



Written Testimony of Mary Price  
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In Support of S.B. 835  
Oregon Senate Judiciary Committee  
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I thank Chair Prozanski, Vice-Chair Thatcher, and members of the Senate Judiciary Committee for the opportunity to provide testimony today in support of S.B. 835, a bill to improve Oregon’s early medical release law. I write on behalf of FAMM, a national organization of prisoners, their families and loved ones, and diverse people concerned about criminal justice reform. FAMM’s mission is to create a more fair and just criminal justice system that respects the values of individual accountability and dignity while maintaining community safety.

For two decades, FAMM has been a leading voice for reform of mechanisms that allow for the safe and expeditious release from our nation’s prisons of medically vulnerable and dying individuals. FAMM was deeply involved in securing long overdue reforms to the federal compassionate release program - which is now among the nation’s most effective – and currently coordinates a nationwide compassionate release clearinghouse to assist medically vulnerable individuals incarcerated in our federal prisons seek compassionate release.<sup>1</sup>

In 2018, FAMM published the results of an in-depth research project that documented compassionate release programs in the 50 states and the District of Columbia. We included an exhaustive review of statutes, agency regulations, and policies. We examined eligibility criteria, application requirements, documentation, and decision-making, as well as post-decision and post-release issues. We published our findings in 51 memoranda on our website.<sup>2</sup>

We analyzed our findings in a report, “Everywhere and Nowhere: Compassionate Release in the States.”<sup>3</sup> The report summarizes policies and practices that pose barriers to release

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<sup>1</sup> While we use the term “compassionate release” to describe this authority, we are aware that many jurisdictions have different names for programs that enable early release for qualifying prisoners. Due to what we have learned of the insurmountable barriers to early release programs encountered by many sick and dying prisoners, we believe every program could benefit from taking a compassion-based look at what it means to go through the process. We call these programs “compassionate release” so that the human experience is foremost in our minds and those of policy makers.

<sup>2</sup> FAMM, Compassionate Release: State Memos (June 2018), <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos>. FAMM is currently revising and updating the 51 state memos.

<sup>3</sup> Mary Price, Everywhere and Nowhere: Compassionate Release in the States (June 2018), (Everywhere and Nowhere), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>.



and those that exemplify best practices. We also include a set of recommendations for states working to implement or update such programs.<sup>4</sup>

That research and analysis informs our support of S.B. 835. Oregon’s Early Medical Release program has good features, such as comprehensive release planning, but also includes barriers, such as narrow eligibility grounds. Senate Bill 835 includes thoughtful features that follow some of the best practices FAMM identified in our nationwide survey. We point out a few below.

**S.B. 835 provides an avenue for release to individuals with underlying conditions that make them vulnerable to medical complications or death should there be another pandemic.**

The pandemic has revealed that most state medical release eligibility criteria were inadequate when it came to rescuing individuals who were at serious risk of complications or death should they contract COVID-19. Nationwide, a reported 2,502 adults in custody have died from the virus and 390,951 have contracted the disease.<sup>5</sup> Oregon was not spared: 3,573 adults in custody have tested positive and 42 individuals died.<sup>6</sup>

We have not identified a single state medical release authority that could be, or was, used to release at-risk people from custody in the pandemic.<sup>7</sup> While nearly every state has some form of release, none was elastic or agile enough to address COVID-19 risk. Only the federal compassionate release program<sup>8</sup> included eligibility criteria that federal courts could apply to cover the threat posed by the pandemic to people with diabetes, hypertension, chronic lung conditions, and other medical conditions identified by the Centers for Disease Control and Prevention.

The numbers tell the story. In 2019, federal judges granted 145 people a reduction in sentence under its compassionate release authority. In the first two months of 2020, judges released an additional 21 people. Since the beginning of March 2020, courts have granted compassionate release to 2,997 individuals, the vast majority due to their vulnerability to COVID-19 and the failure of the federal Bureau of Prisons to protect them.

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<sup>4</sup> Everywhere and Nowhere, Executive Summary, <https://famm.org/wp-content/uploads/Exec-Summary-2-page.pdf>.

<sup>5</sup> “A State by State Look at Coronavirus in Prisons,” The Marshall Project, Updated March 25, 2021, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (Visited March 27, 2021).

<sup>6</sup> Oregon Department of Corrections, COVID-19 Status at Oregon Corrections Facilities, <https://www.oregon.gov/doc/covid19/Pages/covid19-tracking.aspx> (visited March 27, 2021).

<sup>7</sup> Several states, including Minnesota, adopted pandemic release mechanisms that were used to thin corrections populations. See Minnesota Dep’t of Corrections, Conditional Medical Release, Policy No. 203.200 at N (Dec. 15, 2020), [http://www.doc.state.mn.us/DocPolicy2/html/DPW\\_Display\\_TOC.asp?Opt=203.200.htm](http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=203.200.htm).

<sup>8</sup> See 18 U.S.C. § 3582(c)(1)(A); see also U.S.S.G § 1B1.13.

The federal program is by no means perfect. Tens of thousands of individuals contracted COVID-19 in federal prisons and at least 227 died.<sup>9</sup> That said, the federal program is confirmation that a system can be fashioned and used to address uncontrollable outbreaks of contagious diseases in the congregate environments of prisons.

Senate Bill 835 addresses pandemic medical vulnerability head on. It makes people eligible for early medical release if they have an underlying condition that increases their risk for complications or death should they be exposed to a contagious disease (from which, presumably, they cannot be protected). Including this or a similar provision to help Oregon release incarcerated individuals it cannot protect when the next pandemic strikes would put Oregon in the forefront of states who are amending their early release programs.

**Senate Bill 835 includes a straightforward review process by a multi-disciplinary board of specialists.**

FAMM found many jurisdictions had complex and multi-layered evaluation and decision-making procedures. Some included multiple, duplicative documentation requirements and others, like Ohio, had applicants go through numerous reviews with a dizzying number of hurdles and boxes to check.<sup>10</sup>

Under S.B. 835, the process would be streamlined and lean, while ensuring that important information is gathered and evaluated by the Medical Release Advisory Committee (Advisory Committee) and provided to the Board of Parole and Post-Release Supervision or the court.

The Advisory Committee would include experts from a variety of disciplines. This would ensure that specialists in medical, mental health and other fields assess eligibility. This multi-disciplinary approach further ensures a straightforward and comprehensive review that will in turn give confidence to the ultimate decision-maker.

**S.B. 835 provides reasonable timeframes and deadlines.**

FAMM found many states did not hold evaluators and decision-makers to any schedule when considering applications for early release. The best programs provide deadlines that help move applications forward, but most do not. Lacking timeframes means that delays are inevitable. This matters when the applicant is suffering or nearing death. The best states have steps that are both well set out and time constrained. California, for example, includes such well-defined timeframes.<sup>11</sup>

Senate Bill 835 includes commendably clear deadlines for steps in the process. The bill's timeframes are designed to move an application along without delay. For example, the Advisory Committee is to make its decision within 45 days of receiving an application (14 in expedited

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<sup>9</sup> Federal Bureau of Prisons, COVID-19 Coronavirus, (Dashboard), COVID-19 Cases, <https://www.bop.gov/coronavirus/> (visited March 27, 2021).

<sup>10</sup> Everywhere and Nowhere at 15.

<sup>11</sup> *Id.* at 18; FAMM Compassionate Release: California, [https://famm.org/wp-content/uploads/California\\_Final.pdf](https://famm.org/wp-content/uploads/California_Final.pdf).

cases). Deadlines such as these would put Oregon well ahead of many programs in the country and signal the state's commitment to promptly addressing and deciding requests made by adults in custody who are suffering or dying.

### **Other forward-thinking reforms.**

The legislation follows other best practices. It ensures that **information about medical release is readily available** and advertised in and out of prison. The Department would post application materials on its website and hold training sessions in its facilities. The bill would also ensure that **corrections officials and staff would be trained to identify, assist, and refer** eligible adults in custody for early medical release. Oregon would be in the forefront of states by ensuring that the program's existence, terms, and procedures are made known to those who need the information.

Senate Bill 835 would add a thorough **data gathering and reporting requirement**. One of the most difficult challenges advocates such as FAMM and scholars encounter is the lack of information about how and whether corrections systems use early release programs. Stakeholders and policy makers cannot hope to understand whether reforms work or are needed if they cannot access information about outcomes. The data reporting aspect of S.B. 835 is commendable and will assist future lawmakers.

### **Conclusion**

Senate Bill 835 is an important and commendable reform that would construct a thoughtful medical release program that the state sorely needs. We urge the committee to support S.B. 835.