

D R A F T

SUMMARY

Establishes Medical Release Advisory Committee within State Board of Parole and Post-Prison Supervision. Specifies qualifications of members of committee. Establishes procedures by which adults in custody may apply for early medical release from custody and standards by which committee recommends release. Establishes cap on number of applications per month committee may consider until January 1, 2025. Provides for appointment of attorney upon release recommendation.

Directs board to accept release recommendation of committee unless person poses specific danger to another person or public that outweighs compassionate reasons for release. Directs board to refer applicant to sentencing court for sentences requiring court authorization for early medical release.

Establishes procedures for sentencing court to consider motion authorizing early medical release and enter supplemental judgment.

Directs Department of Corrections to inform adults in custody concerning release process and develop application form. Authorizes department to directly refer adults in custody to board for early medical release.

Directs committee to annually report data concerning early medical release to committees of Legislative Assembly related to judiciary.

Prohibits prosecuting attorney from conditioning plea offer on waiver of early medical release eligibility.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1

2 Relating to early medical release from custody; creating new provisions;
3 amending ORS 135.418, 144.122, 144.126 and 144.750; and prescribing an
4 effective date.

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

6 **SECTION 1. (1) Except as provided in subsection (2) of this section,**
7 **an adult in custody may apply for early medical release from custody**

1 under sections 1 to 7 of this 2022 Act.

2 (2) An adult in custody who is serving a sentence required by ORS
3 137.635, 137.690, 137.700, 137.707, 164.061, 475.907, 475.925, 475.930 or
4 813.011, or serving a sentence of life imprisonment without the possi-
5 bility of release or parole under ORS 138.052 or 163.150, is not eligible
6 to apply for early medical release under sections 1 to 7 of this 2022 Act.

7 (3) As used in sections 1 to 7 of this 2022 Act, “adult in custody”
8 means a person who is committed to the legal and physical custody
9 of the Department of Corrections by a sentencing court under ORS
10 137.124 or 137.707.

11 **SECTION 2.** (1) There is established, within the State Board of
12 Parole and Post-Prison Supervision, the Medical Release Advisory
13 Committee.

14 (2)(a) The Governor shall appoint at least seven and up to 13 mem-
15 bers of the committee. Committee members are appointed to four-year
16 terms, but serve at the pleasure of the Governor. If the number of
17 committee members falls below seven for any cause, the Governor
18 shall make an appointment to become immediately effective for the
19 unexpired term. A person who has served as a committee member is
20 eligible for reappointment.

21 (b) The committee members shall consist of licensed physicians,
22 physician assistants, nurse practitioners and nurses. At least one
23 committee member must be a licensed and board-certified physician,
24 and at least four committee members must be involved in direct pa-
25 tient care. The committee members may not be employees or con-
26 tractors of the Department of Corrections or current adults in
27 custody. When making appointments to the committee, the Governor
28 shall strive to appoint members of communities of which the popu-
29 lation of adults in custody are a part and members from historically
30 marginalized or underrepresented communities.

31 (3) The board shall provide staff support to the committee and shall

1 **compensate committee members for the performance of committee**
2 **work. A board member may not vote or participate in any deliber-**
3 **ations of the committee concerning whether to give recommendation**
4 **for early medical release under sections 1 to 7 of this 2022 Act.**

5 **(4) The committee shall elect one of its members to serve as**
6 **chairperson. A majority of members of the committee constitutes a**
7 **quorum for the transaction of business.**

8 **(5) The committee shall form at least two panels of at least five**
9 **members each. At least one panel shall receive and consider regular**
10 **applications for early medical release and at least one panel shall re-**
11 **ceive and consider expedited applications for early medical release.**

12 **(6) The board shall hire at least one release navigator to support**
13 **the committee and assist persons applying for early medical release**
14 **as described in section 3 of this 2022 Act.**

15 **(7) The committee shall develop an application form for early med-**
16 **ical release under sections 1 to 7 of this 2022 Act that is simple and**
17 **easy to understand. The form must allow the applicant to request ex-**
18 **pedited review of the application and be made available in multiple**
19 **languages.**

20 **(8)(a) The committee shall adopt rules necessary to carry out the**
21 **duties of the committee, including but not limited to:**

22 **(A) Rules further defining the criteria for early medical release de-**
23 **scribed in section 3 (6) of this 2022 Act.**

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

27 **(C) Rules establishing which applicants qualify for expedited appli-**
28 **cations for early medical release under sections 1 to 7 of this 2022 Act.**

29 **(D) Rules adopted in consultation with the Oregon Health Authority**
30 **and the Governor concerning applicants who are described in section**
31 **3 (6)(c) of this 2022 Act.**

1 (b) The committee shall annually review the rules adopted under
2 this subsection to ensure that the rules are based on current medical
3 understanding.

4 **SECTION 3.** (1) An adult in custody who is eligible to apply for early
5 medical release from custody under section 1 of this 2022 Act may
6 submit an application for early release to the Medical Release Advisory
7 Committee established under section 2 of this 2022 Act.

8 (2)(a) After receipt of the application, a panel of the committee
9 shall determine whether the application is complete.

10 (b) If the application is complete, the panel shall notify the appli-
11 cant that the application has been accepted and shall forward the ap-
12 plication to the full committee for consideration. The notice to the
13 applicant must include the date on which the application was deter-
14 mined to be complete.

15 (c) If the application is incomplete, the panel shall promptly notify
16 the applicant concerning what additional information is needed to re-
17 view the application, including necessary medical records, and allow
18 the applicant an opportunity to provide the additional information.

19 (d) If the panel determines that an applicant is not eligible for early
20 medical release under section 1 of this 2022 Act, the panel shall notify
21 the applicant and cease any further review of the application.

22 (e) Upon acceptance of an application to be considered by the com-
23 mittee, the committee shall assign a release navigator to assist the
24 applicant with reentry planning and ensuring continuity of care in the
25 community. The release navigator shall assist the applicant with
26 planning for obtaining housing and medical care in the community.

27 (3)(a) Except as provided in paragraphs (b) and (c) of this sub-
28 section, the committee shall make a recommendation decision on a
29 regular application within 45 calendar days, and a recommendation
30 decision on an expedited application within 14 calendar days.

31 (b) The committee may, for good cause, make a decision on an ap-

1 **plication up to 14 days after the time requirements described in para-**
2 **graph (a) of this 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 **(4)(a) The committee shall review each application to determine**
8 **whether the applicant meets one or more of the criteria described in**
9 **subsection (6) of this section. The committee will evaluate the appli-**
10 **cation and the criteria by assessing considerations including, but not**
11 **limited to, the balance between time the applicant has left to serve,**
12 **the quality of life living with the medical condition and whether con-**
13 **tinued care in a custodial setting is no longer appropriate. If the**
14 **committee determines, by a vote of the majority of the committee,**
15 **that the applicant meets one or more of the criteria described in sub-**
16 **section (6) of this section, the committee shall recommend early re-**
17 **lease of the applicant from custody based on medical need and**
18 **compassion.**

19 **(b) A committee member may consult with an outside expert or**
20 **specialist concerning an application under consideration before the**
21 **panel.**

22 **(c) The committee shall make a written recommendation decision,**
23 **including written findings, when recommending or declining to re-**
24 **commend release.**

25 **(d) Each month, the committee shall review no more than five ap-**
26 **plications to decide whether to recommend early medical release. The**
27 **committee shall give priority to applications based on the applicant's**
28 **having a terminal illness with a prognosis of 12 months or less to live,**
29 **but shall otherwise consider applications in the order in which the**
30 **panel accepted the applications as complete under subsection (2) of**
31 **this section.**

1 (e) The limit on applications considered by the committee described
2 in paragraph (d) of this subsection may be exceeded during any month
3 that a state of emergency has been declared under ORS 401.165 or is
4 ongoing, or a public health emergency has been declared under ORS
5 433.441 or is ongoing, but the committee shall continue to prioritize the
6 consideration of applications based on the applicant's having a termi-
7 nal illness with a prognosis of 12 months or less to live.

8 (5) If committee recommends release under subsection (4) of this
9 section:

10 (a) Pursuant to ORS 151.216 and 151.219, the Public Defense Services
11 Commission shall provide for the representation of financially eligible
12 applicants at all subsequent proceedings, including hearings before the
13 State Board of Parole and Post-Prison Supervision under section 4 of
14 this 2022 Act and before the court on motions for resentencing under
15 section 5 of this 2022 Act. If the commission determines that the ap-
16 plicant is not financially eligible for appointed counsel at state ex-
17 pense, the applicant may request review of the determination as
18 provided in ORS 144.337.

19 (b) The release navigator assigned by the committee may coordinate
20 with the Department of Corrections or any other outside agency or
21 organization in order to continue to assist the applicant with reentry
22 planning and ensuring continuity of care in the community.

23 (c) The committee shall submit the application and recommen-
24 dation to the board for review as provided under section 4 of this 2022
25 Act.

26 (6) An applicant may be recommended for early medical release if
27 the applicant meets one or more of the following criteria, as further
28 defined in the rules of the committee:

29 (a) The applicant has a terminal illness with a prognosis of 12
30 months or less to live;

31 (b) The applicant is unable to independently complete the activities

1 of eating, toileting, grooming, dressing, bathing or physical transfers
2 or is unable to independently move from place to place, even with the
3 use of a mobility device; or

4 (c) The applicant has an underlying condition that places the ap-
5 plicant at increased risk of illness, medical complications or death if
6 the applicant is exposed to disease, and:

7 (A) A state of emergency has been declared under ORS 401.165; or

8 (B) A public health emergency has been declared under ORS 433.441.

9 (7) If the committee declines to recommend an applicant for early
10 medical release, the applicant may reapply for release provided that
11 the applicant can show that:

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

15 (b) New information has been obtained regarding the medical con-
16 dition or other circumstance since the previous application.

17 (8) An early medical release recommendation decision, or a deter-
18 mination under subsection (2) of this section that an applicant is not
19 eligible for early medical release, is not subject to judicial review un-
20 der ORS 144.335 or 183.480 to 183.497.

21 SECTION 4. (1) Except as otherwise provided in this section, the
22 State Board of Parole and Post-Prison Supervision shall review rec-
23 ommendations for early medical release of applicants from the Medical
24 Release Advisory Committee under section 3 of this 2022 Act, and di-
25 rect referrals for early medical release of adults in custody from the
26 Department of Corrections under section 6 of this 2022 Act, to deter-
27 mine whether to accept the recommendation or referral for early
28 medical release as provided in this section.

29 (2)(a) The board shall hold a hearing within 45 days of receiving the
30 recommendation or referral, unless the board finds good cause to
31 postpone the hearing, the board proceeds under paragraph (c) of this

1 subsection or no hearing is required, as described in subsection (3) of
2 this section.

3 (b) The board may require a psychological evaluation or risk as-
4 sessment of an applicant before proceeding on a recommendation from
5 the advisory committee.

6 (c) The board may accept a committee recommendation or a de-
7 partment referral without a hearing, and shall provide the decision in
8 writing and promptly notify the applicant or referred adult in custody.

9 (d) The board shall accept the committee recommendation or de-
10 partment referral, advance the release date and order the release of
11 the applicant or referred adult in custody unless the board finds, by
12 clear and convincing evidence, that the applicant or referred adult in
13 custody poses a danger to the safety of another person or the public
14 and the danger outweighs any compassionate reasons for the release.

15 (3) If the board determines that an applicant or referred adult in
16 custody is serving one or more sentences that require the sentencing
17 court to authorize early medical release, the board shall first conduct
18 the hearing described in subsection (2) of this section for any sen-
19 tences that the board determines do not require the sentencing court
20 to authorize early medical release. After completing the board hear-
21 ing, or if no board hearing is required, the board shall notify the ap-
22 plicant or referred adult in custody concerning the need to appear
23 before the sentencing court, and shall provide the applicant or referred
24 adult in custody with:

25 (a) A certified copy of any committee recommendation provided to
26 the board under section 3 of this 2022 Act, or any direct referral pro-
27 vided to the board under section 6 of this 2022 Act;

28 (b) A certified copy of any board decision accepting or declining to
29 accept an early medical release recommendation under subsection (2)
30 of this section; and

31 (c) A statement identifying the sentences that the board has deter-

1 **mined require the sentencing court to authorize early medical release.**

2 **(4) If a victim has requested notification of the release of the ap-**
3 **plicant or referred adult in custody, the board shall notify the victim**
4 **immediately upon receiving a recommendation or referral under this**
5 **section.**

6 **(5) A decision by the board to accept or not accept a recommen-**
7 **dation or referral under this section is not subject to judicial review**
8 **under ORS 144.335 or 183.480 to 183.497.**

9 **SECTION 5. (1) If an applicant under section 3 of this 2022 Act or**
10 **adult in custody referred under section 6 of this 2022 Act receives no-**
11 **tification from the Board of Parole and Post-Prison Supervision under**
12 **section 4 (3) of this 2022 Act that the board has determined that the**
13 **applicant or referred adult in custody is serving one or more sentences**
14 **that require the sentencing court to authorize early medical release,**
15 **the attorney for the applicant or referred adult in custody may file a**
16 **motion for early medical release with the sentencing court. Copies of**
17 **the documents described in section 4 (3) of this 2022 Act must be filed**
18 **with the motion. The attorney shall serve a copy of the motion on the**
19 **district attorney of the county in which the sentencing court is lo-**
20 **cated. The district attorney shall make reasonable efforts to notify the**
21 **victim or victims, if any, of the filing of the motion and the hearing**
22 **described in subsection (2) of this section.**

23 **(2)(a) The court shall hold a hearing within 30 calendar days of the**
24 **filing of a motion described in subsection (1) of this section, unless the**
25 **court finds good cause to postpone the hearing or the court proceeds**
26 **under paragraph (c) of this subsection.**

27 **(b) The court may require a psychological evaluation or risk as-**
28 **essment of the applicant or referred adult in custody before proceed-**
29 **ing on a motion for early medical release under this section.**

30 **(c) The court may grant the motion and enter a supplemental**
31 **judgment authorizing early medical release without a hearing upon**

1 stipulation of the parties and agreement of the victim.

2 (d) If the victim is not present at the hearing, the court shall in-
3 quire of the district attorney whether the victim was notified of the
4 hearing and whether the victim requested to be heard during the
5 hearing.

6 (3)(a) The court shall grant the motion and authorize early medical
7 release from custody if the court finds that the applicant or referred
8 adult in custody meets one or more of the criteria described in section
9 3 (6) of this 2022 Act unless the court finds, by clear and convincing
10 evidence, that the early medical release of the applicant or referred
11 adult in custody would create a substantial threat to public safety in
12 light of the circumstances of the applicant or referred adult in cus-
13 tody. The court shall give substantial weight to any recommendation
14 of the Medical Release Advisory Committee when making a decision
15 under this section.

16 (b) If the court grants the motion, the court shall enter a supple-
17 mental judgment authorizing early medical release from custody for
18 the sentences previously imposed by the court.

19 (4) An applicant or referred adult in custody whose motion for re-
20 sentencing is denied under this section may apply or reapply for early
21 medical release provided that the applicant or referred adult in cus-
22 tody can show that:

23 (a) There has been a substantial change in the medical condition
24 or other circumstances, as defined in rules adopted by the committee,
25 since the previous application; or

26 (b) New information has been obtained regarding the medical con-
27 dition or other circumstance since the previous application.

28 (5)(a) The grant or denial by the court of a motion for resentencing
29 under this section is not appealable.

30 (b) Notwithstanding ORS 138.035 and 138.045, a supplemental judg-
31 ment entered under this section is not appealable and does not grant

1 or extend any right to appellate or collateral review of any decision
2 or judgment previously entered in the case.

3 **SECTION 6.** (1) The Department of Corrections shall ensure that
4 the process for obtaining release under sections 1 to 7 of this 2022 Act
5 is explained on the website of the department and in any handbook
6 provided to adults in custody.

7 (2) The department shall ensure that application forms for obtain-
8 ing release under sections 1 to 7 of this 2022 Act are made available for
9 all adults in custody in department facilities.

10 (3) The department, in its discretion, may directly refer an adult in
11 custody to the Board of Parole and Post-Prison Supervision for early
12 medical release if the department determines that an adult in custody
13 meets one of the criteria described in section 3 (6) of this 2022 Act.
14 When determining whether to refer an adult in custody under this
15 subsection, the department shall give priority to those adults in cus-
16 tody with a terminal illness with a prognosis of 12 months or less to
17 live.

18 (4) The department, after receiving an order or a supplemental
19 judgment authorizing early medical release under section 4 or 5 of this
20 2022 Act, shall assist the applicant or referred adult in custody with
21 reentry into the community and shall process the applicant's or re-
22 ferred adult in custody's release within a reasonable amount of time.

23 **SECTION 7.** (1) The Medical Release Advisory Committee, in col-
24 laboration with the State Board of Parole and Post-Prison Supervision,
25 shall track the following data on early medical release under sections
26 1 to 7 of this 2022 Act:

27 (a) The number of applications each year for release under sections
28 1 to 7 of this 2022 Act.

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

1 (c) The number of applicants recommended by the committee for
2 release that were released by the board, not released by the board,
3 resentenced by the court and not resentenced by the court, and the
4 reasons for each disposition.

5 (d) The number of applicants who reapplied for release.

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

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

13 **SECTION 8.** ORS 144.750 is amended to read:

14 144.750. (1) To accord crime victims due dignity and respect, a victim of
15 a crime that is the subject of a proceeding conducted by the State Board of
16 Parole and Post-Prison Supervision has the following rights:

17 (a) The right to be reasonably protected from the offender during the
18 proceeding;

19 (b) The right to attend the proceeding in person or, at the discretion of
20 the victim and with advance notice to the board, to attend the proceeding
21 by alternative means; and

22 (c) The right to request the district attorney of the county in which the
23 offender was convicted, in the discretion of the district attorney, to partic-
24 ipate in the proceeding.

25 (2)(a) The board must make a reasonable effort to notify the district at-
26 torney of the county in which the offender was convicted and the victim, if
27 the victim requests to be notified and furnishes the board a current address,
28 of any hearing conducted by the board. The board shall send written notice
29 to the current addresses of the district attorney and the victim no later than
30 30 days before the hearing.

31 (b) The victim, personally or by counsel, and the district attorney of the

1 county in which the offender was convicted have the right to appear at a
2 hearing conducted by the board and may submit written and oral statements
3 adequately and reasonably expressing any views concerning the crime and
4 the offender.

5 (c) The victim, personally or by counsel, and the district attorney of the
6 county in which the offender was convicted shall be given access to the in-
7 formation that the board will rely upon in the hearing. The victim and the
8 district attorney shall be given adequate time to rebut the information. The
9 victim or the district attorney may request that the board, in the discretion
10 of the board, obtain and consider additional records, evaluations or other
11 documents.

12 (3) The board must make a reasonable effort to notify the victim, if the
13 victim requests to be notified and furnishes the board with a current address,
14 of any hearing or administrative decision making process resetting or ad-
15 vancing a release date pursuant to ORS 144.122 or 144.126 **or sections 1 to**
16 **7 of this 2022 Act.**

17 (4)(a) A supervisory authority must make a reasonable effort to notify the
18 victim, if the victim requests to be notified and furnishes the supervisory
19 authority a current address, of any contested hearing conducted by the su-
20 pervisory authority. The supervisory authority shall send written notice to
21 the current address of the victim as soon as practicable.

22 (b) The victim, personally or by counsel, has the right to appear at a
23 contested hearing conducted by the supervisory authority and may submit
24 written and oral statements adequately and reasonably expressing any views
25 concerning the crime and the offender.

26 (c) The victim, personally or by counsel, shall be given access to infor-
27 mation that the supervisory authority will rely upon in the contested hear-
28 ing. The victim shall be given adequate time to rebut the information. The
29 victim may request that the supervisory authority, in the discretion of the
30 supervisory authority, obtain and consider additional records, evaluations
31 or other documents.

1 (5) For purposes of this section, the victim may appear personally through
2 the victim's next of kin or a representative selected by the victim.

3 **SECTION 9.** 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**:

13 (a) Has demonstrated an extended course of conduct indicating outstand-
14 ing reformation;

15 (b) Suffers from a severe medical condition including terminal illness; or

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

19 (2) The Advisory Commission on Prison Terms and Parole Standards may
20 propose to the board and the board shall adopt rules:

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

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

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

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

31 (4) The provisions of this section do not apply to [*prisoners*] **adults in**

1 **custody** sentenced to life imprisonment without the possibility of release or
2 parole under ORS 138.052 or 163.150.

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

7 (6) **As used in this section, “adult in custody” has the meaning**
8 **given that term in section 1 of this 2022 Act.**

9 **SECTION 10.** ORS 144.126 is amended to read:

10 144.126. (1) The State Board of Parole and Post-Prison Supervision may
11 advance the release date of [*a prisoner*] **an adult in custody** who was sen-
12 tenced in accordance with rules of the Oregon Criminal Justice Commission
13 or ORS 161.610. The release date may be advanced if the board determines
14 that continued incarceration is cruel and inhumane and that advancing the
15 release date of the [*prisoner*] **adult in custody** is not incompatible with the
16 best interests of the [*prisoner*] **adult in custody** and society and that the
17 [*prisoner*] **adult in custody** is:

18 (a) Suffering from a severe medical condition including terminal illness;
19 or

20 (b) Elderly and permanently incapacitated in such a manner that the
21 [*prisoner*] **adult in custody** is unable to move from place to place without
22 the assistance of another person.

23 (2) The board shall adopt rules establishing criteria for release plans for
24 [*prisoners*] **adults in custody** released under this section that, at a mini-
25 mum, must insure appropriate supervision and services for the person re-
26 leased.

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

30 (4) If the victim has requested notification of the release of the
31 [*prisoner*] **adult in custody**, the board shall notify the victim as described

1 in ORS 144.750 (3) prior to any hearing or administrative decision under this
2 section.

3 **(5) As used in this section, “adult in custody” has the meaning**
4 **given that term in section 1 of this 2022 Act.**

5 **SECTION 11.** ORS 135.418 is amended to read:

6 135.418. (1) A prosecuting attorney may not condition a defendant’s plea
7 offer on:

8 (a) The defendant’s waiver of:

9 (A) The disclosure obligation of ORS 135.815 (1)(g).

10 (B) The ability to receive the audio recording of grand jury proceedings
11 as permitted under ORS 132.270, if the indictment has been indorsed “a true
12 bill.”

13 (C) Eligibility for transitional leave under ORS 421.168.

14 (D) Eligibility for a reduction in the term of incarceration under ORS
15 421.120 or 421.121.

16 (E) Eligibility for any reduction in sentence, leave or release from custody
17 or any other program for which the executing or releasing authority may
18 consider the defendant, including programs for which the executing or re-
19 leasing authority determines eligibility and programs for which consider-
20 ation must be ordered by the sentencing court under ORS 137.750.

21 (F) The ability to set aside the conviction under ORS 137.225.

22 **(G) Eligibility for early medical release from custody under sections**
23 **1 to 7 of this 2022 Act.**

24 (b) A requirement that the defendant or the defense attorney stipulate to
25 the unconstitutionality of an existing law.

26 (2)(a) A plea agreement may not contain a provision prohibited by sub-
27 section (1) of this section.

28 (b) A prohibited provision described in subsection (1) of this section in a
29 plea agreement is contrary to public policy and is void and unenforceable.

30 (3) As used in this section, “executing or releasing authority” has the
31 meaning given that term in ORS 137.750.

1 **SECTION 12.** Section 1 of this 2022 Act is amended to read:

2 **Sec. 1.** (1) Except as provided in subsection (2) of this section, an adult
3 in custody may apply for early medical release from custody under sections
4 1 to 7 of this 2022 Act.

5 (2) An adult in custody who is serving a sentence required by ORS
6 137.635, 137.690, [137.700, 137.707,] 164.061, 475.907, 475.925, 475.930 or 813.011,
7 or serving a sentence of life imprisonment without the possibility of release
8 or parole under ORS 138.052 or 163.150, is not eligible to apply for early
9 medical release under sections 1 to 7 of this 2022 Act.

10 (3) As used in sections 1 to 7 of this 2022 Act, “adult in custody” means
11 a person who is committed to the legal and physical custody of the Depart-
12 ment of Corrections by a sentencing court under ORS 137.124 or 137.707.

13 **SECTION 13.** Section 3 of this 2022 Act is amended to read:

14 **Sec. 3.** (1) An adult in custody who is eligible to apply for early medical
15 release from custody under section 1 of this 2022 Act may submit an appli-
16 cation for early release to the Medical Release Advisory Committee estab-
17 lished under section 2 of this 2022 Act.

18 (2)(a) After receipt of the application, a panel of the committee shall de-
19 termine whether the application is complete.

20 (b) If the application is complete, the panel shall notify the applicant that
21 the application has been accepted and shall forward the application to the
22 full committee for consideration. The notice to the applicant must include
23 the date on which the application was determined to be complete.

24 (c) If the application is incomplete, the panel shall promptly notify the
25 applicant concerning what additional information is needed to review the
26 application, including necessary medical records, and allow the applicant an
27 opportunity to provide the additional information.

28 (d) If the panel determines that an applicant is not eligible for early
29 medical release under section 1 of this 2022 Act, the panel shall notify the
30 applicant and cease any further review of the application.

31 (e) Upon acceptance of an application to be considered by the committee,

1 the committee shall assign a release navigator to assist the applicant with
2 reentry planning and ensuring continuity of care in the community. The re-
3 lease navigator shall assist the applicant with planning for obtaining hous-
4 ing and medical care in the community.

5 (3)(a) Except as provided in paragraphs (b) and (c) of this subsection, the
6 committee shall make a recommendation decision on a regular application
7 within 45 calendar days, and a recommendation decision on an expedited
8 application within 14 calendar days.

9 (b) The committee may, for good cause, make a decision on an application
10 up to 14 days after the time requirements described in paragraph (a) of this
11 subsection.

12 (c) Upon the request of an applicant, the time requirements described in
13 paragraph (a) of this subsection are tolled until the applicant subsequently
14 requests that the panel proceed with considering the application.

15 (4)(a) The committee shall review each application to determine whether
16 the applicant meets one or more of the criteria described in subsection (6)
17 of this section. The committee will evaluate the application and the criteria
18 by assessing considerations including, but not limited to, the balance be-
19 tween time the applicant has left to serve, the quality of life living with the
20 medical condition and whether continued care in a custodial setting is no
21 longer appropriate. If the committee determines, by a vote of the majority
22 of the committee, that the applicant meets one or more of the criteria de-
23 scribed in subsection (6) of this section, the committee shall recommend early
24 release of the applicant from custody based on medical need and compassion.

25 (b) A committee member may consult with an outside expert or specialist
26 concerning an application under consideration before the panel.

27 (c) The committee shall make a written recommendation decision, in-
28 cluding written findings, when recommending or declining to recommend re-
29 lease.

30 *[(d) Each month, the committee shall review no more than five applications*
31 *to decide whether to recommend early medical release. The committee shall*

1 *give priority to applications based on the applicant's having a terminal illness*
2 *with a prognosis of 12 months or less to live, but shall otherwise consider ap-*
3 *plications in the order in which the panel accepted the applications as complete*
4 *under subsection (2) of this section.]*

5 *[(e) The limit on applications considered by the committee described in*
6 *paragraph (d) of this subsection may be exceeded during any month that a*
7 *state of emergency has been declared under ORS 401.165 or is ongoing, or a*
8 *public health emergency has been declared under ORS 433.441 or is ongoing,*
9 *but the committee shall continue to prioritize the consideration of applications*
10 *based on the applicant's having a terminal illness with a prognosis of 12*
11 *months or less to live.]*

12 (5)(a) If committee recommends release under subsection (4) of this sec-
13 tion:

14 [(a)] (A) Pursuant to ORS 151.216 and 151.219, the Public Defense Services
15 Commission shall provide for the representation of financially eligible ap-
16 plicants at all subsequent proceedings, including hearings before the State
17 Board of Parole and Post-Prison Supervision under section 4 of this 2022 Act
18 and before the court on motions for resentencing under section 5 of this 2022
19 Act. If the commission determines that the applicant is not financially eli-
20 gible for appointed counsel at state expense, the applicant may request re-
21 view of the determination as provided in ORS 144.337.

22 [(b)] (B) The release navigator assigned by the committee may coordinate
23 with the Department of Corrections or any other outside agency or organ-
24 ization in order to continue to assist the applicant with reentry planning and
25 ensuring continuity of care in the community.

26 [(c)] (C) The committee shall submit the application and recommendation
27 to the board for review as provided under section 4 of this 2022 Act.

28 **(b) Notwithstanding paragraph (a) of this subsection, if the com-**
29 **mittee recommends release but the applicant is serving a sentence**
30 **required by ORS 137.700 or 137.707, the committee shall provide the**
31 **applicant with a certified copy of the release recommendation but shall**

1 **not submit the application and recommendation to the board for re-**
2 **view.**

3 (6) An applicant may be recommended for early medical release if the
4 applicant meets one or more of the following criteria, as further defined in
5 the rules of the committee:

6 (a) The applicant has a terminal illness with a prognosis of 12 months or
7 less to live;

8 (b) The applicant is unable to independently complete the activities of
9 eating, toileting, grooming, dressing, bathing or physical transfers or is un-
10 able to independently move from place to place, even with the use of a mo-
11 bility device; [*or*]

12 (c) The applicant has an underlying condition that places the applicant
13 at increased risk of illness, medical complications or death if the applicant
14 is exposed to disease, and:

15 (A) A state of emergency has been declared under ORS 401.165; or

16 (B) A public health emergency has been declared under ORS 433.441[.];

17 **or**

18 **(d) The applicant has a debilitating or progressively debilitating**
19 **medical condition, including but not limited to an injury, illness, dis-**
20 **ease, physiological or psychological condition or disorder that:**

21 **(A) Poses an immediate risk to the applicant's health or life;**

22 **(B) Requires complex medical intervention or intensive, high needs**
23 **or specialized care; or**

24 **(C) Is otherwise described in the rules of the committee.**

25 (7) If the committee declines to recommend an applicant for early medical
26 release, the applicant may reapply for release provided that the applicant can
27 show that:

28 (a) There has been a substantial change in the medical condition or other
29 circumstances, as defined in rules adopted by the committee, since the pre-
30 vious application; or

31 (b) New information has been obtained regarding the medical condition

1 or other circumstance since the previous application.

2 (8) An early medical release recommendation decision, or a determination
3 under subsection (2) of this section that an applicant is not eligible for early
4 medical release, is not subject to judicial review under ORS 144.335 or
5 183.480 to 183.497.

6 **SECTION 14. (1) The amendments to section 1 of this 2022 Act by
7 section 12 of this 2022 Act become operative on January 1, 2025.**

8 **(2) The amendments to section 3 of this 2022 Act by section 13 of
9 this 2022 Act become operative on January 1, 2025.**

10 **SECTION 15. This 2022 Act takes effect on the 91st day after the
11 date on which the 2022 regular session of the Eighty-first Legislative
12 Assembly adjourns sine die.**

13
