

House Bill 3255

Sponsored by Representatives STARK, WILLIAMSON

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 hearings be presided over by hearings officer. Specifies procedures for review by board and issuance of final order. Modifies contested case procedures applicable to board proceedings.

A BILL FOR AN ACT

1
2 Relating to parole board proceedings; creating new provisions; amending ORS 144.025, 163.105,
3 163.115, 163.155 and 183.315; and repealing ORS 144.035.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 144.**

6 **SECTION 2. (1) All hearings held under this chapter and ORS 163.105, 163.115 and 163.155**
7 **must be presided over by a hearings officer.**

8 (2)(a) **The hearings officer shall issue a preliminary order consisting of findings of fact**
9 **and conclusions of law and serve the preliminary order upon the inmate and the chairperson**
10 **of the State Board of Parole and Post-Prison Supervision.**

11 (b) **The inmate shall have 60 days to challenge the preliminary order in accordance with**
12 **the rules of the board.**

13 (c) **After the 60-day period, a three-member panel of the board shall review any chal-**
14 **lenges submitted by the inmate and:**

15 (A) **Adopt the preliminary order as a final order;**

16 (B) **Issue a modified order as the final order; or**

17 (C) **Conduct a new hearing before a three-member panel of the board.**

18 (3) **The chairperson shall apportion matters for decision to the panels. However, if there**
19 **is a division in the panel so that a decision is not unanimous, another member shall vote**
20 **after administrative review of the record.**

21 (4) **The provisions of subsections (1) to (3) of this section do not apply to a decision to**
22 **release a prisoner sentenced under ORS 144.110 (1). In such cases, the board shall release the**
23 **prisoner only upon affirmative vote of a majority of three board members or, if the chair-**
24 **person requires all voting members to participate, a majority of all voting members.**

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

26 144.025. (1) **The Governor shall select one of the members of the State Board of Parole and**
27 **Post-Prison Supervision as chairperson and another member as vice chairperson, for such terms and**
28 **with duties and powers, in addition to those established by law, necessary for the performance of**
29 **the function of such office as the Governor determines.**

30 (2) **A majority of the members of the board constitutes a quorum for decisions concerning rules**
31 **and policies.**

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

3 (4) Except as otherwise provided by statute, all board hearings [*are presumed to be panel*
 4 *hearings*] **must be presided over by a hearings officer.**

5 (5) The chairperson of the board may require all voting members of the board to participate in
 6 any [*hearing or*] decision requiring at least three board members. The decision to require the par-
 7 ticipation of all board members is not appealable.

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

10 **SECTION 4.** ORS 183.315 is amended to read:

11 183.315. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452,
 12 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created
 13 pursuant to ORS 199.430, the Department of Revenue, State Accident Insurance Fund Corporation,
 14 Department of Consumer and Business Services with respect to its functions under ORS chapters
 15 654 and 656[, *State Board of Parole and Post-Prison Supervision*] or Psychiatric Security Review
 16 Board with respect to its functions under ORS 161.315 to 161.351.

17 (2) This chapter does not apply with respect to actions of the Governor authorized under ORS
 18 chapter 240 and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160 (14).

19 (3) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458 and
 20 183.460 do not apply to the Employment Appeals Board or the Employment Department.

21 (4) The Employment Department shall be exempt from the provisions of this chapter to the ex-
 22 tent that a formal finding of the United States Secretary of Labor is made that such provision con-
 23 flicts with the terms of the federal law, acceptance of which by the state is a condition precedent
 24 to continued certification by the United States Secretary of Labor of the state's law.

25 (5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490
 26 to 183.500 do not apply to orders issued to persons who:

27 (a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Cor-
 28 rections or are otherwise confined in a Department of Corrections facility; or

29 (b) Seek to visit an inmate confined in a Department of Corrections facility.

30 (6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do
 31 not apply to the Public Utility Commission. Except as provided in ORS 774.180, judicial review of
 32 an order issued by the commission in a contested case may be sought only by a party to the con-
 33 tested case.

34 (7) The provisions of this chapter do not apply to the suspension, cancellation or termination
 35 of an apprenticeship or training agreement under ORS 660.060.

36 (8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings con-
 37 ducted under rules adopted by the Secretary of State under ORS 246.190.

38 **(9) The provisions of ORS 183.410, 183.425, 183.440, 183.450, 183.452, 183.458, 183.484 and**
 39 **183.500 do not apply to the State Board of Parole and Post-Prison Supervision.**

40 **SECTION 5.** ORS 163.105 is amended to read:

41 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

42 (1)(a) Except as otherwise provided in ORS 137.707, when a defendant is convicted of aggravated
 43 murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150, to
 44 death, life imprisonment without the possibility of release or parole or life imprisonment.

45 (b) A person sentenced to life imprisonment without the possibility of release or parole under

1 this section shall not have that sentence suspended, deferred or commuted by any judicial officer,
 2 and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce
 3 the period of confinement in any manner whatsoever. The Department of Corrections or any execu-
 4 tive official may not permit the prisoner to participate in any sort of release or furlough program.

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

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

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

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

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

20 (3) If[, *upon hearing all of the evidence,*] the board, upon a unanimous vote of three board mem-
 21 bers or, if the chairperson requires all voting members to participate, a unanimous vote of all voting
 22 members, [*finds*] **issues a final order finding** that the prisoner is capable of rehabilitation and that
 23 the terms of the prisoner's confinement should be changed to life imprisonment with the possibility
 24 of parole, release to post-prison supervision or work release, [*it shall enter an order to that effect*
 25 *and*] the order shall convert the terms of the prisoner's confinement to life imprisonment with the
 26 possibility of parole, release to post-prison supervision or work release and may set a release date.
 27 Otherwise the board shall deny the relief sought in the petition.

28 (4) If the board denies the relief sought in the petition, the board shall determine the date of the
 29 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS
 30 144.285.

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

34 **SECTION 6.** ORS 163.115 is amended to read:

35 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes mur-
 36 der:

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

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

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

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

- 1 (C) Burglary in the first degree as defined in ORS 164.225;
- 2 (D) Escape in the first degree as defined in ORS 162.165;
- 3 (E) Kidnapping in the second degree as defined in ORS 163.225;
- 4 (F) Kidnapping in the first degree as defined in ORS 163.235;
- 5 (G) Robbery in the first degree as defined in ORS 164.415;
- 6 (H) Any felony sexual offense in the first degree defined in this chapter;
- 7 (I) Compelling prostitution as defined in ORS 167.017; or
- 8 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
- 9 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
- 10 14 years of age; or
- 11 (c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to
- 12 the value of human life, causes the death of a child under 14 years of age or a dependent person,
- 13 as defined in ORS 163.205, and:
 - 14 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-
 - 15 tim or another child under 14 years of age or a dependent person; or
 - 16 (B) The person causes the death by neglect or maltreatment.
- 17 (2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section
- 18 need not allege specific incidents of assault or torture.
- 19 (3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the
- 20 defendant:
 - 21 (a) Was not the only participant in the underlying crime;
 - 22 (b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause
 - 23 or aid in the commission thereof;
 - 24 (c) Was not armed with a dangerous or deadly weapon;
 - 25 (d) Had no reasonable ground to believe that any other participant was armed with a dangerous
 - 26 or deadly weapon; and
 - 27 (e) Had no reasonable ground to believe that any other participant intended to engage in con-
 - 28 duct likely to result in death.
- 29 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that
- 30 the victim was a dependent person who was at least 18 years of age and was under care or treat-
- 31 ment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person
- 32 or the guardian of the dependent person.
- 33 (5) Except as otherwise provided in ORS 163.155:
 - 34 (a) A person convicted of murder, who was at least 15 years of age at the time of committing
 - 35 the murder, shall be punished by imprisonment for life.
 - 36 (b) When a defendant is convicted of murder under this section, the court shall order that the
 - 37 defendant shall be confined for a minimum of 25 years without possibility of parole, release to
 - 38 post-prison supervision, release on work release or any form of temporary leave or employment at
 - 39 a forest or work camp.
 - 40 (c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
 - 41 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
 - 42 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
 - 43 within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabili-
 - 44 tated within a reasonable period of time. At the hearing the prisoner has:
 - 45 (A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation

1 within a reasonable period of time;

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

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

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

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

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

21 (6) As used in this section:

22 (a) “Assault” means the intentional, knowing or reckless causation of physical injury to another
 23 person. “Assault” does not include the causation of physical injury in a motor vehicle accident that
 24 occurs by reason of the reckless conduct of a defendant.

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

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

30 (d) “Torture” means the intentional infliction of intense physical pain upon an unwilling victim
 31 as a separate objective apart from any other purpose.

32 **SECTION 7.** ORS 163.155 is amended to read:

33 163.155. (1) When a defendant, who was at least 15 years of age at the time of committing the
 34 murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a) and the defendant
 35 knew that the victim was pregnant, the defendant shall be sentenced to life imprisonment without
 36 the possibility of release or parole or to life imprisonment. The court shall conduct a sentencing
 37 proceeding to determine whether the defendant shall be sentenced to life imprisonment without the
 38 possibility of release or parole as described in subsection (4) of this section or to life imprisonment
 39 as described in subsection (5) of this section. If the defendant waives all rights to a jury sentencing
 40 proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for
 41 the sentencing proceeding, whether before a court or a jury, shall follow the procedure of ORS
 42 163.150 (1)(a), as modified by this section.

43 (2) Following the presentation of evidence and argument under subsection (1) of this section, the
 44 court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment
 45 without the possibility of release or parole as described in subsection (4) of this section, unless after

1 considering all of the evidence submitted, 10 or more members of the jury find there are sufficient
2 mitigating circumstances to warrant life imprisonment with the possibility of release or parole as
3 described in subsection (5) of this section. If 10 or more members of the jury do not find there are
4 sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or
5 parole, the trial court shall sentence the defendant to life imprisonment without the possibility of
6 release or parole as described in subsection (4) of this section. If 10 or more members of the jury
7 find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility
8 of release or parole, the trial court shall sentence the defendant to life imprisonment as described
9 in subsection (5) of this section.

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

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

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

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

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

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

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

37 (7) If[, *upon hearing all of the evidence,*] the board, upon a unanimous vote of three board mem-
38 bers or, if the chairperson requires all voting members to participate, a unanimous vote of all voting
39 members, [*finds*] **issues a final order finding** that the prisoner is capable of rehabilitation and that
40 the terms of the prisoner's confinement should be changed to life imprisonment with the possibility
41 of parole, release on post-prison supervision or work release, [*it shall enter an order to that effect*
42 *and*] the order shall convert the terms of the prisoner's confinement to life imprisonment with the
43 possibility of parole, release on post-prison supervision or work release and may set a release date.
44 Otherwise the board shall deny the relief sought in the petition.

45 (8) Not less than two years after the denial of the relief sought in a petition under this section,

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

3 **SECTION 8. ORS 144.035 is repealed.**

4 **SECTION 9. Section 2 of this 2019 Act, the amendments to ORS 144.025, 163.105, 163.115,
5 163.155 and 183.315 by sections 3 to 7 of this 2019 Act and the repeal of ORS 144.035 by section
6 8 of this 2019 Act apply to hearings occurring on or after the effective date of this 2019 Act.**

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