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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. ORS 144.025 is amended to read:

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

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

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

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

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

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

SECTION 4. ORS 183.315 is amended to read:

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

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


(4) The Employment Department shall be exempt from the provisions of this chapter to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state’s law.

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

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

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

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

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

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


SECTION 5. ORS 163.105 is amended to read:

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

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

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

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

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

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

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

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

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

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

SECTION 6. ORS 163.115 is amended to read:

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

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

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

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

(B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;
(C) Burglary in the first degree as defined in ORS 164.225;
(D) Escape in the first degree as defined in ORS 162.165;
(E) Kidnapping in the second degree as defined in ORS 163.225;
(F) Kidnapping in the first degree as defined in ORS 163.235;
(G) Robbery in the first degree as defined in ORS 164.415;
(H) Any felony sexual offense in the first degree defined in this chapter;
(I) Compelling prostitution as defined in ORS 167.017; or
(J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under 14 years of age; or
(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to the value of human life, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:
(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or
(B) The person causes the death by neglect or maltreatment.
(2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section need not allege specific incidents of assault or torture.
(3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:
(a) Was not the only participant in the underlying crime;
(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission thereof;
(c) Was not armed with a dangerous or deadly weapon;
(d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and
(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.
(4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that the victim was a dependent person who was at least 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person or the guardian of the dependent person.
(5) Except as otherwise provided in ORS 163.155:
(a) A person convicted of murder, who was at least 15 years of age at the time of committing the murder, shall be punished by imprisonment for life.
(b) When a defendant is convicted of murder under this section, the court shall order that the defendant shall be confined for a minimum of 25 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.
(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing the prisoner has:
(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation
within a reasonable period of time;

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

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

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

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

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

As used in this section:

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

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

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

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

SECTION 7. ORS 163.155 is amended to read:

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

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

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

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

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

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

(a) The prisoner has the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;
(b) The prisoner has the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and
(c) The prisoner has the right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the board pursuant to rules adopted by the board.

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

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

SECTION 8. ORS 144.035 is repealed.

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