

# D R A F T

## SUMMARY

Modifies hearing process before State Board of Parole and Post-Prison Supervision for persons convicted of murder or aggravated murder who are sentenced to life imprisonment with possibility of parole, work release or release to post-prison supervision. Directs board to set release date at murder review hearing upon finding that person is capable of rehabilitation and that terms of person's confinement should be changed to life imprisonment with possibility of parole, work release or release to post-prison supervision. Provides that release to post-prison supervision is limited to crimes committed on or after November 1, 1989. Specifies that release date occur 60 days after date of hearing. Provides that person with release date set at murder review hearing is not subject to prison term hearing or postponement of release date at exit interview hearing.

## A BILL FOR AN ACT

1  
2 Relating to parole hearings; creating new provisions; and amending ORS  
3 144.110, 144.120, 144.125, 163.105, 163.107, 163.115 and 163.155.

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

5 **SECTION 1.** ORS 163.105 is amended to read:

6 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS  
7 421.450 to 421.490:

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

12 (b) A person sentenced to life imprisonment without the possibility of  
13 release or parole under this section shall not have that sentence suspended,  
14 deferred or commuted by any judicial officer, and the State Board of Parole

1 and Post-Prison Supervision may not parole the [prisoner] **person** nor reduce  
2 the period of confinement in any manner whatsoever. The Department of  
3 Corrections or any executive official may not permit the [prisoner] **person**  
4 to participate in any sort of release or furlough program.

5 (c) If sentenced to life imprisonment, the court shall order that the de-  
6 fendant shall be confined for a minimum of 30 years without possibility of  
7 parole or release to post-prison supervision except as provided in ORS  
8 144.397, and without the possibility of release on work release or any form  
9 of temporary leave or employment at a forest or work camp.

10 (2) At any time after completion of a minimum period of confinement  
11 pursuant to subsection (1)(c) of this section, the State Board of Parole and  
12 Post-Prison Supervision, upon the petition of [*a prisoner*] **an adult in cus-**  
13 **tody** so confined, shall hold a hearing to determine if the [*prisoner*] **adult**  
14 **in custody** is likely to be rehabilitated within a reasonable period of time.  
15 The sole issue is whether or not the [*prisoner*] **adult in custody** is likely to  
16 be rehabilitated within a reasonable period of time. At the hearing, the  
17 [*prisoner*] **adult in custody** has:

18 (a) The burden of proving by a preponderance of the evidence the likeli-  
19 hood of rehabilitation within a reasonable period of time;

20 (b) The right, if the [*prisoner*] **adult in custody** is without sufficient  
21 funds to employ an attorney, to be represented by legal counsel, appointed  
22 by the board, at board expense; and

23 (c) The right to a subpoena upon a showing of the general relevance and  
24 reasonable scope of the evidence sought, provided that any subpoena issued  
25 on behalf of the [*prisoner*] **adult in custody** must be issued by the State  
26 Board of Parole and Post-Prison Supervision pursuant to rules adopted by  
27 the board.

28 (3) If, upon hearing all of the evidence, the board, upon a unanimous vote  
29 of three board members or, if the chairperson requires all voting members  
30 to participate, a unanimous vote of all voting members, finds that the [*pris-*  
31 *oner*] **adult in custody** is capable of rehabilitation and that the terms of the

1 [prisoner's] confinement **of the adult in custody** should be changed to life  
2 imprisonment with the possibility of parole, release to post-prison super-  
3 vision or work release, it shall enter an order to that effect and the order  
4 shall convert the terms of the [prisoner's] confinement **of the adult in cus-**  
5 **tody** to life imprisonment with the possibility of parole, release to post-  
6 prison supervision **for crimes committed on or after November 1, 1989,**  
7 or work release, and [may] **shall** set a release date **to occur 60 days after**  
8 **the date of the hearing.** Otherwise the board shall deny the relief sought  
9 in the petition.

10 (4) If the board denies the relief sought in the petition, the board shall  
11 determine the date of the subsequent hearing, and the [prisoner] **adult in**  
12 **custody** may petition for an interim hearing, in accordance with ORS  
13 144.285.

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

18 **SECTION 2.** ORS 163.107 is amended to read:

19 163.107. (1) "Murder in the first degree" means murder in the second de-  
20 gree as defined in ORS 163.115 which is committed under, or accompanied  
21 by, any of the following circumstances:

22 (a) The defendant committed the murder pursuant to an agreement that  
23 the defendant receive money or other thing of value for committing the  
24 murder.

25 (b) The defendant solicited another to commit the murder and paid or  
26 agreed to pay the person money or other thing of value for committing the  
27 murder.

28 (c) The defendant committed murder after having been convicted previ-  
29 ously in any jurisdiction of any homicide, the elements of which constitute  
30 the crime of aggravated murder as defined in ORS 163.095, murder in the first  
31 degree under this section, murder in the second degree as defined in ORS

1 163.115 or manslaughter in the first degree as defined in ORS 163.118.

2 (d) There was more than one murder victim in the same criminal episode  
3 as defined in ORS 131.505.

4 (e) The homicide occurred in the course of or as a result of intentional  
5 maiming or torture of the victim.

6 (f) The victim of the intentional homicide was a person under the age of  
7 14 years.

8 (g) The victim was one of the following and the murder was related to the  
9 performance of the victim's official duties in the justice system:

10 (A) A police officer as defined in ORS 181A.355;

11 (B) A correctional, parole and probation officer or other person charged  
12 with the duty of custody, control or supervision of convicted persons;

13 (C) A member of the Oregon State Police;

14 (D) A judicial officer as defined in ORS 1.210;

15 (E) A juror or witness in a criminal proceeding;

16 (F) An employee or officer of a court of justice;

17 (G) A member of the State Board of Parole and Post-Prison Supervision;

18 or

19 (H) A regulatory specialist.

20 (h) The defendant was confined in a state, county or municipal penal or  
21 correctional facility or was otherwise in custody when the murder occurred.

22 (i) The defendant committed murder by means of an explosive as defined  
23 in ORS 164.055.

24 (j) Notwithstanding ORS 163.115 (1)(b), the defendant personally and in-  
25 tentionally committed the homicide under the circumstances set forth in ORS  
26 163.115 (1)(b).

27 (k) The murder was committed in an effort to conceal the commission of  
28 a crime, or to conceal the identity of the perpetrator of a crime.

29 (L) The murder was committed after the defendant had escaped from a  
30 state, county or municipal penal or correctional facility and before the de-  
31 fendant had been returned to the custody of the facility.

1 (2)(a) Except as otherwise provided in ORS 163.155 and paragraph (b) of  
2 this subsection, the court shall sentence a person convicted of murder in the  
3 first degree, who was at least 15 years of age at the time of committing the  
4 murder, to life imprisonment. The court shall order that the defendant be  
5 confined for a minimum of 30 years without possibility of parole or release  
6 to post-prison supervision except as provided in ORS 144.397, and without the  
7 possibility of release on work release or any form of temporary leave or  
8 employment at a forest or work camp.

9 (b) The court may sentence the person to life imprisonment without the  
10 possibility of parole if the person was at least 18 years of age at the time  
11 of committing the murder. The court shall state on the record the reasons  
12 for imposing the sentence. A person sentenced to life imprisonment without  
13 the possibility of release or parole under this paragraph shall not have that  
14 sentence suspended, deferred or commuted by any judicial officer, and the  
15 State Board of Parole and Post-Prison Supervision may not parole the [*pris-*  
16 *oner*] **person** nor reduce the period of confinement in any manner whatso-  
17 ever. The Department of Corrections or any executive official may not permit  
18 the [*prisoner*] **person** to participate in any sort of release or furlough pro-  
19 gram.

20 (3)(a) For a person sentenced to life imprisonment, at any time after  
21 completion of the minimum period of confinement described in subsection  
22 (2)(a) of this section, the State Board of Parole and Post-Prison Supervision,  
23 upon the petition of [*a prisoner*] **an adult in custody** so confined, shall hold  
24 a hearing to determine if the [*prisoner*] **adult in custody** is likely to be re-  
25 habilitated within a reasonable period of time. The sole issue is whether the  
26 [*prisoner*] **adult in custody** is likely to be rehabilitated within a reasonable  
27 period of time. At the hearing the [*prisoner*] **adult in custody** has:

28 (A) The burden of proving by a preponderance of the evidence the likeli-  
29 hood of rehabilitation within a reasonable period of time;

30 (B) The right, if the [*prisoner*] **adult in custody** is without sufficient  
31 funds to employ an attorney, to be represented by legal counsel, appointed

1 by the board, at board expense; and

2 (C) The right to a subpoena upon a showing of the general relevance and  
3 reasonable scope of the evidence sought, provided that any subpoena issued  
4 on behalf of the [*prisoner*] **adult in custody** must be issued by the State  
5 Board of Parole and Post-Prison Supervision pursuant to rules adopted by  
6 the board.

7 (b) If, upon hearing all of the evidence, the board, upon a unanimous vote  
8 of three board members or, if the chairperson requires all voting members  
9 to participate, a unanimous vote of all voting members, finds that the [*pris-*  
10 *oner*] **adult in custody** is capable of rehabilitation and that the terms of the  
11 [*prisoner's*] confinement **of the adult in custody** should be changed to life  
12 imprisonment with the possibility of parole, release to post-prison super-  
13 vision or work release, it shall enter an order to that effect and the order  
14 shall convert the terms of the [*prisoner's*] confinement **of the adult in cus-**  
15 **tody** to life imprisonment with the possibility of parole, release to post-  
16 prison supervision **for crimes committed on or after November 1, 1989,**  
17 or work release, and [*may*] **shall** set a release date **to occur 60 days after**  
18 **the date of the hearing.** Otherwise, the board shall deny the relief sought  
19 in the petition.

20 (c) If the board denies the relief sought in the petition, the board shall  
21 determine the date of the subsequent hearing, and the [*prisoner*] **adult in**  
22 **custody** may petition for an interim hearing, in accordance with ORS  
23 144.285.

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

28 **SECTION 3.** ORS 163.115 is amended to read:

29 163.115. (1) Except as provided in ORS 163.095, 163.118 and 163.125, crim-  
30 inial homicide constitutes murder in the second degree:

31 (a) When it is committed intentionally, except that it is an affirmative

1 defense that, at the time of the homicide, the defendant was under the in-  
2 fluence of an extreme emotional disturbance;

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

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

10 (B) Criminal mischief in the first degree by means of an explosive as de-  
11 fined in ORS 164.365;

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

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

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

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

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

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

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

19 (J) Assault in the first degree, as defined in ORS 163.185, and the victim  
20 is under 14 years of age, or assault in the second degree, as defined in ORS  
21 163.175 (1)(a) or (b), and the victim is under 14 years of age; or

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

25 (A) The person has previously engaged in a pattern or practice of assault  
26 or torture of the victim or another child under 14 years of age or a dependent  
27 person; or

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

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

31 (3) It is an affirmative defense to a charge of violating subsection (1)(b)

1 of this section that the defendant:

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

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

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

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

8 (e) Had no reasonable ground to believe that any other participant in-  
9 tended to engage in conduct likely to result in death.

10 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B)  
11 of this section that the victim was a dependent person who was at least 18  
12 years of age and was under care or treatment solely by spiritual means  
13 pursuant to the religious beliefs or practices of the dependent person or the  
14 guardian of the dependent person.

15 (5) Except as otherwise provided in ORS 144.397 and 163.155:

16 (a) A person convicted of murder in the second degree, who was at least  
17 15 years of age at the time of committing the murder, shall be punished by  
18 imprisonment for life.

19 (b) When a defendant is convicted of murder in the second degree under  
20 this section, the court shall order that the defendant shall be confined for  
21 a minimum of 25 years without possibility of parole, release to post-prison  
22 supervision, release on work release or any form of temporary leave or em-  
23 ployment at a forest or work camp.

24 (c) At any time after completion of a minimum period of confinement  
25 pursuant to paragraph (b) of this subsection, the State Board of Parole and  
26 Post-Prison Supervision, upon the petition of [*a prisoner*] **an adult in cus-**  
27 **tody** so confined, shall hold a hearing to determine if the [*prisoner*] **adult**  
28 **in custody** is likely to be rehabilitated within a reasonable period of time.  
29 The sole issue is whether the [*prisoner*] **adult in custody** is likely to be re-  
30 habilitated within a reasonable period of time. At the hearing the [*prisoner*]  
31 **adult in custody** has:



1 (A) The burden of proving by a preponderance of the evidence the likeli-  
2 hood of rehabilitation within a reasonable period of time;

3 (B) The right, if the [*prisoner*] **adult in custody** is without sufficient  
4 funds to employ an attorney, to be represented by legal counsel, appointed  
5 by the board, at board expense; and

6 (C) The right to a subpoena upon a showing of the general relevance and  
7 reasonable scope of the evidence sought, provided that any subpoena issued  
8 on behalf of the [*prisoner*] **adult in custody** must be issued by the State  
9 Board of Parole and Post-Prison Supervision pursuant to rules adopted by  
10 the board.

11 (d) If, upon hearing all of the evidence, the board, upon a unanimous vote  
12 of three board members or, if the chairperson requires all voting members  
13 to participate, a unanimous vote of all voting members, finds that the [*pris-*  
14 *oner*] **adult in custody** is capable of rehabilitation and that the terms of the  
15 [*prisoner's*] confinement **of the adult in custody** should be changed to life  
16 imprisonment with the possibility of parole, release to post-prison super-  
17 vision or work release, it shall enter an order to that effect and the order  
18 shall convert the terms of the [*prisoner's*] confinement **of the adult in cus-**  
19 **tody** to life imprisonment with the possibility of parole, release to post-  
20 prison supervision **for crimes committed on or after November 1, 1989,**  
21 or work release, and [*may*] **shall** set a release date **to occur 60 days after**  
22 **the date of the hearing.** Otherwise, the board shall deny the relief sought  
23 in the petition.

24 (e) If the board denies the relief sought in the petition, the board shall  
25 determine the date of the subsequent hearing, and the [*prisoner*] **adult in**  
26 **custody** may petition for an interim hearing, in accordance with ORS  
27 144.285.

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

1 (6) As used in this section:

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

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

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

12 (d) "Torture" means the intentional infliction of intense physical pain  
13 upon an unwilling victim as a separate objective apart from any other pur-  
14 pose.

15 **SECTION 4.** ORS 163.155 is amended to read:

16 163.155. (1) When a defendant, who was at least 15 years of age at the  
17 time of committing the murder, is convicted of murdering a pregnant victim  
18 under ORS 163.115 (1)(a) and the defendant knew that the victim was preg-  
19 nant, the defendant shall be sentenced to life imprisonment without the  
20 possibility of release or parole if the person was at least 18 years of age at  
21 the time of committing the offense or to life imprisonment. The court shall  
22 conduct a sentencing proceeding to determine whether the defendant shall  
23 be sentenced to life imprisonment without the possibility of release or parole  
24 as described in subsection (4) of this section or to life imprisonment as de-  
25 scribed in subsection (5) of this section. If the defendant waives all rights  
26 to a jury sentencing proceeding, the court shall conduct the sentencing pro-  
27 ceeding as the trier of fact. The procedure for the sentencing proceeding,  
28 whether before a court or a jury, shall follow the procedure of ORS 163.150  
29 (1)(a), as modified by this section.

30 (2) Following the presentation of evidence and argument under subsection  
31 (1) of this section, the court shall instruct the jury that the trial court shall

1 sentence the defendant to life imprisonment without the possibility of release  
2 or parole as described in subsection (4) of this section, unless after consid-  
3 ering all of the evidence submitted, 10 or more members of the jury find  
4 there are sufficient mitigating circumstances to warrant life imprisonment  
5 with the possibility of release or parole as described in subsection (5) of this  
6 section. If 10 or more members of the jury do not find there are sufficient  
7 mitigating circumstances to warrant life imprisonment with the possibility  
8 of release or parole, the trial court shall sentence the defendant to life  
9 imprisonment without the possibility of release or parole as described in  
10 subsection (4) of this section. If 10 or more members of the jury find there  
11 are sufficient mitigating circumstances to warrant life imprisonment with  
12 the possibility of release or parole, the trial court shall sentence the de-  
13 fendant to life imprisonment as described in subsection (5) of this section.

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

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

27 (5) If the defendant is sentenced to life imprisonment, the court shall or-  
28 der that the defendant be confined for a minimum of 30 years without pos-  
29 sibility of parole or release to post-prison supervision except as provided in  
30 ORS 144.397, and without the possibility of release on work release or any  
31 form of temporary leave or employment at a forest or work camp.

1 (6) At any time after completion of the minimum period of confinement  
2 pursuant to subsection (5) of this section, the board, upon the petition of [*a*  
3 *prisoner*] **an adult in custody** so confined, shall hold a hearing to determine  
4 if the [*prisoner*] **adult in custody** is likely to be rehabilitated within a rea-  
5 sonable period of time. The sole issue shall be whether the [*prisoner*] **adult**  
6 **in custody** is likely to be rehabilitated within a reasonable period of time.  
7 The proceeding shall be conducted in the manner prescribed for a contested  
8 case hearing under ORS chapter 183, except that:

9 (a) The [*prisoner*] **adult in custody** has the burden of proving by a pre-  
10 ponderance of the evidence the likelihood of rehabilitation within a reason-  
11 able period of time;

12 (b) The [*prisoner*] **adult in custody** has the right, if the [*prisoner*] **adult**  
13 **in custody** is without sufficient funds to employ an attorney, to be repres-  
14 ented by legal counsel, appointed by the board, at board expense; and

15 (c) The [*prisoner*] **adult in custody** has the right to a subpoena upon a  
16 showing of the general relevance and reasonable scope of the evidence  
17 sought, provided that any subpoena issued on behalf of the [*prisoner*] **adult**  
18 **in custody** must be issued by the board pursuant to rules adopted by the  
19 board.

20 (7) If, upon hearing all of the evidence, the board, upon a unanimous vote  
21 of three board members or, if the chairperson requires all voting members  
22 to participate, a unanimous vote of all voting members, finds that the [*pris-*  
23 *oner*] **adult in custody** is capable of rehabilitation and that the terms of the  
24 [*prisoner's*] confinement **of the adult in custody** should be changed to life  
25 imprisonment with the possibility of parole, release on post-prison super-  
26 vision or work release, it shall enter an order to that effect and the order  
27 shall convert the terms of the [*prisoner's*] confinement **of the adult in cus-**  
28 **tody** to life imprisonment with the possibility of parole, release on post-  
29 prison supervision **for crimes committed on or after November 1, 1989,**  
30 or work release, and [*may*] **shall** set a release date **to occur 60 days after**  
31 **the date of the hearing.** Otherwise the board shall deny the relief sought

1 in the petition.

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

7 [(8)] **(9)** Not less than two years after the denial of the relief sought in  
8 a petition under this section, the [prisoner] **adult in custody** may petition  
9 again for a change in the terms of confinement. Further petitions for a  
10 change may be filed at intervals of not less than two years thereafter.

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

12 144.120. (1)(a) Within six months of the admission of a [prisoner] **person**  
13 to any Department of Corrections institution, with the exception of those  
14 [prisoners] **persons** sentenced to a term of imprisonment for life or for more  
15 than five years, the State Board of Parole and Post-Prison Supervision shall  
16 conduct a parole hearing to interview the [prisoner] **person** and set the ini-  
17 tial date of release on parole pursuant to subsection (2) of this section. For  
18 those [prisoners] **persons** sentenced to a term of imprisonment for more than  
19 five years but less than 15 years, the board shall conduct the parole hearing  
20 and set the initial date of release within eight months following admission  
21 of the [prisoner] **person** to the institution. For those [prisoners] **persons**  
22 sentenced to a term of imprisonment for life or for 15 years or more, with  
23 the exception of those sentenced for aggravated murder or murder, the board  
24 shall conduct the parole hearing, and shall set the initial release date, within  
25 one year following admission of the [prisoner] **person** to the institution.  
26 Release shall be contingent upon satisfaction of the requirements of ORS  
27 144.125.

28 (b) Those [prisoners] **persons** sentenced to a term of imprisonment for less  
29 than 15 years for commission of an offense designated by rule by the board  
30 as a non person-to-person offense may waive their rights to the parole hear-  
31 ing. When a [prisoner] **person** waives the parole hearing, the initial date of

1 release on parole may be set administratively by the board pursuant to sub-  
2 sections (2) to (6) of this section. If the board is not satisfied that the waiver  
3 was made knowingly or intelligently or if it believes more information is  
4 necessary before making its decision, it may order a hearing.

5 (2) In setting the initial parole release date for a [*prisoner*] **person** pur-  
6 suant to subsection (1) of this section, the board shall apply the appropriate  
7 range established pursuant to ORS 144.780. Variations from the range shall  
8 be in accordance with ORS 144.785.

9 (3) In setting the initial parole release date for a [*prisoner*] **person** pur-  
10 suant to subsection (1) of this section, the board shall consider the presen-  
11 tence investigation report specified in ORS 144.791 or, if no such report has  
12 been prepared, a report of similar content prepared by the Department of  
13 Corrections.

14 (4) Notwithstanding subsection (1) of this section, in the case of a [*pris-*  
15 *oner*] **person** whose offense included particularly violent or otherwise dan-  
16 gerous criminal conduct or whose offense was preceded by two or more  
17 convictions for a Class A or Class B felony or whose record includes a psy-  
18 chiatric or psychological diagnosis of severe emotional disturbance such as  
19 to constitute a danger to the health or safety of the community, the board  
20 may choose not to set a parole date.

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

27 (6) When the board has set the initial parole release date for a  
28 [*prisoner*] **person**, it shall inform the sentencing court of the date.

29 (7) **This section does not apply to a person with a release date set**  
30 **under ORS 163.105 (3), 163.107 (3)(b), 163.115 (5)(d) or 163.155 (7).**

31 **SECTION 6.** ORS 144.125 is amended to read:

1 144.125. (1) Prior to the scheduled release of any *[prisoner]* **adult in**  
2 **custody** on parole and prior to release rescheduled under this section, the  
3 State Board of Parole and Post-Prison Supervision may upon request of the  
4 Department of Corrections or on its own initiative interview the *[prisoner]*  
5 **adult in custody** to review the *[prisoner's]* parole plan and psychiatric or  
6 psychological report **of the adult in custody**, if any, and the record of the  
7 *[prisoner's]* conduct **of the adult in custody** during confinement. To ac-  
8 commodate such review by the board, the Department of Corrections shall  
9 provide to the board any psychiatric or psychological reports held by the  
10 department regarding the *[prisoner]* **adult in custody**. However, if the psy-  
11 chiatrist or psychologist who prepared any report or any treating psychia-  
12 trist or psychologist determines that disclosure to the *[prisoner]* **adult in**  
13 **custody** of the contents of the report would be detrimental to the  
14 *[prisoner's]* mental or emotional health **of the adult in custody**, the psy-  
15 chiatrist or psychologist may indorse upon the report a recommendation that  
16 it not be disclosed to the *[prisoner]* **adult in custody**. The department may  
17 withhold from the board any report so indorsed.

18 (2) The board shall postpone a *[prisoner's]* scheduled release date **of an**  
19 **adult in custody** if it finds, after a hearing, that the *[prisoner]* **adult in**  
20 **custody** engaged in serious misconduct during confinement. The board shall  
21 adopt rules defining serious misconduct and specifying periods of  
22 postponement for such misconduct.

23 (3)(a) If the board finds the *[prisoner]* **adult in custody** has a present  
24 severe emotional disturbance such as to constitute a danger to the health  
25 or safety of the community, the board may order the postponement of the  
26 scheduled parole release until a specified future date. The board may not  
27 postpone a *[prisoner's]* scheduled release date to a date that is less than two  
28 years, or more than 10 years, from the date of the hearing, unless the *[pris-*  
29 *oner]* **adult in custody** would be held beyond the maximum sentence. The  
30 board shall determine the scheduled release date, and the *[prisoner]* **adult**  
31 **in custody** may petition for interim review, in accordance with ORS 144.280.

1 (b) If the board finds the [*prisoner*] **adult in custody** has a present severe  
2 emotional disturbance such as to constitute a danger to the health or safety  
3 of the community, but also finds that the [*prisoner*] **adult in custody** can  
4 be adequately controlled with supervision and mental health treatment and  
5 that the necessary supervision and treatment are available, the board may  
6 order the [*prisoner*] **adult in custody** released on parole subject to condi-  
7 tions that are in the best interests of community safety and the [*prisoner's*]  
8 welfare **of the adult in custody**.

9 (4) Each [*prisoner*] **adult in custody** shall furnish the board with a parole  
10 plan prior to the scheduled release of the [*prisoner*] **adult in custody** on  
11 parole. The board shall adopt rules specifying the elements of an adequate  
12 parole plan and may defer release of the [*prisoner*] **adult in custody** for not  
13 more than three months if it finds that the parole plan is inadequate. The  
14 Department of Corrections shall assist [*prisoners*] **adults in custody** in  
15 preparing parole plans.

16 **(5) Subsections (2) and (3) of this section do not apply to an adult**  
17 **in custody with a release date set under ORS 163.105 (3), 163.107 (3)(b),**  
18 **163.115 (5)(d) or 163.155 (7).**

19 **SECTION 7.** ORS 144.110 is amended to read:

20 144.110. (1) In any felony case, the court may impose a minimum term of  
21 imprisonment of up to one-half of the sentence it imposes.

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

23 (a) The State Board of Parole and Post-Prison Supervision shall not re-  
24 lease a prisoner on parole who has been sentenced under subsection (1) of  
25 this section until the minimum term has been served, except upon affirmative  
26 vote of a majority of three board members or, if the chairperson requires all  
27 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 un-  
30 der the provisions of ORS 163.095, except as provided in ORS 163.105;

31 (B) Who has been convicted of murder in the first degree under the pro-



1 visions of ORS 163.107, except as provided in ORS 163.107 (3) [*or 163.155 (6)*  
2 *to (8)*]; or

3 (C) Who has been convicted of murder in the second degree under the  
4 provisions of ORS 163.115, except as provided in ORS 163.115 (5)(c) to (f) or  
5 163.155 (6) to [(8)] (9).

6 **SECTION 8. (1) The amendments to ORS 144.110, 144.120, 144.125,**  
7 **163.105, 163.107, 163.115 and 163.155 by sections 1 to 7 of this 2023 Act**  
8 **apply to persons who become eligible for a hearing described in ORS**  
9 **163.105 (3), 163.107 (3), 163.115 (5)(c) or 163.155 (6) on or after the effec-**  
10 **tive date of this 2023 Act, regardless of the date of the commission of**  
11 **the crime.**

12 (2)(a) Notwithstanding section 28, chapter 790, Oregon Laws 1989, if,  
13 prior to the effective date of this 2023 Act, a person's sentence has  
14 been converted under ORS 163.105 (3), 163.107 (3)(b), 163.115 (5)(d) or  
15 163.155 (7) to a sentence of life imprisonment with the possibility of  
16 parole, release to post-prison supervision or work release, but the  
17 person's release has not been deferred under ORS 144.125, the board  
18 shall, within 60 days after the effective date of this 2023 Act, either  
19 hold a hearing under ORS 144.125 or set a release date to occur 60 days  
20 after the effective date of this 2023 Act.

21 (b) Notwithstanding subsection (1) of this section, if, prior to the  
22 effective date of this 2023 Act, a person's sentence has been converted  
23 under ORS 163.105 (3), 163.107 (3)(b), 163.115 (5)(d) or 163.155 (7) to a  
24 sentence of life imprisonment with the possibility of parole, release to  
25 post-prison supervision or work release, and the person's release has  
26 been deferred under ORS 144.125, the amendments to ORS 144.110,  
27 144.120, 144.125, 163.105, 163.107, 163.115 and 163.155 by sections 1 to 7 of  
28 this 2023 Act do not apply to the person.

29 (3) The amendments to ORS 144.110, 144.120, 144.125, 163.105, 163.107,  
30 163.115 and 163.155 by sections 1 to 7 of this 2023 Act do not affect the  
31 right of a person to a hearing available under the law in effect at the

1 **time of the commission of the crime.**

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