

# House Bill 3258

Sponsored by Representatives STARK, WILLIAMSON; Representative SANCHEZ

## 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**.

Provides that person appearing before State Board of Parole and Post-Prison Supervision for specified hearings has right to counsel and, if financially eligible, to have counsel appointed by Public Defense Services Commission at state expense. Specifies procedures for review of financial eligibility.

## A BILL FOR AN ACT

1  
2 Relating to counsel at parole board hearings; creating new provisions; amending ORS 144.343,  
3 163.105, 163.115 and 163.155; and repealing ORS 144.317.

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

5 **SECTION 1. (1)(a) For the purposes of appointing counsel, the State Board of Parole and**  
6 **Post-Prison Supervision shall notify the Public Defense Services Commission prior to:**

7 (A) Any hearing concerning:

8 (i) The establishment of a prison term;

9 (ii) A determination whether to grant release or rerelease on parole;

10 (iii) The setting or postponement of a release date;

11 (iv) The setting or postponement of a parole consideration hearing date; or

12 (v) A determination whether to reduce a prison term; or

13 (B) A hearing under ORS 163.105, 163.115 or 163.155.

14 (b) The notification under paragraph (a) of this subsection must be provided in a manner  
15 that allows sufficient time for counsel to be appointed and prepare for the hearing.

16 (2)(a) Upon receiving the notification under subsection (1) of this section, the commission  
17 shall determine whether the person who is the subject of the hearing is financially eligible  
18 in accordance with ORS 151.485.

19 (b) If the person is financially eligible, the commission shall provide for the appointment  
20 of counsel at state expense pursuant to ORS 151.216 and 151.219.

21 (c) If the commission determines that a person appearing before the board is not finan-  
22 cially eligible for appointed counsel at state expense, the commission shall promptly notify  
23 the person of the determination and of the person's right to request review of the determi-  
24 nation by the Court of Appeals.

25 (d) The person may request review of the commission's determination by filing a motion  
26 in the Court of Appeals no later than 60 days after the date of the commission's notice.

27 (e) The determination of the Court of Appeals under paragraph (d) of this section as to  
28 whether the person is financially eligible is final.

29 (3) Upon completion of the board hearing and administrative review process, the board  
30 shall determine whether the person for whom counsel was appointed under subsection (2)

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 of this section is able to pay a portion of the attorney fees paid by the state. In determining  
 2 whether the person is able to pay, the board shall take into account the other financial ob-  
 3 ligations of the person, including any orders for payment of fines or restitution. If the board  
 4 determines that the person is able to pay a portion, the board may order the person to make  
 5 payments as a condition of parole or post-prison supervision.

6 **SECTION 2.** ORS 144.343 is amended to read:

7 144.343. (1) When the State Board of Parole and Post-Prison Supervision or its designated rep-  
 8 resentative has been informed and has reasonable grounds to believe that a person under its juris-  
 9 diction has violated a condition of parole and that revocation of parole may be warranted, the board  
 10 or its designated representative shall conduct a hearing as promptly as convenient to determine  
 11 whether there is probable cause to believe a violation of one or more of the conditions of parole  
 12 has occurred and also conduct a parole violation hearing if necessary. Evidence received and the  
 13 order of the court at a preliminary hearing under ORS 135.070 to 135.225 may be used by the board  
 14 to determine the existence of probable cause. A waiver by the defendant of any preliminary hearing  
 15 shall also constitute a waiver of probable cause hearing by the board. The location of the hearing  
 16 shall be reasonably near the place of the alleged violation or the place of confinement.

17 (2) The board may:

18 (a) Reinstate or continue the alleged violator on parole subject to the same or modified condi-  
 19 tions of parole;

20 (b) Revoke parole and require that the parole violator serve the remaining balance of the sen-  
 21 tence as provided by law;

22 (c) Impose sanctions as provided in ORS 144.106; or

23 (d) Delegate the authority, in whole or in part, granted by this subsection to its designated  
 24 representative as provided by rule.

25 (3) Within a reasonable time prior to the hearing, the board or its designated representative  
 26 shall provide the parolee with written notice which shall contain the following information:

27 (a) A concise written statement of the suspected violations and the evidence which forms the  
 28 basis of the alleged violations.

29 (b) The parolee's right to a hearing and the time, place and purpose of the hearing.

30 (c) The names of persons who have given adverse information upon which the alleged violations  
 31 are based and the right of the parolee to have such persons present at the hearing for the purposes  
 32 of confrontation and cross-examination unless it has been determined that there is good cause for  
 33 not allowing confrontation.

34 (d) The parolee's right to present letters, documents, affidavits or persons with relevant infor-  
 35 mation at the hearing unless it has been determined that informants would be subject to risk of  
 36 harm if their identity were disclosed.

37 (e) The parolee's right to subpoena witnesses under ORS 144.347.

38 (f) The parolee's right to be represented by counsel and, if [*indigent, to have counsel appointed*  
 39 *at board expense if the board or its designated representative determines, after request, that the request*  
 40 *is based on a timely and colorable claim that:*] **financially eligible, to have counsel appointed un-**  
 41 **der section 1 of this 2019 Act.**

42 [(A) *The parolee has not committed the alleged violation of the conditions upon which the parolee*  
 43 *is at liberty;*]

44 [(B) *Even if the violation is a matter of public record or is uncontested, there are substantial rea-*  
 45 *sons which justify or mitigate the violation and make revocation inappropriate and that the reasons*

1 *are complex or otherwise difficult to develop or present; or]*

2 *[(C) The parolee, in doubtful cases, appears to be incapable of speaking effectively on the parolee's*  
 3 *own behalf.]*

4 (g) That the hearing is being held to determine:

5 (A) Whether there is probable cause to believe a violation of one or more of the conditions of  
 6 parole has occurred; and

7 (B) If there is probable cause to believe a violation of one or more of the conditions of parole  
 8 has occurred:

9 (i) Whether to reinstate parole;

10 (ii) Whether to continue the alleged violator on parole subject to the same or modified condi-  
 11 tions of parole; or

12 (iii) Whether to revoke parole and require that the parole violator serve a term of imprisonment  
 13 consistent with ORS 144.346.

14 (4) At the hearing the parolee shall have the right:

15 (a) To present evidence on the parolee's behalf, which shall include the right to present letters,  
 16 documents, affidavits or persons with relevant information regarding the alleged violations;

17 (b) To confront witnesses against the parolee unless it has been determined that there is good  
 18 cause not to allow confrontation;

19 (c) To examine information or documents which form the basis of the alleged violation unless  
 20 it has been determined that informants would be subject to risk of harm if their identity is disclosed;  
 21 and

22 (d) To be represented by counsel and, if *[indigent, to have counsel provided at board expense if*  
 23 *the request and determination provided in subsection (3)(f) of this section have been made. If an*  
 24 *indigent's request is refused, the grounds for the refusal shall be succinctly stated in the record]* **fi-**  
 25 **nancially eligible, to have counsel appointed under section 1 of this 2019 Act.**

26 (5) Within a reasonable time after the preliminary hearing, the parolee shall be given a written  
 27 summary of what transpired at the hearing, including the board's or its designated representative's  
 28 decision or recommendation and reasons for the decision or recommendation and the evidence upon  
 29 which the decision or recommendation was based. *[If an indigent parolee's request for counsel at*  
 30 *board expense has been made in the manner provided in subsection (3)(f) of this section and refused,*  
 31 *the grounds for the refusal shall be succinctly stated in the summary.]*

32 (6)(a) The parolee may admit or deny the violation without being physically present at the  
 33 hearing if the parolee appears before the board or its designee by means of simultaneous television  
 34 transmission allowing the board to observe and communicate with the parolee and the parolee to  
 35 observe and communicate with the board or by telephonic communication allowing the board to  
 36 communicate with the parolee and the parolee to communicate with the board.

37 (b) Notwithstanding paragraph (a) of this subsection, appearance by simultaneous television  
 38 transmission or telephonic communication shall not be permitted unless the facilities used enable the  
 39 parolee to consult privately with counsel during the proceedings.

40 (7) If the board or its designated representative has determined that there is probable cause to  
 41 believe that a violation of one or more of the conditions of parole has occurred, the hearing shall  
 42 proceed to receive evidence from which the board may determine whether to reinstate or continue  
 43 the alleged parole violator on parole subject to the same or modified conditions of parole or revoke  
 44 parole and require that the parole violator serve a term of imprisonment as provided by ORS  
 45 144.346.

1 (8) At the conclusion of the hearing, if probable cause has been determined and the hearing has  
 2 been held by a member of the board or by a designated representative of the board, the person  
 3 conducting the hearing shall transmit the record of the hearing, together with a proposed order in-  
 4 cluding findings of fact, recommendation and reasons for the recommendation to the board. The  
 5 parolee or the parolee's representative shall have the right to file exceptions and written arguments  
 6 with the board. The right to file exceptions and written arguments may be waived. After consider-  
 7 ation of the record, recommendations, exceptions and arguments, a quorum of the board shall enter  
 8 a final order including findings of fact, its decision and reasons for the decision.

9 **SECTION 3.** ORS 163.105 is amended to read:

10 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

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

14 (b) A person sentenced to life imprisonment without the possibility of release or parole under  
 15 this section shall not have that sentence suspended, deferred or commuted by any judicial officer,  
 16 and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce  
 17 the period of confinement in any manner whatsoever. The Department of Corrections or any execu-  
 18 tive official may not permit the prisoner to participate in any sort of release or furlough program.

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

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

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

29 (b) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented  
 30 by legal counsel, appointed [*by the board*] **under section 1 of this 2019 Act**, at [*board*] **state** ex-  
 31 pense; and

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

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

43 (4) If the board denies the relief sought in the petition, the board shall determine the date of the  
 44 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS  
 45 144.285.

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

4 **SECTION 4.** ORS 163.115 is amended to read:

5 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes mur-  
 6 der:

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

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

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

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

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

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

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

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

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

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

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

23 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of  
 24 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under  
 25 14 years of age; or

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

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

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

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

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

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

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

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

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

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

44 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that  
 45 the victim was a dependent person who was at least 18 years of age and was under care or treat-

1 ment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person  
 2 or the guardian of the dependent person.

3 (5) Except as otherwise provided in ORS 163.155:

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

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

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

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

17 (B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented  
 18 by legal counsel, appointed [*by the board*] **under section 1 of this 2019 Act**, at [*board*] **state** ex-  
 19 pense; and

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

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

31 (e) If the board denies the relief sought in the petition, the board shall determine the date of the  
 32 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS  
 33 144.285.

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

37 (6) As used in this section:

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

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

45 (c) "Pattern or practice" means one or more previous episodes.

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

3 **SECTION 5.** ORS 163.155 is amended to read:

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

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

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

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

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

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

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

3 (b) The prisoner has the right, if the prisoner is without sufficient funds to employ an attorney,  
 4 to be represented by legal counsel, appointed [*by the board*] **under section 1 of this 2019 Act**, at  
 5 [*board*] **state** expense; and

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

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

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

20 **SECTION 6. ORS 144.317 is repealed.**

21 **SECTION 7. Section 1 of this 2019 Act, the amendments to ORS 144.343, 163.105, 163.115**  
 22 **and 163.155 by section 2 to 5 of this 2019 Act and the repeal of 144.317 by section 6 of this 2019**  
 23 **Act apply to hearings occurring on or after the effective date of this 2019 Act.**

24