

# House Bill 3298

Sponsored by Representative REYNOLDS, Senator DEMBROW

## 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**.

Modifies procedures for early medical release of adult in custody from prison. Directs Department of Corrections to inform adults in custody concerning release process and develop application form. Establishes Medical Release Advisory Committee within State Board of Parole and Post-Prison Supervision. Specifies qualifications of members of committee. Requires board to follow release recommendation of committee unless adult in custody poses specific danger to another person or public that outweighs compassionate reasons for release. Provides that staff attorney of committee may petition court for resentencing in order to effectuate early medical release.

Directs Department of Corrections to annually report data concerning medical release to committees of Legislative Assembly related to judiciary.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to early medical release from prison; creating new provisions; amending ORS 144.122 and  
3 144.126; declaring an emergency; and providing for criminal sentence reduction that requires  
4 approval by a two-thirds majority.

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

6 **SECTION 1.** ORS 144.122 is amended to read:

7 144.122. (1) After the initial parole release date has been set under ORS 144.120 and after a  
8 minimum period of time established by the State Board of Parole and Post-Prison Supervision under  
9 subsection [(2)(a)] **(3)(a)** of this section, [*the prisoner*] **an adult in custody** may request that the  
10 parole release date be reset to an earlier date. The board may grant the request upon a determi-  
11 nation by the board that continued incarceration is cruel and inhumane and that resetting the re-  
12 lease date to an earlier date is not incompatible with the best interests of the [*prisoner*] **adult in**  
13 **custody** and society and that the [*prisoner:*] **adult in custody has demonstrated an extended**  
14 **course of conduct indicating outstanding reformation.**

15 [*(a) Has demonstrated an extended course of conduct indicating outstanding reformation;*]

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

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

19 **(2)(a) After the initial parole release date has been set under ORS 144.120, an adult in**  
20 **custody may request that the parole release date be reset to an earlier date due to one or**  
21 **more of the criteria described in section 5 (5) of this 2021 Act by completing an application**  
22 **for release and submitting the application to the Medical Release Advisory Committee es-**  
23 **tablished under section 4 of this 2021 Act.**

24 **(b) If the advisory committee provides the board with a recommendation for release un-**  
25 **der this section, the board shall hold a hearing. The adult in custody has the right to be re-**  
26 **presented by counsel at the hearing and, if financially eligible, to have counsel appointed at**  
27 **board expense. The board shall affirm the committee's recommendation, reset the release**

**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 **date and release the adult in custody unless the board finds, by clear and convincing evi-**  
 2 **dence, that the adult in custody poses a specific danger to the safety of another person or**  
 3 **the public and the danger outweighs any compassionate reasons for the release.**

4 [(2)] (3) The Advisory Commission on Prison Terms and Parole Standards may propose to the  
 5 board and the board shall adopt rules:

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

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

10 (c) Establishing criteria for parole release plans for [prisoners] **adults in custody** released under  
 11 this section that, at a minimum, must ensure appropriate supervision and services for the person  
 12 released.

13 [(3)] (4) The provisions of [subsection (1)(b) of] this section apply to [prisoners] **adults in custody**  
 14 sentenced in accordance with ORS 161.610.

15 [(4)] (5) The provisions of this section do not apply to [prisoners] **adults in custody** sentenced  
 16 to life imprisonment without the possibility of release or parole under ORS 138.052 or 163.150.

17 [(5)] (6) If the victim has requested notification of the release of the [prisoner] **adult in**  
 18 **custody**, the board shall notify the victim as described in ORS 144.750 (3) prior to any hearing or  
 19 administrative decision under this section.

20 **(7) An adult in custody whose application for release under subsection (2) of this section**  
 21 **is denied by the board may reapply for release provided that the medical condition or other**  
 22 **circumstance has changed since the previous application.**

23 **SECTION 2.** ORS 144.126 is amended to read:

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

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

31 [(b) *Elderly and permanently incapacitated in such a manner that the prisoner is unable to move*  
 32 *from place to place without the assistance of another person]* **as described in subsection (2) of this**  
 33 **section.**

34 **(2)(a) An adult in custody may apply for release under this section by completing an ap-**  
 35 **plication for release and submitting the application to the Medical Release Advisory Com-**  
 36 **mittee established under section 4 of this 2021 Act.**

37 **(b) If the advisory committee provides the board with a recommendation for release un-**  
 38 **der this section, the board shall hold a hearing. The adult in custody has the right to be re-**  
 39 **presented by counsel at the hearing and, if financially eligible, to have counsel appointed at**  
 40 **board expense. The board shall affirm the committee's recommendation, advance the release**  
 41 **date and release the adult in custody unless the board finds, by clear and convincing evi-**  
 42 **dence, that the adult in custody poses a specific danger to the safety of another person or**  
 43 **the public and the danger outweighs any compassionate reasons for the release.**

44 [(2)] (3) The board shall adopt rules establishing criteria for release plans for [prisoners] **adults**  
 45 **in custody** released under this section that, at a minimum, must [insure] **ensure** appropriate

1 supervision and services for the person released.

2 [(3)] (4) The provisions of this section do not apply to [prisoners] **adults in custody** sentenced  
3 to life imprisonment without the possibility of release or parole under ORS 138.052 or 163.150.

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

7 (6) **An adult in custody whose application for release under this section is denied by the**  
8 **board may reapply for release provided that the medical condition or other circumstance has**  
9 **changed since the previous application.**

10 **SECTION 3. The Department of Corrections shall:**

11 (1) **Ensure that the process for obtaining release under ORS 144.122 (2) or 144.126 is ex-**  
12 **plained on the website of the department and in any handbook provided to adults in custody.**

13 (2) **Hold informational sessions for adults in custody concerning the process for obtaining**  
14 **release under ORS 144.122 (2) and 144.126.**

15 (3) **Ensure that staff members at each department facility are trained on the application**  
16 **process for obtaining release under ORS 144.122 (2) and 144.126, and trained to assist adults**  
17 **in custody with preparing an application.**

18 (4) **Ensure that staff members at each department facility are trained to identify poten-**  
19 **tial adults in custody who may meet the criteria for medical release under ORS 144.122 (2)**  
20 **or 144.126, and refer those adults in custody to the application process.**

21 (5) **Develop an application form for medical release under ORS 144.122 (2) and 144.126 that**  
22 **is simple, easy to understand and available for all adults in custody in department facilities.**  
23 **The form must allow the applicant to request expedited review of the application.**

24 (6) **Ensure that completed applications for medical release are submitted to the Medical**  
25 **Release Advisory Committee for consideration.**

26 (7) **Facilitate communication between an applicant for early release under ORS 144.122**  
27 **(2) or 144.126 and the Medical Release Advisory Committee, or a staff member of the com-**  
28 **mittee.**

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

31 (2) **The Governor shall appoint at least five and up to 13 members of the committee. The**  
32 **committee members shall consist of licensed medical providers, including mental health**  
33 **professionals, medical professionals and addiction professionals. The committee members**  
34 **may not be employees of the Department of Corrections.**

35 (3) **The board shall provide staff support to the committee and shall compensate com-**  
36 **mittee members for the performance of committee work, but may not participate in or exert**  
37 **any influence over the business or decisions of the committee.**

38 (4) **The committee shall elect one of its members to serve as chairperson and may adopt**  
39 **rules necessary for the operation of the committee.**

40 (5) **A majority of members of the committee constitutes a quorum for the transaction**  
41 **of business other than consideration of medical release applications.**

42 (6) **The committee shall form at least two panels of at least three members each. At least**  
43 **one panel shall receive and consider regular applications for medical release under ORS**  
44 **144.122 (2) and 144.126 and at least one panel shall receive and consider expedited applications**  
45 **for medical release under ORS 144.122 (2) and 144.126.**

1 (7) The committee shall hire a staff attorney to assist the committee in the performance  
 2 of its duties and to file motions with the court under section 5 (4) of this 2021 Act.

3 **SECTION 5.** (1)(a) Upon receipt of an application for medical release under ORS 144.122  
 4 (2) or 144.126, a panel of the Medical Release Advisory Committee shall determine whether  
 5 the application is complete and provides sufficient information to make a recommendation  
 6 under subsection (3) of this section.

7 (b) If the application is incomplete, the panel shall notify the applicant and allow the  
 8 applicant an opportunity to complete the application.

9 (c) If the application is complete, but does not contain sufficient information to make a  
 10 recommendation under subsection (3) of this section, the panel may require the applicant to  
 11 provide additional information, including medical records, or may require that the applicant  
 12 provide authorization to obtain additional medical records, in order to move forward on  
 13 considering the application.

14 (2) A panel considering applications in the normal course shall make a decision on an  
 15 application within 45 days of receiving a completed application. A panel considering expedited  
 16 applications shall make a decision on an application within 14 days of receiving a completed  
 17 application.

18 (3) The panel shall review each completed application to determine whether the applicant  
 19 meets one or more of the criteria described in subsection (5) of this section. If the panel  
 20 determines, by a vote of the majority of the panel, that the applicant meets one or more of  
 21 the criteria, the panel shall recommend that the applicant be released based on medical need  
 22 and compassion.

23 (4)(a) If the panel recommends release under subsection (3) of this section, the commit-  
 24 tee staff attorney shall determine whether the applicant is eligible for release by the State  
 25 Board of Parole and Post-Prison Supervision under ORS 144.122 (2) or 144.126 or whether the  
 26 applicant may only obtain relief from the sentencing court.

27 (b) If the person is eligible for release by the board, the staff attorney shall submit the  
 28 application and recommendation to the board.

29 (c) If the person is not eligible for release by the board under ORS 144.122 (2) or 144.126,  
 30 the staff attorney shall file a motion for release with the sentencing court and proceed under  
 31 section 6 of this 2021 Act.

32 (5) An applicant is eligible for release under ORS 144.122 (2) or 144.126 if the applicant  
 33 meets one or more of the following criteria:

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

35 (b) The applicant has a debilitating or progressively debilitating medical condition.

36 (c) The applicant has a debilitating or progressively debilitating injury from which the  
 37 adult in custody is not expected to recover.

38 (d) The applicant has an underlying condition that places the adult in custody at in-  
 39 creased risk of illness, medical complications or death from exposure to disease.

40 (e) The applicant is physically handicapped and permanently incapacitated to such a de-  
 41 gree as to be unable to move from place to place without assistance or unable to complete  
 42 basic activities of daily living.

43 (f) The applicant has been diagnosed with a mental, behavioral or emotional disorder re-  
 44 sulting in serious functional impairment that substantially interferes with or limits one or  
 45 more major life activities or personal safety.

1 (g) The applicant has significant limitations in intellectual functioning, including but not  
 2 limited to reasoning, learning or problem solving.

3 (h) The applicant has significant limitations in adaptive behavior, including but not lim-  
 4 ited to conceptual, social and practical skills in everyday life.

5 (i) The balance between time the applicant has left to serve and quality of life living with  
 6 a medical condition in prison favors release.

7 (j) The applicant is unable to receive care in prison that meets the community standard  
 8 for care.

9 (6) An applicant whose application for release under ORS 144.122 (2) or 144.126 is denied  
 10 by the committee may reapply for release provided that the medical condition or other cir-  
 11 cumstance has changed since the previous application.

12 **SECTION 6.** (1) If the staff attorney of the Medical Release Advisory Committee files a  
 13 motion for release with the sentencing court under section 5 (4) of this 2021 Act, the staff  
 14 attorney shall file a copy of the motion with the district attorney of the county in which the  
 15 sentencing court is located. The district attorney shall make reasonable efforts to notify the  
 16 victim of the hearing.

17 (2) Upon receipt of a motion under section 5 (4) of this 2021 Act, the court shall set a  
 18 resentencing hearing within 30 days. The applicant has the right to be represented by  
 19 counsel at the hearing and, if financially eligible, to have counsel appointed at state expense.  
 20 The court may require testimony or evidence concerning whether the applicant meets one  
 21 or more of the criteria described in section 5 (5) of this 2021 Act. At the hearing, the district  
 22 attorney and the victim shall have an opportunity to be heard.

23 (3) If at the hearing the court determines that, due to the applicant meeting one or more  
 24 of the criteria described in section 5 (5) of this 2021 Act, the interests of justice require re-  
 25 lease, the court may resentence the applicant to a term of incarceration equal to the amount  
 26 of the time the applicant has already served in custody, notwithstanding any mandatory  
 27 sentence or sentence otherwise required by law.

28 (4) An applicant whose resentencing is denied under this section may reapply for release  
 29 under ORS 144.126 provided that the applicant can show that the medical condition or other  
 30 circumstance has changed since the previous application.

31 **SECTION 7.** (1) The Department of Corrections shall track the following data on early  
 32 release under ORS 144.122 (2) and 144.126:

33 (a) The number of applications each year for release under ORS 144.122 (2) and 144.126.

34 (b) The number of applications that resulted in a recommendation by the Medical Release  
 35 Advisory Committee for release, the number that did not result in a recommendation for  
 36 release and the reasons for each decision, if available.

37 (c) The number of applicants recommended by the committee for release that were re-  
 38 leased by the State Board of Parole and Post-Prison Supervision, not released by the board,  
 39 resented by the court and not resented by the court, and the reasons for each dispo-  
 40 sition, if available.

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

42 (e) Demographic data for each of the applicants, organized by disposition.

43 (2) No later than December 31 each year, the department shall prepare a report con-  
 44 taining the data described in subsection (1) of this section from the preceding year and pro-  
 45 vide a copy of the report to the committees of the Legislative Assembly related to the

1 **judiciary in the manner provided in ORS 192.245.**

2 **SECTION 8. This 2021 Act being necessary for the immediate preservation of the public**  
3 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**  
4 **on its passage.**

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