



Oregon

Tina Kotek, Governor

Board of Parole and Post-Prison Supervision

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April 1, 2025

The Honorable Senator Prozanski, Chair
The Honorable Senator Thatcher, Vice-Chair
Members of the Senate Committee on Judiciary

Re: Testimony regarding SB 469- Requires the State Board of Parole and Post-Prison Supervision to study parole law in this state.

Chair Prozanski, Vice-Chair Thatcher and Members of the Committee:

The Board provides the following testimony for SB 469, and the expected -1 amendments. The Board is not taking a position on this bill. The purpose of this testimony is to provide up-to-date information about the Board's current hearings processes for individuals convicted and sentenced to a life sentence for aggravated murder, first-degree murder, second-degree murder, or murder of a pregnant victim, and provide information about the impacts and operational challenges presented by the language in the bill.

It has been represented to the Board that an amendment to SB 469 containing the bill language from 2023's SB 1027 is expected. The Board analyzed the impacts on Board procedures, and any operational concerns presented by SB 469, with that language in mind. It has also been represented to the Board that additional changes will be made to that expected amendment. However, as the Board has not yet seen any updated bill language, nor had the opportunity to fully review how those changes impact the Board's analysis, the Board will not be able to address the extent to which those potential changes provide different impacts.

Current Hearings Process and Hearings Data:

Consistent with Oregon Law, and as a result of appellate decisions interpreting the relevant statutes, the Board currently has a three-step process for considering the release of individuals convicted and sentenced to a life sentence for four specific crimes: aggravated murder, first-degree murder, second-degree murder, and murder of a pregnant victim under ORS 163.105, ORS 163.107, ORS 163.115, and ORS 163.155. Those three steps include 1) holding a Murder Review hearing, 2) setting an initial parole release date (also known as establishing a prison term), and 3) holding an Exit Interview Hearing.

Murder Review Hearing:

The release process begins with a Murder Review Hearing. In a Murder Review Hearing, for each of the four crimes described above, "the sole issue is whether the prisoner is likely to be rehabilitated within a reasonable period of time." The adult in custody (AIC) has the burden of proof of that fact by a preponderance of the evidence. An AIC is entitled to have a Board-appointed attorney. Registered

victims and the District Attorney from the committing jurisdiction have the right to appear and provide information for the Board to consider. For a Murder Review Hearing, an AIC is not required to submit to a psychological evaluation.

If the Board, or Board panel conducting the Murder-Review Hearing, does not unanimously find the AIC is capable of rehabilitation within a reasonable period of time, the Board will set a subsequent right to petition for a new hearing date within 2 to 10 years, with the person having the ability to petition for an interim hearing as provided in ORS 144.285. Alternatively, if the Board finds the AIC is capable of rehabilitation, the Board will proceed to the next step of setting an initial parole release date. A review of hearings data from Murder Review hearings between 2019 to 2024 reflected the Board conducted approximately **135 Murder Review Hearings** and found in the AIC's favor in approximately **54 of those hearings**. Accordingly, data reflects the Board found the AIC was capable of rehabilitation approximately 40% of the time.

Setting an initial parole release date:

The next step is to establish an initial parole release date (prison term). The Board sets a parole release date by using the "matrix" rules for certain AICs, including AICs who committed crimes before the Sentencing Guidelines were adopted in 1989. For the vast majority of AICs, using the matrix rules, the Board will establish a parole release date administratively which is included in the Board's orders from the Murder Review Hearing. Less common, in cases in which the matrix rules might yield a parole release date beyond the time the AIC has already served, the Board will hold a prison term hearing. Those less common cases typically may concern an AIC who has been convicted and sentenced for multiple counts of aggravated murder or other murder crimes.

Board data reflects that for the 54 AICs who were found likely to be rehabilitated at a Murder Review Hearing between 2019 and 2024, the Board held **6 prison term hearings and calculated the prison term administratively 48 times**. Accordingly, the Board held a prison term hearing for approximately **11%** of the AICs in the data set.

Exit Interview Hearing:

The final step in the parole release process is the Exit Interview Hearing pursuant to ORS 144.125, which occurs approximately 3-6 months prior to the AIC's parole release date. The presumption is that the AIC will release on the parole release date, unless the Board defers the release. The Board may postpone a parole release date for three reasons: (1) for "serious misconduct" while incarcerated, ORS 144.125(2); (2) if the Board finds that the AIC has a "present severe emotional disturbance such as to constitute a danger to the health or safety of the community," ORS 144.125(3)(a), or (3) the Board may postpone the parole release date for up to three months if the AIC has an inadequate parole plan, ORS 144.125(4).

ORS 144.125 and ORS 144.223 provides clear authority for the Board to require the AIC participate in a Board ordered psychological evaluation prior to the hearing. The Board contracts with forensic evaluators who provide detailed information about the AIC's history, mental health information, any

mental health diagnosis, and a determination as to the risk the AIC poses for future violent or criminal conduct, among other information. The evaluation also includes recommendations for the AIC's parole plan. If an AIC refuses to participate in the psychological evaluation process, the Board may defer their release.

It is important to note that under the Board's current three step process, after an Exit Interview, the Board may find that an AIC has a "present severe emotional disturbance" that "constitutes a danger to the health or safety of the community" where the AIC, at a previous Murder Review Hearing, successfully proved that they are "likely to be rehabilitated within a reasonable period of time." That is partly because of the narrow focus of the Murder Review hearing, which looks solely at the individual's ability to be rehabilitated within a period of time, and in contrast to the focus of the Exit Interview, which includes consideration as to whether the AIC has a present and severe emotional disturbance such as to cause a danger to the safety or health of the community, and whether the individual might otherwise be adequately controlled with supervision and mental health treatment that is necessary and available in the community.

Impacts and Operational Challenges created by SB 469

AICs will release from custody after only having to prove they are capable of rehabilitation within a reasonable period of time.

SB 469 would largely replace the three-step process including conducting a Murder Review hearing, establishing a parole release date, and conducting an Exit Interview hearing into essentially one hearing. Accordingly, SB 469 would result in AIC's convicted and sentenced to a life sentence for aggravated murder, first-degree murder, second-degree murder, and murder of a pregnant victim, being released after only proving they are capable of rehabilitation within a reasonable period of time. If a person meets that evidentiary burden, the Board would no longer have the authority to postpone a parole release date under ORS 144.125 based on a finding of serious misconduct while incarcerated or based on a finding that the individual has a "present severe emotional disturbance that constitutes a danger to the health or safety of the community" at an Exit Interview hearing"

It is unclear whether AICs may be required to participate in a Board ordered psychological evaluation prior to a Murder Review hearing, as amended by SB 469.

SB 469 does not address what requirement would exist, if any, for AICs to participate in a Board ordered psychological evaluation at the time of a Murder Review hearing. Current law, ORS 144.223, authorizes the Board to require an AIC to participate in a psychological evaluation prior to "being released on parole." However, SB 469 appears to provide that AICs with crimes occurring after November 1, 1989, would be released onto post-prison supervision in lieu of parole. A significant number of AICs the Board has jurisdiction over fall under this time frame. It is uncertain whether SB 469 would limit the Board's authority to require a psychological evaluation for individuals whose aggravated murder or murder crimes occurred after November 1, 1989, as they would now not be released onto parole, but instead onto post-prison supervision. If the legislature is interested in requiring AICs convicted of murder and aggravated murder to participate in a psychological evaluation

prior to release, so the Board can consider that information and the included analysis of future risk of harm, the legislature may wish to clarify or expressly incorporate that requirement into SB 469.

The Board's authority to return a person to prison for potential future violations of supervision conditions, including new criminal behavior, will be significantly changed.

Under current law, the Board's authority to sanction a person who is paroled for aggravated murder or murder convictions includes the authority to revoke parole for the remainder of a sentence, which may be for the remainder of the person's life. SB 469 would amend ORS 163.105, ORS 163.107, ORS 163.115, and ORS 163.155 to specify that for "crimes committed on or after November 1, 1989" an AIC would release to post-prison supervision rather than parole. The Board's authority to sanction individuals on supervision for violations of supervision conditions while on post-prison supervision are different, and typically limited by the rules of the Oregon Criminal Justice Commission or ORS 144.107. Accordingly, if SB 469 passes, the Board's authority to return a person who has been released by the Board back to prison for new criminal conduct may be changed significantly.

The Board may lack sufficient time to schedule a psychological evaluation and exit interview for AICs who are subject to Section 8(2) of SB 469.

Section 8(2) of SB 469 includes the provision that if an AIC has been found capable of rehabilitation at a Murder Review Hearing, and if that AIC has not yet been deferred at an Exit Interview Hearing, then the Board "shall" either hold an Exit Interview Hearing or set a release date within 60 days of the effective date of the act. In Board cases, it typically takes approximately 4 months for the Board to order a psychological evaluation, for the examiner to schedule an evaluation and then provide a written evaluation to the Board, with ORS 144.223 requiring the examining psychiatrist or psychologist to file a written report with the Board "[w]ithin 60 days after the examination." Because of that timeline, the Board ordinarily schedules hearings approximately 6 to 7 months in advance. In addition, Board rules require the Board notify registered victims of an upcoming hearing 90 days in advance of the hearing. There are currently at least **6 AICs** who would fall under the provisions of this section. There may also be others the Board is currently unaware of given the brief time the Board had to compile this testimony. Accordingly, the Board may not be able to timely schedule and complete Exit Interviews Hearings within the 60-day time frame identified in Section 8 of SB 469.

The Board appreciates the opportunity to provide this information outlining the impact of SB 469 on current operations.

Respectfully,


John Bailey, Chairperson


Dylan Arthur, Executive Director