

House Bill 2021

Sponsored by Representative BARKER, Senator COURTNEY (Presession filed.)

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**.

Establishes procedures for sentencing defendant as sexually violent dangerous offender for certain first degree sex crimes.

Provides for sentencing proceeding with trial jury. Requires sentence of life imprisonment with minimum term of 20 years' imprisonment after certain jury findings made. Establishes procedures for release by State Board of Parole and Post-Prison Supervision after defendant serves minimum term.

A BILL FOR AN ACT

1
2 Relating to sexually violent dangerous offenders; creating new provisions; and amending ORS
3 144.110, 144.120 and 144.285.

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

5 **SECTION 1.** (1)(a) **The district attorney may, by pleading the fact in an accusatory in-**
6 **strument, notify a defendant of the intent to sentence the defendant as a sexually violent**
7 **dangerous offender for a crime listed in paragraph (b) of this subsection if the defendant was**
8 **at least 18 years of age at the time of the offense.**

9 (b) **A defendant may be sentenced as a sexually violent dangerous offender after con-**
10 **viction for the following crimes:**

11 (A) **Rape in the first degree under ORS 163.375 (1)(a), (b) or (d);**

12 (B) **Sodomy in the first degree under ORS 163.405 (1)(a), (b) or (d); or**

13 (C) **Unlawful sexual penetration in the first degree under ORS 163.411.**

14 (2)(a) **After proper notice as described in subsection (1)(a) of this section, if a defendant**
15 **is convicted of one of the crimes listed in subsection (1)(b) of this section, the court shall**
16 **conduct a separate sentencing proceeding to determine whether the defendant shall be sen-**
17 **tenced to life imprisonment as described in this section and section 2 (1) of this 2017 Act.**

18 (b) **The proceeding shall be conducted in the trial court before the trial jury as soon as**
19 **practicable. If a juror for any reason is unable to perform the function of a juror, the juror**
20 **shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the**
21 **name of one of the alternate jurors, who shall then become a member of the jury for the**
22 **sentencing proceeding notwithstanding the fact that the alternate juror did not deliberate**
23 **on the issue of guilt. The substitution of an alternate juror shall be allowed only if the jury**
24 **has not begun to deliberate on the issue of the sentence.**

25 (3)(a) **In the proceeding, evidence may be presented as to any matter that the court**
26 **deems relevant to sentence including, but not limited to, evidence relating to the personal**
27 **characteristics of the defendant and any aggravating or mitigating evidence relevant to the**
28 **issue in paragraph (b)(C) of this subsection; however, neither the state nor the defendant**
29 **shall be allowed to introduce repetitive evidence that has previously been offered and re-**
30 **ceived during the trial on the issue of guilt. The court shall instruct the jury that all evi-**

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 dence previously offered and received may be considered for purposes of the sentencing
 2 hearing. This paragraph shall not be construed to authorize the introduction of any evidence
 3 secured in violation of the Constitution of the United States or of the State of Oregon. The
 4 state and the defendant or the counsel of the defendant shall be permitted to present argu-
 5 ments for or against a sentence of life imprisonment.

6 (b) Upon the conclusion of the presentation of the evidence, the court shall submit the
 7 following issues to the jury:

8 (A) Whether the defendant has psychopathic personality features, sexually deviant
 9 arousal patterns or interests and a history of sexual assault;

10 (B) Whether there is a substantial probability that the defendant will commit a crime
 11 described in subsection (1) of this section if released; and

12 (C) Whether the defendant should receive a life sentence.

13 (c) The court shall instruct the jury to consider, in determining the issues in paragraph
 14 (b) of this subsection, any mitigating circumstances offered in evidence, including but not
 15 limited to the defendant's age and the extent and severity of the defendant's prior criminal
 16 conduct.

17 (d) The state must prove each issue submitted under paragraph (b) of this subsection
 18 beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on
 19 each issue considered.

20 (e) The court shall charge the jury that it may not answer any issue "yes" under para-
 21 graph (b) of this subsection unless 10 or more of the 12 jurors agree.

22 (f) Notwithstanding ORS 161.605, if the jury returns an affirmative finding on each issue
 23 considered under paragraph (b) of this subsection, the trial judge shall sentence the defend-
 24 ant to life imprisonment in the custody of the Department of Corrections as provided in
 25 section 2 (1) of this 2017 Act.

26 (g) If the jury returns a negative finding on any issue under paragraph (b) of this sub-
 27 section, the trial court shall sentence the defendant pursuant to ORS 137.700 and the sen-
 28 tencing guidelines of the Oregon Criminal Justice Commission.

29 (4) If the trial court grants a mistrial during the sentencing proceeding, the trial court,
 30 at the election of the state, shall impanel a new sentencing jury for the purpose of conduct-
 31 ing a new sentencing proceeding to determine if the defendant should be sentenced to life
 32 imprisonment in the custody of the Department of Corrections as described in this section
 33 and section 2 (1) of this 2017 Act.

34 (5) A sentence imposed under this section shall constitute a departure from the sen-
 35 tencing guidelines created by rules of the Oregon Criminal Justice Commission. The findings
 36 made to classify the defendant as a sexually violent dangerous offender under this section
 37 shall constitute substantial and compelling reasons to depart from the presumptive sentence
 38 as provided by rules of the Oregon Criminal Justice Commission.

39 (6) The facts required to be found to sentence a defendant as a sexually violent dangerous
 40 offender under this section are enhancement facts, as defined in ORS 136.760, and ORS
 41 136.765 to 136.785 apply to making determinations of those facts.

42 (7) As used in this section, "history of sexual assault" means that a person has engaged
 43 in unlawful sexual conduct that:

44 (a) Is not related to the crime for which the person is currently being sentenced; and

45 (b) Seriously endangered the life or safety of another person or involved a victim under

1 12 years of age.

2 **SECTION 2.** Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to
3 421.490:

4 (1) If a defendant is sentenced as a sexually violent dangerous offender to life
5 imprisonment under section 1 of this 2017 Act, the court shall order that the defendant shall
6 be confined for a minimum of 20 years without possibility of parole, release to post-prison
7 supervision, release on work release or any form of temporary leave or employment at a
8 forest or work camp.

9 (2) At any time after completion of a minimum period of confinement pursuant to sub-
10 section (1) of this section or other statutory authority, the State Board of Parole and Post-
11 Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to
12 determine if there is a substantial probability that the prisoner will commit a crime de-
13 scribed in section 1 (1)(b) of this 2017 Act if released. The sole issue is whether or not there
14 is a substantial probability that the prisoner will commit a crime described in section 1 (1)(b)
15 of this 2017 Act if released. At the hearing, the prisoner has:

16 (a) The burden of proving by a preponderance of the evidence the likelihood that the
17 prisoner will not commit a crime described in section 1 (1)(b) of this 2017 Act if released;

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

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

23 (3) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its
24 members, finds that there is not a substantial probability that the prisoner will commit a
25 crime described in section 1 (1)(b) of this 2017 Act if released and that the terms of the
26 prisoner's confinement should be changed to life imprisonment with the possibility of parole,
27 release to post-prison supervision or work release, it shall enter an order to that effect and
28 the order shall convert the terms of the prisoner's confinement to life imprisonment with
29 the possibility of parole, release to post-prison supervision or work release and may set a
30 release date. Otherwise the board shall deny the relief sought in the petition.

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

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

38 (6) The board may adopt rules to implement this section.

39 **SECTION 3.** ORS 144.285 is amended to read:

40 144.285. (1)(a) If the State Board of Parole and Post-Prison Supervision denies a petition for a
41 change in the terms of confinement filed by a prisoner convicted of aggravated murder or murder
42 or sentenced as a sexually violent dangerous offender under sections 1 and 2 of this 2017
43 Act, the board may not grant the prisoner a subsequent hearing that is less than two years, or more
44 than 10 years, from the date the petition is denied.

45 (b) The board may not grant the prisoner a hearing that is more than two years from the date

1 a petition is denied unless the board finds that it is not reasonable to expect that the prisoner would
 2 be granted a change in the terms of confinement before the date of the subsequent hearing.

3 (c) The board shall determine the date of the subsequent hearing in accordance with rules
 4 adopted by the board. Rules adopted under this paragraph must be based on the foundation princi-
 5 ples of criminal law described in section 15, Article I of the Oregon Constitution.

6 (2) If the board grants the prisoner a hearing that is more than two years from the date a pe-
 7 tition is denied, the prisoner may submit a request for an interim hearing not earlier than the date
 8 that is two years from the date the petition is denied and at intervals of not less than two years
 9 thereafter. If the board finds, based upon a request for an interim hearing, that there is reasonable
 10 cause to believe that the prisoner may be granted a change in the terms of confinement, the board
 11 shall conduct a hearing as soon as is reasonably convenient.

12 (3) When the board grants a prisoner a hearing that is more than two years from the date a
 13 petition is denied and when the board denies a petition for an interim hearing, the board shall issue
 14 a final order. The order shall be accompanied by findings of fact and conclusions of law. The
 15 findings of fact shall consist of a concise statement of the underlying facts supporting the findings
 16 as to each contested issue of fact and as to each ultimate fact required to support the board's order.
 17 Unless the prisoner bears the burden of persuasion, the order shall include findings necessary to
 18 deny the prisoner a change in the terms of confinement for any period of time when the prisoner
 19 would be presumed to be eligible for a change in the terms of confinement.

20 **SECTION 4.** ORS 144.110 is amended to read:

21 144.110. (1) In any felony case, the court may impose a minimum term of imprisonment of up to
 22 one-half of the sentence it imposes.

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

24 (a) The State Board of Parole and Post-Prison Supervision shall not release a prisoner on parole
 25 who has been sentenced under subsection (1) of this section until the minimum term has been served,
 26 except upon affirmative vote of a majority of three board members or, if the chairperson requires
 27 all voting members to participate, a majority of all voting members.

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

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

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

33 **(C) Who has been sentenced as a sexually violent dangerous offender, except as provided**
 34 **in sections 1 and 2 of this 2017 Act.**

35 **SECTION 5.** ORS 144.120 is amended to read:

36 144.120. (1)(a) Within six months of the admission of a prisoner to any Department of Cor-
 37 rections institution, with the exception of those prisoners sentenced to a term of imprisonment for
 38 life or for more than five years, the State Board of Parole and Post-Prison Supervision shall conduct
 39 a parole hearing to interview the prisoner and set the initial date of release on parole pursuant to
 40 subsection (2) of this section. For those prisoners sentenced to a term of imprisonment for more than
 41 five years but less than 15 years, the board shall conduct the parole hearing and set the initial date
 42 of release within eight months following admission of the prisoner to the institution. For those
 43 prisoners sentenced to a term of imprisonment for life or for 15 years or more, with the exception
 44 of those sentenced for aggravated murder or murder **or as sexually violent dangerous offenders**
 45 **under sections 1 and 2 of this 2017 Act**, the board shall conduct the parole hearing, and shall set

1 the initial release date, within one year following admission of the prisoner to the institution. Re-
 2 lease shall be contingent upon satisfaction of the requirements of ORS 144.125.

3 (b) Those prisoners sentenced to a term of imprisonment for less than 15 years for commission
 4 of an offense designated by rule by the board as a non person-to-person offense may waive their
 5 rights to the parole hearing. When a prisoner waives the parole hearing, the initial date of release
 6 on parole may be set administratively by the board pursuant to subsections (2) to (6) of this section.
 7 If the board is not satisfied that the waiver was made knowingly or intelligently or if it believes
 8 more information is necessary before making its decision, it may order a hearing.

9 (2) In setting the initial parole release date for a prisoner pursuant to subsection (1) of this
 10 section, the board shall apply the appropriate range established pursuant to ORS 144.780. Vari-
 11 ations from the range shall be in accordance with ORS 144.785.

12 (3) In setting the initial parole release date for a prisoner pursuant to subsection (1) of this
 13 section, the board shall consider the presentence investigation report specified in ORS 144.791 or,
 14 if no such report has been prepared, a report of similar content prepared by the Department of
 15 Corrections.

16 (4) Notwithstanding subsection (1) of this section, in the case of a prisoner whose offense in-
 17 cluded particularly violent or otherwise dangerous criminal conduct or whose offense was preceded
 18 by two or more convictions for a Class A or Class B felony or whose record includes a psychiatric
 19 or psychological diagnosis of severe emotional disturbance such as to constitute a danger to the
 20 health or safety of the community, the board may choose not to set a parole date.

21 (5) After the expiration of six months after the admission of the prisoner to any Department of
 22 Corrections institution, the board may defer setting the initial parole release date for the prisoner
 23 for a period not to exceed 90 additional days pending receipt of psychiatric or psychological reports,
 24 criminal records or other information essential to formulating the release decision.

25 (6) When the board has set the initial parole release date for a prisoner, it shall inform the
 26 sentencing court of the date.

27 **SECTION 6. Sections 1 and 2 of this 2017 Act and the amendments to ORS 144.110, 144.120**
 28 **and 144.285 by sections 3 to 5 of this 2017 Act apply to conduct occurring on or after the ef-**
 29 **fective date of this 2017 Act.**