

House Bill 3436

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

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

Requires that State Board of Parole and Post-Prison Supervision have five members. Authorizes minimum of three board members to make and review certain decisions. Requires that certain board decisions be in writing and posted on board's website.

A BILL FOR AN ACT

1
2 Relating to the State Board of Parole and Post-Prison Supervision; amending ORS 144.005, 144.015,
3 144.025, 144.035, 144.054, 144.079, 144.110, 144.783, 163.105, 163.115 and 163.155.

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

5 **SECTION 1.** ORS 144.005 is amended to read:

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

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

10 (b) If the number of members falls below [*three*] **five** for any cause, the Governor shall make an
11 appointment to become immediately effective for the unexpired term.

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

14 (3) Each member shall devote the member's entire time to the performance of the duties imposed
15 on the board and shall not engage in any partisan political activity.

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

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

22 **SECTION 2.** ORS 144.015 is amended to read:

23 144.015. **Except as provided in ORS 144.005 (2)(b)**, the appointment of a member of the State
24 Board of Parole and Post-Prison Supervision is subject to confirmation by the Senate as provided in
25 ORS 171.562 and 171.565.

26 **SECTION 3.** ORS 144.025 is amended to read:

27 144.025. (1) The Governor shall select one of the members of the State Board of Parole and
28 Post-Prison Supervision as chairperson and another member as vice chairperson, for such terms and
29 with duties and powers, in addition to those established by law, necessary for the performance of
30 the function of such office as the Governor determines.

31 (2) A majority of the members of the board constitutes a quorum for decisions concerning rules

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 and policies.

2 (3) Except as otherwise provided in this chapter, decisions affecting individuals under the ju-
3 risdiction of the board shall be made as designated by the rules of the board.

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

6 (5) **The chairperson of the board may require all voting members of the board to partic-**
7 **ipate in any hearing or decision requiring at least three board members. The decision to re-**
8 **quire the participation of all board members is not appealable.**

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

11 **SECTION 4.** ORS 144.035 is amended to read:

12 144.035. (1) In hearings conducted by the State Board of Parole and Post-Prison Supervision, the
13 board may sit together or in panels.

14 (2) Panels may consist of one or two board members or of one member and one hearings officer,
15 appointed by the chairperson as a designated representative of the board. A panel consisting of one
16 member or of one member and one hearings officer shall be used only when considering inmates
17 convicted of non person-to-person crimes as defined in the rules of the Oregon Criminal Justice
18 Commission. The chairperson of the board from time to time shall make assignments of members to
19 the panels. The chairperson of the board may participate on any panel.

20 (3) The chairperson shall apportion matters for decision to the panels. Each panel shall have the
21 authority to hear and determine all questions before it. However:

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

24 (b) In case of a panel consisting of one board member, another member shall vote after admin-
25 istrative review of the record.

26 (c) If the original panel was made up of one board member and the member voting after admin-
27 istrative review of the record disagrees with the decision, the matter shall be reassigned to a panel
28 made up of the remaining board members. If this second panel agrees with neither member of the
29 original panel, the matter will be referred to a hearing before the full board.

30 (4) The provisions of subsections (1) to (3) of this section shall not apply to a decision to release
31 a prisoner sentenced under ORS 144.110 (1). In such cases, the board shall release the prisoner only
32 upon affirmative vote of a majority of [*the board*] **at least three board members.**

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

35 **SECTION 5.** ORS 144.054 is amended to read:

36 144.054. (1) Whenever the State Board of Parole and Post-Prison Supervision makes a decision
37 affecting a person sentenced to life imprisonment or convicted of a crime involving the death of a
38 victim, whether or not the prosecution directly charged the person with causing the death of the
39 victim, the decision affecting such person must be reviewed by [*the full membership of the board*]
40 **no fewer than three board members.**

41 (2)(a) **Whenever the board makes a release decision pursuant to ORS 144.125 or 144.232**
42 **affecting a person sentenced to life imprisonment, convicted of a crime involving the death**
43 **of a victim or convicted of rape in the first degree, sodomy in the first degree, unlawful**
44 **sexual penetration in the first degree or kidnapping in the first degree, the decision shall be**
45 **in writing and shall specify the reasons for the decision.**

1 **(b) The board shall make all written decisions described in paragraph (a) of this sub-**
 2 **section available to the public without cost on the board’s Internet website.**

3 **(c) The board shall adopt rules concerning the manner in which the written decisions**
 4 **described in paragraph (a) of this subsection will be made available on the board’s Internet**
 5 **website.**

6 **SECTION 6.** ORS 144.079 is amended to read:

7 144.079. (1)(a) If a prisoner is sentenced to terms of imprisonment that are consecutive to one
 8 another and result from crimes committed during the period before the prisoner’s first initial parole
 9 hearing, or if a prisoner is sentenced to terms of imprisonment that are consecutive to one another
 10 and result from crimes committed during the period between any two initial parole hearings, the
 11 total term resulting from the crimes committed during each such separate period shall be determined
 12 by the State Board of Parole and Post-Prison Supervision as follows, except as provided in sub-
 13 section (2) of this section, and the total terms so determined shall then be summed as provided in
 14 ORS 144.783 (1):

15 (A) First, the board shall establish the appropriate range for the felony determined by the board,
 16 according to its rules, to be the most serious of the felonies committed during the period. If two
 17 or more felonies are determined to be equally the most serious, the board shall establish the ap-
 18 propriate range under this paragraph only for one of those felonies.

19 (B) Second, the board shall establish a range for each of the remaining felonies committed dur-
 20 ing the same period. For purposes of establishing the ranges for the remaining felonies under this
 21 paragraph, the board shall not consider prior criminal history.

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

26 (D) Finally, the board shall vary the term determined under subparagraph (C) of this paragraph
 27 according to rules established under ORS 144.785 (1), if the board finds aggravating or mitigating
 28 factors in the case. The board shall consider as an aggravating factor the fact that the prisoner has
 29 been sentenced to consecutive terms of imprisonment.

30 (b) Whenever a prisoner is committed to the custody of the Department of Corrections for a
 31 crime that was committed during a period already considered at an initial parole hearing and upon
 32 a sentence consecutive to any sentence imposed for crimes committed during that period, the board
 33 shall conduct a hearing to consider the previously unconsidered crime. The hearing shall be a
 34 hearing supplemental to the original initial hearing concerning crimes committed during the period.
 35 Time limitations and other procedural provisions applicable to initial hearings shall apply to a sup-
 36 plemental hearing under this subsection. Upon conclusion of the supplemental hearing, the board
 37 shall redetermine the appropriate total term for the period. The redetermination shall be conducted
 38 de novo under the provisions of subsection (2) of this section.

39 (2) The method established by this section for determining, where applicable, the total term re-
 40 sulting from the summing of consecutive sentences shall apply only if none of the crimes involved
 41 is:

- 42 (a) Murder, as defined in ORS 163.115 or any aggravated form thereof;
- 43 (b) Assault in the first degree, as defined in ORS 163.185;
- 44 (c) Kidnapping in the first degree, as defined in ORS 163.235;
- 45 (d) Rape in the first degree, as defined in ORS 163.375;

- 1 (e) Sodomy in the first degree, as defined in ORS 163.405;
- 2 (f) Unlawful sexual penetration, as defined in ORS 163.411;
- 3 (g) Arson in the first degree, as defined in ORS 164.325; or
- 4 (h) Treason, as defined in ORS 166.005.

5 (3) The duration of imprisonment pursuant to consecutive sentences may be less than the sum
 6 of the terms under subsection (1) of this section if the board finds, by affirmative vote of a majority
 7 of *[its]* **at least three board** members, that consecutive sentences are not appropriate penalties for
 8 the criminal offenses involved and that the combined terms of imprisonment are not necessary to
 9 protect community security.

10 (4) The *[State]* board *[of Parole and Post-Prison Supervision]* shall use the method set forth in
 11 subsections (1) to (3) of this section to determine the parole release date for any person serving a
 12 sentence in the custody of the Department of Corrections for crimes committed before or after July
 13 11, 1987.

14 **SECTION 7.** ORS 144.110 is amended to read:

15 144.110. (1) In any felony case, the court may impose a minimum term of imprisonment of up to
 16 one-half of the sentence it imposes.

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

18 (a) The State Board of Parole and Post-Prison Supervision shall not release a prisoner on parole
 19 who has been sentenced under subsection (1) of this section until the minimum term has been served,
 20 except upon affirmative vote of a majority of *[the members of the board]* **at least three board**
 21 **members.**

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

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

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

27 **SECTION 8.** ORS 144.783 is amended to read:

28 144.783. (1) When a prisoner is sentenced to two or more consecutive terms of imprisonment, the
 29 duration of the term of imprisonment shall be the sum of the terms set by the State Board of Parole
 30 and Post-Prison Supervision pursuant to the ranges established for the offenses, subject to ORS
 31 144.079, and subject to the variations established pursuant to ORS 144.785 (1).

32 (2) The duration of imprisonment pursuant to consecutive sentences may be less than the sum
 33 of the terms under subsection (1) of this section if the board finds, by affirmative vote of a majority
 34 of *[its]* **at least three board** members that consecutive sentences are not appropriate penalties for
 35 the criminal offenses involved and that the combined terms of imprisonment are not necessary to
 36 protect community security.

37 **SECTION 9.** ORS 163.105 is amended to read:

38 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

39 (1)(a) Except as otherwise provided in ORS *[137.700]* **137.707**, when a defendant is convicted of
 40 aggravated murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS
 41 163.150, to death, life imprisonment without the possibility of release or parole or life imprisonment.

42 (b) A person sentenced to life imprisonment without the possibility of release or parole under
 43 this section shall not have that sentence suspended, deferred or commuted by any judicial officer,
 44 and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce
 45 the period of confinement in any manner whatsoever. The Department of Corrections or any execu-

1 tive official may not permit the prisoner to participate in any sort of release or furlough program.

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

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

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

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

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

17 (3) If, upon hearing all of the evidence, the board, upon a unanimous vote of [*all of its*] **at least**
 18 **three board** members, finds that the prisoner is capable of rehabilitation and that the terms of the
 19 prisoner's confinement should be changed to life imprisonment with the possibility of parole, release
 20 to post-prison supervision or work release, it shall enter an order to that effect and the order shall
 21 convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole,
 22 release to post-prison supervision or work release and may set a release date. Otherwise the board
 23 shall deny the relief sought in the petition.

24 (4) If the board denies the relief sought in the petition, the board shall determine the date of the
 25 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS
 26 144.285.

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

30 **SECTION 10.** ORS 163.115 is amended to read:

31 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes mur-
 32 der:

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

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

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

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

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

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

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

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

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

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

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

4 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
5 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
6 14 years of age; or

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

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

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

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

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

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

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

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

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

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

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

29 [(5)(a)] **(5)** Except as otherwise provided in ORS 163.155[,]:

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

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

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

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

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

45 (C) The right to a subpoena upon a showing of the general relevance and reasonable scope of

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

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

10 (e) If the board denies the relief sought in the petition, the board shall determine the date of the
 11 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS
 12 144.285.

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

16 (6) As used in this section:

17 (a) “Assault” means [*to intentionally, knowingly or recklessly cause*] **the intentional, knowing**
 18 **or reckless causation of** physical injury to another person. “Assault” does not include the
 19 [*causing*] **causation** of physical injury in a motor vehicle accident that occurs by reason of the
 20 reckless conduct of a defendant.

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

25 (c) “Pattern or practice” means one or more previous episodes.

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

28 **SECTION 11.** ORS 163.155 is amended to read:

29 163.155. (1) When a defendant, who was at least 15 years of age at the time of committing the
 30 murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a) and the defendant
 31 knew that the victim was pregnant, the defendant shall be sentenced to life imprisonment without
 32 the possibility of release or parole or to life imprisonment. The court shall conduct a sentencing
 33 proceeding to determine whether the defendant shall be sentenced to life imprisonment without the
 34 possibility of release or parole as described in subsection (4) of this section or to life imprisonment
 35 as described in subsection (5) of this section. If the defendant waives all rights to a jury sentencing
 36 proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for
 37 the sentencing proceeding, whether before a court or a jury, shall follow the procedure of ORS
 38 163.150 (1)(a), as modified by this section.

39 (2) Following the presentation of evidence and argument under subsection (1) of this section, the
 40 court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment
 41 without the possibility of release or parole as described in subsection (4) of this section, unless after
 42 considering all of the evidence submitted, 10 or more members of the jury find there are sufficient
 43 mitigating circumstances to warrant life imprisonment with the possibility of release or parole as
 44 described in subsection (5) of this section. If 10 or more members of the jury do not find there are
 45 sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or

1 parole, the trial court shall sentence the defendant to life imprisonment without the possibility of
 2 release or parole as 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 imprisonment with the possibility
 4 of release or parole, the trial court shall sentence the defendant to life imprisonment as described
 5 in subsection (5) of this section.

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

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

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

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

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

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

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

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

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

43