

Requested by Senator DEMBROW

**PROPOSED AMENDMENTS TO
SENATE BILL 835**

1 On page 1 of the printed bill, delete lines 6 through 27 and delete pages
2 2 through 6 and insert:

3 **“SECTION 1.** ORS 144.122 is amended to read:

4 “144.122. (1) After the initial parole release date has been set under ORS
5 144.120 and after a minimum period of time established by the State Board
6 of Parole and Post-Prison Supervision under subsection (2)(a) of this section,
7 *[the prisoner]* **an adult in custody** may request that the parole release date
8 be reset to an earlier date. The board may grant the request upon a deter-
9 mination by the board that continued incarceration is cruel and inhumane
10 and that resetting the release date to an earlier date is not incompatible with
11 the best interests of the *[prisoner]* **adult in custody** and society and that the
12 *[prisoner:]* **adult in custody has demonstrated an extended course of**
13 **conduct indicating outstanding reformation.**

14 “[*a*) *Has demonstrated an extended course of conduct indicating outstand-*
15 *ing reformation;*]

16 “[*b*) *Suffers from a severe medical condition including terminal illness;*
17 *or]*

18 “[*c*) *Is elderly and is permanently incapacitated in such a manner that the*
19 *prisoner is unable to move from place to place without the assistance of another*
20 *person.*]

21 “(2) The Advisory Commission on Prison Terms and Parole Standards may

1 propose to the board and the board shall adopt rules:

2 “(a) Establishing minimum periods of time to be served by [*prisoners*]
3 **adults in custody** before application may be made for a reset of release date
4 under subsection (1) of this section;

5 “(b) Detailing the criteria set forth under subsection (1) of this section
6 for the resetting of a parole release date; and

7 “(c) Establishing criteria for parole release plans for [*prisoners*] **adults**
8 **in custody** released under this section that, at a minimum, must ensure ap-
9 propriate supervision and services for the person released.

10 “[*(3) The provisions of subsection (1)(b) of this section apply to prisoners*
11 *sentenced in accordance with ORS 161.610.*]

12 “[*(4)*] **(3)** The provisions of this section do not apply to prisoners sen-
13 tenced to life imprisonment without the possibility of release or parole under
14 ORS 138.052 or 163.150.

15 “[*(5)*] **(4)** If the victim has requested notification of the release of the
16 [*prisoner*] **adult in custody**, the board shall notify the victim as described
17 in ORS 144.750 (3) prior to any hearing or administrative decision under this
18 section.

19 **“SECTION 2.** ORS 144.126 is amended to read:

20 “144.126. (1) The State Board of Parole and Post-Prison Supervision may
21 advance the release date of [*a prisoner who was sentenced in accordance with*
22 *rules of the Oregon Criminal Justice Commission or ORS 161.610*] **an adult**
23 **in custody who meets one or more of the criteria described in section**
24 **5 (5) of this 2021 Act.** The release date may be advanced [*if the board de-*
25 *termines that continued incarceration is cruel and inhumane and that ad-*
26 *vancing the release date of the prisoner is not incompatible with the best*
27 *interests of the prisoner and society and that the prisoner is:*]

28 “[*(a) Suffering from a severe medical condition including terminal illness;*
29 *or*]

30 “[*(b) Elderly and permanently incapacitated in such a manner that the*”

1 *prisoner is unable to move from place to place without the assistance of another*
2 *person*] **as described in subsection (2) of this section.**

3 **“(2)(a) An adult in custody may apply for release under this section**
4 **by completing an application for release and submitting the applica-**
5 **tion to the Medical Release Advisory Committee established under**
6 **section 4 of this 2021 Act.**

7 **“(b) If the advisory committee provides the board with a recom-**
8 **mendation for release under this section, the board shall hold a hear-**
9 **ing within 45 days of receiving the recommendation, unless the board**
10 **finds good cause to postpone the hearing or the board proceeds under**
11 **paragraph (c) of this subsection.**

12 **“(c) The board may affirm the committee’s recommendation, ad-**
13 **vance the release date and release the adult in custody without holding**
14 **a hearing.**

15 **“(d) The board shall affirm the committee’s recommendation, ad-**
16 **vance the release date and release the adult in custody unless the**
17 **board finds, by clear and convincing evidence, that the adult in cus-**
18 **tody poses a danger to the safety of another person or the public and**
19 **the danger outweighs any compassionate reasons for the release.**

20 **“[(2)] (3) The board shall adopt rules establishing criteria for release**
21 **plans for [prisoners] adults in custody released under this section that, at**
22 **a minimum, must [insure] ensure appropriate supervision [and services] for**
23 **the person released.**

24 **“[(3) *The provisions of this section do not apply to prisoners sentenced to***
25 ***life imprisonment without the possibility of release or parole under ORS***
26 ***138.052 or 163.150.*]**

27 **“(4) If the victim has requested notification of the release of the**
28 **[prisoner] adult in custody, the board shall notify the victim as described**
29 **in ORS 144.750 (3) prior to any hearing or administrative decision under this**
30 **section.**

1 **“(5) An adult in custody whose application for release under this**
2 **section is denied by the board may reapply for release if:**

3 **“(a) There has been a substantial change in the medical condition**
4 **or other circumstances, as defined in rules adopted by the Medical**
5 **Release Advisory Committee, since the previous application; or**

6 **“(b) New information has been obtained regarding the medical**
7 **condition or other circumstance since the previous application.**

8 **“SECTION 3. (1) The Department of Corrections shall ensure that**
9 **the process for obtaining release under ORS 144.126 is explained on the**
10 **website of the department and in any handbook provided to adults in**
11 **custody.**

12 **“(2) The department shall ensure that application forms for ob-**
13 **taining release under ORS 144.126 are made available for all adults in**
14 **custody in department facilities.**

15 **“SECTION 4. (1) There is established, within the State Board of**
16 **Parole and Post-Prison Supervision, the Medical Release Advisory**
17 **Committee.**

18 **“(2) The Governor shall appoint at least seven and up to 13 members**
19 **of the committee. The committee members shall consist of licensed**
20 **physicians, physician assistants, nurse practitioners and nurses. At**
21 **least one committee member must be a licensed and board-certified**
22 **physician, and at least four committee members must be involved in**
23 **direct patient care. The committee members may not be employees of**
24 **the Department of Corrections, must reflect the communities of which**
25 **the population of adults in custody are members, and must include**
26 **representatives from historically marginalized or underrepresented**
27 **communities.**

28 **“(3) The board shall provide staff support to the committee and**
29 **shall compensate committee members for the performance of com-**
30 **mittee work, but may not participate in or exert any influence over**

1 the business or decisions of the committee.

2 “(4) The committee shall elect one of its members to serve as
3 chairperson. A majority of members of the committee constitutes a
4 quorum for the transaction of business other than consideration of
5 medical release applications.

6 “(5) The committee shall form at least two panels of at least three
7 members each. At least one panel shall receive and consider regular
8 applications for medical release under ORS 144.126 and at least one
9 panel shall receive and consider expedited applications for medical re-
10 lease under ORS 144.126.

11 “(6) Upon request by the committee, the board shall authorize funds
12 for a consultation with an expert or specialist that is necessary for the
13 committee to carry out the duties described in section 5 of this 2021
14 Act.

15 “(7) The committee shall hire a social worker to assist persons ap-
16 plying for medical release under ORS 144.126 as described in section 5
17 of this 2021 Act.

18 “(8) The committee shall develop an application form for medical
19 release under ORS 144.126 that is simple and easy to understand. The
20 form must allow the applicant to request expedited review of the ap-
21 plication and be made available in multiple languages.

22 “(9)(a) The committee shall adopt rules necessary to carry out the
23 duties of the committee, including but not limited to:

24 “(A) Rules further defining the criteria for medical release under
25 ORS 144.126 described in section 5 (5) of this 2021 Act.

26 “(B) Rules further defining eligibility for reapplying for medical
27 release after denial at any stage, including what constitutes a sub-
28 stantial change in a medical condition or other circumstances.

29 “(C) Rules establishing which applicants qualify for expedited ap-
30 plications for medical release under ORS 144.126.

1 “(D) Rules adopted in consultation with the Oregon Health Au-
2 thority and the Governor concerning applicants who are described in
3 section 5 (5)(d) of this 2021 Act.

4 “(b) The committee shall regularly review the rules adopted under
5 this subsection to ensure that the rules are based on current medical
6 understanding.

7 “SECTION 5. (1)(a) Upon receipt of an application for medical re-
8 lease under ORS 144.126, a panel of the Medical Release Advisory
9 Committee shall determine whether the application is complete and
10 provides sufficient information to make a recommendation under
11 subsection (3) of this section.

12 “(b) If the application is incomplete, the panel shall notify the ap-
13 plicant and allow the applicant an opportunity to complete the appli-
14 cation.

15 “(c) If the application is complete, but does not contain sufficient
16 information to make a recommendation under subsection (3) of this
17 section, the panel may require the applicant to provide additional in-
18 formation, including medical records, or may require that the appli-
19 cant provide authorization to obtain additional medical records, in
20 order to move forward on considering the application.

21 “(d) Upon receipt of the application by the committee, the social
22 worker employed by the committee shall assist the applicant with re-
23 entry planning and ensuring continuity of care in the community.

24 “(2)(a) Except as provided in paragraphs (b) and (c) of this sub-
25 section, a panel considering applications in the normal course shall
26 make a decision on an application within 45 calendar days of receiving
27 a completed application. A panel considering expedited applications
28 shall make a decision on an application within 14 calendar days of re-
29 ceiving a completed application.

30 “(b) A panel may, for good cause, make a decision on an application

1 after the time requirements limits described in paragraph (a) of this
2 subsection.

3 “(c) Upon the request of an applicant, the time requirements de-
4 scribed in paragraph (a) of this subsection are tolled until the appli-
5 cant subsequently requests that the panel proceed with considering the
6 application.

7 “(3)(a) The panel shall review each completed application to deter-
8 mine whether the applicant meets one or more of the criteria de-
9 scribed in subsection (5) of this section. The committee will evaluate
10 the application and the criteria by assessing considerations including,
11 but not limited to, the balance between time the applicant has left to
12 serve, the quality of life living with the medical condition, and
13 whether continued care in a custodial setting is no longer appropriate.
14 If the panel determines, by a vote of the majority of the panel, that
15 the applicant meets one or more of the criteria, the panel shall re-
16 commend that the applicant be released based on medical need and
17 compassion.

18 “(b) Any member of a panel may consult with a committee member
19 on another panel, or with an outside expert or specialist, concerning
20 an application under consideration before the panel.

21 “(c) A panel may refer an application for a vote by the full com-
22 mittee. If the full committee determines, by a vote of the majority of
23 the committee, that the applicant meets one or more of the criteria
24 described in subsection (5) of this section, the committee shall re-
25 commend that the applicant be released based on medical need and
26 compassion.

27 “(d) The committee shall make written findings when recommend-
28 ing or declining to recommend release under this section.

29 “(4) If the panel or committee recommends release under subsection
30 (3) of this section:

1 “(a) Pursuant to ORS 151.216 and 151.219, the Public Defense Ser-
2 vices Commission shall provide for the representation of financially
3 eligible applicants at all subsequent proceedings, including hearings
4 before the State Board of Parole and Post-Prison Supervision under
5 ORS 144.126 and hearings before the court on motions for release under
6 section 6 of this 2021 Act. If the commission determines that the ap-
7 plicant is not financially eligible for appointed counsel at state ex-
8 pense, the applicant may request review of the determination as
9 provided in ORS 144.337.

10 “(b) The social worker employed by the committee may coordinate
11 with the Department of Corrections or any other outside agency or
12 organization in order to continue to assist the applicant with reentry
13 planning and ensuring continuity of care in the community.

14 “(c) The applicant’s attorney shall advise the applicant, and inform
15 the committee, concerning whether the applicant is eligible for release
16 by the board under ORS 144.126. If the person is eligible for release by
17 the board, the committee shall submit the application and recom-
18 mendation to the board. If the person is not eligible for release by the
19 board, the applicant’s attorney may file a motion for release with the
20 sentencing court and proceed under section 6 of this 2021 Act.

21 “(5) An applicant is eligible for release under ORS 144.126 if the
22 applicant meets one or more of the following criteria, as further de-
23 fined in the rules of the committee:

24 “(a) The applicant has a terminal illness with a prognosis of 12
25 months or less to live.

26 “(b) The applicant has a debilitating or progressively debilitating
27 medical condition, including but not limited to an injury, illness, dis-
28 ease, physiologic or psychological condition or disorder that:

29 “(A) Poses an immediate risk to the person’s health or life;

30 “(B) Requires complex medical intervention or intensive, high needs

1 or specialized care; or

2 “(C) Is otherwise described in the rules of the committee.

3 “(c) The applicant is physically handicapped and permanently inca-
4 pacitated to such a degree as to be unable to move from place to place
5 without assistance or unable to complete basic activities of daily liv-
6 ing.

7 “(d) The applicant has an underlying condition that places the ap-
8 plicant at increased risk of illness, medical complications or death if
9 the applicant is exposed to disease, and a state of emergency has been
10 declared under ORS 401.165, a public health emergency has been de-
11 clared under ORS 433.441, or a pandemic is occurring.

12 “(6) An applicant whose application for release under ORS 144.126
13 is denied by the committee may reapply for release provided that:

14 “(a) There has been a substantial change in the medical condition
15 or other circumstances, as defined in rules adopted by the committee,
16 since the previous application; or

17 “(b) New information has been obtained regarding the medical
18 condition or other circumstance since the previous application.

19 “SECTION 6. (1) If the attorney of an applicant recommended for
20 release by the Medical Release Advisory Committee files a motion for
21 release with the sentencing court under section 5 (4) of this 2021 Act,
22 the attorney shall file a copy of the motion with the district attorney
23 of the county in which the sentencing court is located. The district
24 attorney shall make reasonable efforts to notify the victim of the
25 hearing.

26 “(2) Upon receipt of a motion under section 5 (4) of this 2021 Act,
27 the court shall schedule a resentencing hearing. The hearing shall
28 occur within 30 calendar days of the receipt of the motion unless the
29 court finds good cause or either party requests a delay. At the hearing,
30 the district attorney and the victim shall have an opportunity to be

1 heard. The court shall give substantial weight to the committee’s
2 recommendation when making a decision under this section, and shall
3 act in accordance with the recommendation unless the court finds by
4 clear and convincing evidence, based on evidence provided by the dis-
5 trict attorney, that resentencing the person would create a threat to
6 public safety.

7 “(3) If at the hearing the court determines that, due to the appli-
8 cant meeting one or more of the criteria described in section 5 (5) of
9 this 2021 Act, the interests of justice require release, the court has the
10 authority to modify the original judgment of conviction to resentence
11 the applicant to a term of incarceration equal to the amount of the
12 time the applicant has already served in custody, notwithstanding any
13 mandatory sentence or sentence otherwise required by law.

14 “(4) An applicant whose resentencing is denied under this section
15 may reapply for medical release provided that the applicant can show
16 that:

17 “(a) There has been a substantial change in the medical condition
18 or other circumstances, as defined in rules adopted by the committee,
19 since the previous application; or

20 “(b) New information has been obtained regarding the medical
21 condition or other circumstance since the previous application.

22 “SECTION 7. (1) The Medical Release Advisory Committee, in col-
23 laboration with the State Board of Parole and Post-Prison Supervision,
24 shall track the following data on early release under ORS 144.126:

25 “(a) The number of applications each year for release under ORS
26 144.126.

27 “(b) The number of applications that resulted in a recommendation
28 by the committee for release, the number that did not result in a
29 recommendation for release and the reasons for each decision.

30 “(c) The number of applicants recommended by the committee for

1 release that were released by the board, not released by the board,
2 resentenced by the court and not resentenced by the court, and the
3 reasons for each disposition.

4 “(d) The number of applicants who reapplied for relief.

5 “(e) Demographic data for each of the applicants, organized by dis-
6 position.

7 “(2) No later than December 31 each year, the board shall prepare
8 a report containing the data described in subsection (1) of this section
9 from the preceding year and provide a copy of the report to the com-
10 mittees of the Legislative Assembly related to the judiciary in the
11 manner provided in ORS 192.245.

12 “SECTION 8. This 2021 Act being necessary for the immediate
13 preservation of the public peace, health and safety, an emergency is
14 declared to exist, and this 2021 Act takes effect on its passage.”.

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