, delete “agency” and insert “supervising agency or the
26 agency making the classification or designation”.

27 In line 18, delete the boldfaced material.

28 In line 20, restore the bracketed material and delete the boldfaced mate-
29 rial.

30 After line 20, insert:

1 “(C) The person has not been determined to be a predatory sex offender
2 prior to January 1, 2014.”

3 On page 16, line 26, delete “if” and insert “while”.

4 In line 27, after “Authority” insert “, unless the department is authorized
5 to do so by a request of the supervising agency”.

6 On page 21, line 38, before “State” insert “Psychiatric Security Review
7 Board, the Oregon Health Authority or the” and delete “for the board”.

8 On page 25, line 27, delete “certified”.

9 On page 26, after line 6, insert:

10 “(8) If the State Board of Parole and Post-Prison Supervision or the Psy-
11 chiatric Security Review Board does not classify an existing registrant under
12 ORS 181.800 because the person has failed or refused to participate in a sex
13 offender risk assessment as directed by the State Board of Parole and Post-
14 Prison Supervision or the Psychiatric Security Review Board, the person is,
15 by operation of law, classified as a level three sex offender under ORS
16 181.800 (3) as of January 1, 2019.”

17 Delete lines 19 through 45 and insert:

18 **“SECTION 31. (1)(a) The juvenile court shall hold a hearing on the**
19 **issue of reporting as a sex offender by a person who has been found**
20 **to be within the jurisdiction of the juvenile court under ORS 419C.005,**
21 **or found by the juvenile court to be responsible except for insanity**
22 **under ORS 419C.411, for having committed an act that if committed**
23 **by an adult would constitute a felony sex crime.**

24 **“(b) The hearing described in paragraph (a) of this subsection must**
25 **be held during the six-month period before:**

26 **“(A) The termination of juvenile court jurisdiction over the person;**
27 **or**

28 **“(B) The person is discharged from the jurisdiction of the Psychi-**
29 **atric Security Review Board, if the person was placed under the ju-**
30 **risdiction of the board.**

1 “(c) The court shall notify the person of the person’s right to a
2 hearing under this section upon finding the person within the juris-
3 diction of the juvenile court under ORS 419C.005.

4 “(d) The county or state agency responsible for supervising the
5 person shall notify the person when the agency determines that ter-
6 mination of jurisdiction will occur within six months.

7 “(e) A petition requesting a hearing may be filed under this section
8 by the person within six months of the termination date if the date
9 has been set by the court, or within six months of the projected ter-
10 mination date provided to the person by the supervising agency.

11 “(2) The district attorney shall notify the victim prior to the hear-
12 ing of the right to appear and the right to be heard under ORS
13 419C.273.

14 “(3) At the hearing described in subsection (1) of this section:

15 “(a) The district attorney, the victim, the person and the juvenile
16 court counselor or a representative of the Oregon Youth Authority
17 shall have an opportunity to be heard.

18 “(b) The person who is the subject of the hearing has the burden
19 of proving by clear and convincing evidence that the person is reha-
20 bilitated and does not pose a threat to the safety of the public. If the
21 court finds that the person has not met the burden of proof, the court
22 shall enter an order requiring the person to report as a sex offender
23 under ORS 181.809.

24 “(4) In determining whether the person has met the burden of
25 proof, the juvenile court may consider but need not be limited to
26 considering:

27 “(a) The extent and impact of any physical or emotional injury to
28 the victim;

29 “(b) The nature of the act that subjected the person to the duty of
30 reporting as a sex offender;

1 “(c) Whether the person used or threatened to use force in com-
2 mitting the act;

3 “(d) Whether the act was premeditated;

4 “(e) Whether the person took advantage of a position of authority
5 or trust in committing the act;

6 “(f) The age of any victim at the time of the act, the age difference
7 between any victim and the person and the number of victims;

8 “(g) The vulnerability of the victim;

9 “(h) Other acts committed by the person that would be crimes if
10 committed by an adult and criminal activities engaged in by the per-
11 son before and after the adjudication;

12 “(i) Statements, documents and recommendations by or on behalf
13 of the victim or the parents of the victim;

14 “(j) The person’s willingness to accept personal responsibility for
15 the act and personal accountability for the consequences of the act;

16 “(k) The person’s ability and efforts to pay the victim’s expenses for
17 counseling and other trauma-related expenses or other efforts to mit-
18 igate the effects of the act;

19 “(L) Whether the person has participated in and satisfactorily
20 completed a sex offender treatment program or any other inter-
21 vention, and if so the juvenile court may also consider:

22 “(A) The availability, duration and extent of the treatment activ-
23 ities;

24 “(B) Reports and recommendations from the providers of the
25 treatment;

26 “(C) The person’s compliance with court, board or supervision re-
27 quirements regarding treatment; and

28 “(D) The quality and thoroughness of the treatment program;

29 “(m) The person’s academic and employment history;

30 “(n) The person’s use of drugs or alcohol before and after the ad-

1 **judication;**

2 **“(o) The person’s history of public or private indecency;**

3 **“(p) The person’s compliance with and success in completing the**
4 **terms of supervision;**

5 **“(q) The results of psychological examinations of the person;**

6 **“(r) The protection afforded the public by the continued existence**
7 **of the records; and**

8 **“(s) Any other relevant factors.**

9 **“(5) In a hearing under this section, the juvenile court may receive**
10 **testimony, reports and other evidence, without regard to whether the**
11 **evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585,**
12 **if the evidence is relevant evidence related to the determination and**
13 **findings required under this section. As used in this subsection, ‘rele-**
14 **vant evidence’ has the meaning given that term in ORS 40.150.**

15 **“(6)(a) In a hearing under this section, the juvenile court shall re-**
16 **view:**

17 **“(A) Evaluations and treatment records concerning the person**
18 **conducted by a clinician or program operating under the standards of**
19 **practice for the evaluation and treatment of juvenile sex offenders**
20 **adopted by the Sex Offender Treatment Board under ORS 675.400, and**
21 **recommendations contained therein regarding the need for the person**
22 **to register in order to protect the public from future sex crimes; and**

23 **“(B) All examination preparation material and examination records**
24 **from polygraph examinations conducted by or for the treatment pro-**
25 **vider, juvenile department or Oregon Youth Authority.**

26 **“(b) Any records and materials to be reviewed by the court under**
27 **this subsection shall be released and disclosed to the court, district**
28 **attorney, person’s attorney and to the Oregon Youth Authority or ju-**
29 **venile department that is responsible for the supervision of the person,**
30 **no less than 15 days prior to any hearing held under this section.**

1 “(7) When the juvenile court enters an order described in subsection
2 (3)(b) of this section, the court shall ensure that the person completes
3 a form that documents the person’s obligation to report under ORS
4 181.809. No later than three business days after the person completes
5 the form required by this subsection, the court shall ensure that the
6 form is sent to the Department of State Police.

7 “(8)(a) A person who is the subject of a hearing under this section
8 has the right to be represented by suitable legal counsel possessing
9 skills and experience commensurate with the nature and complexity
10 of the case, to consult with counsel prior to the hearing and, if fi-
11 nancially eligible, to have suitable counsel appointed at state expense.

12 “(b) In order to comply with the right to counsel under paragraph
13 (a) of this subsection, the court may:

14 “(A) Continue the appointment of the attorney appointed under
15 ORS 419C.200 at the time of disposition;

16 “(B) Set a date prior to the hearing under this section in order to
17 reappoint the attorney appointed under ORS 419C.200; or

18 “(C) Appoint or reappoint an attorney at any time in response to a
19 request by the person who is the subject of a hearing under this sec-
20 tion.

21 “(9) Notwithstanding ORS 419C.005 (4)(e), the juvenile court retains
22 jurisdiction over a person for purposes of this section.”.

23 On page 27, delete lines 1 through 23.

24 On page 35, delete lines 9 through 45 and insert:

25 “**NOTE:** Section 34 was deleted by amendment. Subsequent sections were
26 not renumbered.”.

27 Delete pages 36 and 37.

28 On page 38, delete lines 1 through 38.

29 On page 41, after line 7, insert:

1 **“STATE BOARD OF PAROLE AND POST-PRISON SUPERVISION**

2

3 **“SECTION 37.** ORS 144.005 is amended to read:

4 “144.005. (1) A State Board of Parole and Post-Prison Supervision of at
5 least three but no more than five members hereby is created. At least one
6 member must be a woman.

7 “(2)(a) Members of the board shall be appointed by the Governor and
8 serve for a term of four years.

9 “(b) If the number of members falls below three for any cause, the Gov-
10 ernor shall make an appointment to become immediately effective for the
11 unexpired term.

12 “(c) The Governor at any time may remove any member for inefficiency,
13 neglect of duty or malfeasance in office.

14 “(3) Each member shall devote the member’s entire time to the perform-
15 ance of the duties imposed on the board and shall not engage in any partisan
16 political activity.

17 “(4) The members shall receive a salary set by the Governor. In addition,
18 all members may receive actual and necessary travel and other expenses in-
19 curred in the performance of their official duties within limits as provided
20 by law or under ORS 292.220 and 292.230.

21 “(5) The Director of the Department of Corrections shall serve as an ex
22 officio nonvoting member of the board **and shall not be considered a**
23 **member for the purposes of subsections (1) to (4) of this section.**

24 **“SECTION 38.** ORS 144.015 is amended to read:

25 “144.015. **Except as provided in ORS 144.005 (2)(b),** the appointment of
26 a member of the State Board of Parole and Post-Prison Supervision is subject
27 to confirmation by the Senate as provided in ORS 171.562 and 171.565.

28 **“SECTION 39.** ORS 144.025 is amended to read:

29 “144.025. (1) The Governor shall select one of the members of the State
30 Board of Parole and Post-Prison Supervision as chairperson and another

1 member as vice chairperson, for such terms and with duties and powers, in
2 addition to those established by law, necessary for the performance of the
3 function of such office as the Governor determines.

4 “(2) A majority of the members of the board constitutes a quorum for
5 decisions concerning rules and policies.

6 “(3) Except as otherwise provided in this chapter, decisions affecting in-
7 dividuals under the jurisdiction of the board shall be made as designated by
8 the rules of the board.

9 “(4) **Except as otherwise provided by statute, all board hearings are**
10 **presumed to be panel hearings.**

11 “(5) **The chairperson of the board may require all voting members**
12 **of the board to participate in any hearing or decision requiring at least**
13 **three board members. The decision to require the participation of all**
14 **board members is not appealable.**

15 “(6) **The board shall adopt rules concerning the number of board**
16 **members that participate in board hearings and decisions.**

17 “**SECTION 40.** ORS 144.035 is amended to read:

18 “144.035. (1) In hearings conducted by the State Board of Parole and
19 Post-Prison Supervision, the board may sit together or in panels.

20 “(2) Panels may consist of one or two board members or of one member
21 and one hearings officer, appointed by the chairperson as a designated rep-
22 resentative of the board. A panel consisting of one member or of one member
23 and one hearings officer shall be used only when considering inmates con-
24 victed of non person-to-person crimes as defined in the rules of the Oregon
25 Criminal Justice Commission. The chairperson of the board from time to time
26 shall make assignments of members to the panels. The chairperson of the
27 board may participate on any panel.

28 “(3) The chairperson shall apportion matters for decision to the panels.
29 Each panel shall have the authority to hear and determine all questions be-
30 fore it. However:

1 “(a) If there is a division in the panel so that a decision is not unanimous,
2 another member shall vote after administrative review of the record.

3 “(b) In case of a panel consisting of one board member, another member
4 shall vote after administrative review of the record.

5 “(c) If the original panel was made up of one board member and the
6 member voting after administrative review of the record disagrees with the
7 decision, the matter shall be reassigned to a panel made up of the remaining
8 board members. If this second panel agrees with neither member of the ori-
9 ginal panel, the matter will be referred to a hearing before the full board.

10 “(4) The provisions of subsections (1) to (3) of this section shall not apply
11 to a decision to release a prisoner sentenced under ORS 144.110 (1). In such
12 cases, the board shall release the prisoner only upon affirmative vote of a
13 majority of [*the board*] **three board members or, if the chairperson re-**
14 **quires all voting members to participate, a majority of all voting**
15 **members.**

16 “(5) The chairperson may elect to conduct the hearings described in this
17 section by conference call with the prisoner.

18 “**SECTION 41.** ORS 144.054 is amended to read:

19 “144.054. Whenever the State Board of Parole and Post-Prison Supervision
20 makes a decision affecting a person sentenced to life imprisonment or con-
21 victed of a crime involving the death of a victim, whether or not the prose-
22 cution directly charged the person with causing the death of the victim, the
23 decision affecting such person must be reviewed by [*the full membership of*
24 *the board*] **no fewer than three board members.**

25 “**SECTION 42.** ORS 144.079 is amended to read:

26 “144.079. (1)(a) If a prisoner is sentenced to terms of imprisonment that
27 are consecutive to one another and result from crimes committed during the
28 period before the prisoner’s first initial parole hearing, or if a prisoner is
29 sentenced to terms of imprisonment that are consecutive to one another and
30 result from crimes committed during the period between any two initial

1 parole hearings, the total term resulting from the crimes committed during
2 each such separate period shall be determined by the State Board of Parole
3 and Post-Prison Supervision as follows, except as provided in subsection (2)
4 of this section, and the total terms so determined shall then be summed as
5 provided in ORS 144.783 (1):

6 “(A) First, the board shall establish the appropriate range for the felony
7 determined by the board, according to its rules, to be the most serious of the
8 felonies committed during the period. If two or more felonies are determined
9 to be equally the most serious, the board shall establish the appropriate
10 range under this paragraph only for one of those felonies.

11 “(B) Second, the board shall establish a range for each of the remaining
12 felonies committed during the same period. For purposes of establishing the
13 ranges for the remaining felonies under this paragraph, the board shall not
14 consider prior criminal history.

15 “(C) Third, the board shall determine the total range applicable in the
16 offender’s case for crimes committed during the same period by summing the
17 ranges established under subparagraph (B) of this paragraph with the range
18 established under subparagraph (A) of this paragraph and shall determine
19 an appropriate term within that range.

20 “(D) Finally, the board shall vary the term determined under subpara-
21 graph (C) of this paragraph according to rules established under ORS 144.785
22 (1), if the board finds aggravating or mitigating factors in the case. The
23 board shall consider as an aggravating factor the fact that the prisoner has
24 been sentenced to consecutive terms of imprisonment.

25 “(b) Whenever a prisoner is committed to the custody of the Department
26 of Corrections for a crime that was committed during a period already con-
27 sidered at an initial parole hearing and upon a sentence consecutive to any
28 sentence imposed for crimes committed during that period, the board shall
29 conduct a hearing to consider the previously unconsidered crime. The hear-
30 ing shall be a hearing supplemental to the original initial hearing concern-

1 ing crimes committed during the period. Time limitations and other
2 procedural provisions applicable to initial hearings shall apply to a supple-
3 mental hearing under this subsection. Upon conclusion of the supplemental
4 hearing, the board shall redetermine the appropriate total term for the pe-
5 riod. The redetermination shall be conducted de novo under the provisions
6 of subsection (2) of this section.

7 “(2) The method established by this section for determining, where appli-
8 cable, the total term resulting from the summing of consecutive sentences
9 shall apply only if none of the crimes involved is:

10 “(a) Murder, as defined in ORS 163.115 or any aggravated form thereof;

11 “(b) Assault in the first degree, as defined in ORS 163.185;

12 “(c) Kidnapping in the first degree, as defined in ORS 163.235;

13 “(d) Rape in the first degree, as defined in ORS 163.375;

14 “(e) Sodomy in the first degree, as defined in ORS 163.405;

15 “(f) Unlawful sexual penetration, as defined in ORS 163.411;

16 “(g) Arson in the first degree, as defined in ORS 164.325; or

17 “(h) Treason, as defined in ORS 166.005.

18 “(3) The duration of imprisonment pursuant to consecutive sentences may
19 be less than the sum of the terms under subsection (1) of this section if the
20 board finds, by affirmative vote of a majority of *[its]* **three board members**
21 **or, if the chairperson requires all voting members to participate, a**
22 **majority of all voting** members, that consecutive sentences are not appro-
23 priate penalties for the criminal offenses involved and that the combined
24 terms of imprisonment are not necessary to protect community security.

25 “(4) The [*State*] board [*of Parole and Post-Prison Supervision*] shall use
26 the method set forth in subsections (1) to (3) of this section to determine the
27 parole release date for any person serving a sentence in the custody of the
28 Department of Corrections for crimes committed before or after July 11, 1987.

29 “**SECTION 43.** ORS 144.110 is amended to read:

30 “144.110. (1) In any felony case, the court may impose a minimum term

1 of imprisonment of up to one-half of the sentence it imposes.

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

3 “(a) The State Board of Parole and Post-Prison Supervision shall not re-
4 lease a prisoner on parole who has been sentenced under subsection (1) of
5 this section until the minimum term has been served, except upon affirmative
6 vote of a majority of [*the members of the board*] **three board members or,**
7 **if the chairperson requires all voting members to participate, a ma-**
8 **majority of all voting members.**

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

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

12 “(B) Who has been convicted of murder under the provisions of ORS
13 163.115, except as provided in ORS 163.115 (5)(c) to (f) **or 163.155 (6) to (8).**

14 **“SECTION 44.** ORS 144.783 is amended to read:

15 “144.783. (1) When a prisoner is sentenced to two or more consecutive
16 terms of imprisonment, the duration of the term of imprisonment shall be the
17 sum of the terms set by the State Board of Parole and Post-Prison Super-
18 vision pursuant to the ranges established for the offenses, subject to ORS
19 144.079, and subject to the variations established pursuant to ORS 144.785 (1).

20 “(2) The duration of imprisonment pursuant to consecutive sentences may
21 be less than the sum of the terms under subsection (1) of this section if the
22 board finds, by affirmative vote of a majority of [*its members*] **three board**
23 **members or, if the chairperson requires all voting members to partic-**
24 **ipate, a majority of all voting members,** that consecutive sentences are
25 not appropriate penalties for the criminal offenses involved and that the
26 combined terms of imprisonment are not necessary to protect community se-
27 curity.

28 **“SECTION 45.** ORS 163.105 is amended to read:

29 “163.105. Notwithstanding the provisions of ORS chapter 144 and ORS
30 421.450 to 421.490:

1 “(1)(a) Except as otherwise provided in ORS [137.700] **137.707**, when a de-
2 fendant is convicted of aggravated murder as defined by ORS 163.095, the
3 defendant shall be sentenced, pursuant to ORS 163.150, to death, life
4 imprisonment without the possibility of release or parole or life
5 imprisonment.

6 “(b) A person sentenced to life imprisonment without the possibility of
7 release or parole under this section shall not have that sentence suspended,
8 deferred or commuted by any judicial officer, and the State Board of Parole
9 and Post-Prison Supervision may not parole the prisoner nor reduce the pe-
10 riod of confinement in any manner whatsoever. The Department of Cor-
11 rections or any executive official may not permit the prisoner to participate
12 in any sort of release or furlough program.

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

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

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

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

29 “(c) The right to a subpoena upon a showing of the general relevance and
30 reasonable scope of the evidence sought, provided that any subpoena issued

1 on behalf of the prisoner must be issued by the State Board of Parole and
2 Post-Prison Supervision pursuant to rules adopted by the board.

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

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

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

20 **“SECTION 46.** ORS 163.115 is amended to read:

21 “163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal
22 homicide constitutes murder:

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

26 “(b) When it is committed by a person, acting either alone or with one
27 or more persons, who commits or attempts to commit any of the following
28 crimes and in the course of and in furtherance of the crime the person is
29 committing or attempting to commit, or during the immediate flight there-
30 from, the person, or another participant if there be any, causes the death of

1 a person other than one of the participants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 “(d) Had no reasonable ground to believe that any other participant was

1 armed with a dangerous or deadly weapon; and

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

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

9 “[~~(5)(a)~~] (5) Except as otherwise provided in ORS 163.155[,]:

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

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

18 “(c) At any time after completion of a minimum period of confinement
19 pursuant to paragraph (b) of this subsection, the State Board of Parole and
20 Post-Prison Supervision, upon the petition of a prisoner so confined, shall
21 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 the prisoner
23 is likely to be rehabilitated within a reasonable period of time. At the
24 hearing the prisoner has:

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

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

30 “(C) The right to a subpoena upon a showing of the general relevance and

1 reasonable scope of the evidence sought, provided that any subpoena issued
2 on behalf of the prisoner must be issued by the State Board of Parole and
3 Post-Prison Supervision pursuant to rules adopted by the board.

4 “(d) If, upon hearing all of the evidence, the board, upon a unanimous
5 vote of [*all of its*] **three board members or, if the chairperson requires**
6 **all voting members to participate, a unanimous vote of all voting**
7 members, finds that the prisoner is capable of rehabilitation and that the
8 terms of the prisoner’s confinement should be changed to life imprisonment
9 with the possibility of parole, release to post-prison supervision or work re-
10 lease, it shall enter an order to that effect and the order shall convert the
11 terms of the prisoner’s confinement to life imprisonment with the possibility
12 of parole, release to post-prison supervision or work release and may set a
13 release date. Otherwise, the board shall deny the relief sought in the peti-
14 tion.

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

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

22 “(6) As used in this section:

23 “(a) ‘Assault’ means [*to intentionally, knowingly or recklessly cause*] **the**
24 **intentional, knowing or reckless causation of** physical injury to another
25 person. ‘Assault’ does not include the [*causing*] **causation** of physical injury
26 in a motor vehicle accident that occurs by reason of the reckless conduct
27 of a defendant.

28 “(b) ‘Neglect or maltreatment’ means a violation of ORS 163.535, 163.545
29 or 163.547 or a failure to provide adequate food, clothing, shelter or medical
30 care that is likely to endanger the health or welfare of a child under 14 years

1 of age or a dependent person. This paragraph is not intended to replace or
2 affect the duty or standard of care required under ORS chapter 677.

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

4 “(d) ‘Torture’ means [*to intentionally inflict*] **the intentional infliction**
5 **of** intense physical pain upon an unwilling victim as a separate objective
6 apart from any other purpose.

7 **“SECTION 47.** ORS 163.155 is amended to read:

8 “163.155. (1) When a defendant, who was at least 15 years of age at the
9 time of committing the murder, is convicted of murdering a pregnant victim
10 under ORS 163.115 (1)(a) and the defendant knew that the victim was preg-
11 nant, the defendant shall be sentenced to life imprisonment without the
12 possibility of release or parole or to life imprisonment. The court shall con-
13 duct a sentencing proceeding to determine whether the defendant shall be
14 sentenced to life imprisonment without the possibility of release or parole
15 as described in subsection (4) of this section or to life imprisonment as de-
16 scribed in subsection (5) of this section. If the defendant waives all rights
17 to a jury sentencing proceeding, the court shall conduct the sentencing pro-
18 ceeding as the trier of fact. The procedure for the sentencing proceeding,
19 whether before a court or a jury, shall follow the procedure of ORS 163.150
20 (1)(a), as modified by this section.

21 “(2) Following the presentation of evidence and argument under sub-
22 section (1) of this section, the court shall instruct the jury that the trial
23 court shall sentence the defendant to life imprisonment without the possi-
24 bility of release or parole as described in subsection (4) of this section, un-
25 less after considering all of the evidence submitted, 10 or more members of
26 the jury find there are sufficient mitigating circumstances to warrant life
27 imprisonment with the possibility of release or parole as described in sub-
28 section (5) of this section. If 10 or more members of the jury do not find there
29 are sufficient mitigating circumstances to warrant life imprisonment with
30 the possibility of release or parole, the trial court shall sentence the de-

1 defendant to life imprisonment without the possibility of release or parole as
2 described in subsection (4) of this section. If 10 or more members of the jury
3 find there are sufficient mitigating circumstances to warrant life
4 imprisonment with the possibility of release or parole, the trial court shall
5 sentence the defendant to life imprisonment as described in subsection (5)
6 of this section.

7 “(3) Nothing in this section precludes the court from sentencing the de-
8 fendant to life imprisonment, as described in subsection (5) of this section,
9 or life imprisonment without the possibility of release or parole, as described
10 in subsection (4) of this section, pursuant to a stipulation of sentence or
11 stipulation of sentencing facts agreed to and offered by both parties if the
12 defendant waives all rights to a jury sentencing proceeding.

13 “(4) A sentence of life imprisonment without the possibility of release or
14 parole under this section may not be suspended, deferred or commuted by any
15 judicial officer, and the State Board of Parole and Post-Prison Supervision
16 may neither parole the prisoner nor reduce the period of confinement in any
17 manner whatsoever. The Department of Corrections or any executive official
18 may not permit the prisoner to participate in any sort of release or furlough
19 program.

20 “(5) If the defendant is sentenced to life imprisonment, the court shall
21 order that the defendant be confined for a minimum of 30 years without
22 possibility of parole, release to post-prison supervision, release on work re-
23 lease or any form of temporary leave or employment at a forest or work
24 camp.

25 “(6) At any time after completion of the minimum period of confinement
26 pursuant to subsection (5) of this section, the board, upon the petition of a
27 prisoner so confined, shall hold a hearing to determine if the prisoner is
28 likely to be rehabilitated within a reasonable period of time. The sole issue
29 shall be whether the prisoner is likely to be rehabilitated within a reason-
30 able period of time. The proceeding shall be conducted in the manner pre-

1 scribed for a contested case hearing under ORS chapter 183, except that:

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

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

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

11 “(7) If, upon hearing all of the evidence, the board, upon a unanimous
12 vote of [*all of its*] **three board members or, if the chairperson requires**
13 **all voting members to participate, a unanimous vote of all voting**
14 members, finds that the prisoner is capable of rehabilitation and that the
15 terms of the prisoner’s confinement should be changed to life imprisonment
16 with the possibility of parole, release on post-prison supervision or work re-
17 lease, it shall enter an order to that effect and the order shall convert the
18 terms of the prisoner’s confinement to life imprisonment with the possibility
19 of parole, release on post-prison supervision or work release and may set a
20 release date. Otherwise the board shall deny the relief sought in the petition.

21 “(8) Not less than two years after the denial of the relief sought in a pe-
22 tition under this section, the prisoner may petition again for a change in the
23 terms of confinement. Further petitions for a change may be filed at inter-
24 vals of not less than two years thereafter.

25 **“SECTION 48. In addition to and not in lieu of any other appropri-**
26 **ation, there is appropriated to the State Board of Parole and Post-**
27 **Prison Supervision, for the biennium beginning July 1, 2015, out of the**
28 **General Fund, the amount of \$3,163,183, for the purposes of carrying**
29 **out the provisions of sections 37 to 47 of this 2015 Act.**

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“CAPTIONS”.

In line 8, delete “37” and insert “49”.

After line 10, insert:

“EMERGENCY CLAUSE”.

In line 11, delete “38” and insert “50”.
