

A-Engrossed
Senate Bill 1568

Ordered by the Senate February 15
Including Senate Amendments dated February 15

Sponsored by Senator DEMBROW, Representative REYNOLDS, Senator PROZANSKI, Representative BYNUM; Senators GOLDEN, SOLLMAN, Representatives ALONSO LEON, DEXTER, GRAYBER, MARSH, WILDE (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

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 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 **early medical** release process and ensure application forms are available to all adults in custody. Authorizes department to directly refer adults in custody to *[board]* **committee** for early medical release. **Directs department to refer to committee certain adults in custody with terminal illness. Specifies release process when early medical release is ordered or authorized.**

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.

Increases maximum number of board members from five to six.

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; amending ORS 135.418,
3 144.005, 144.122, 144.126 and 144.750; and prescribing an effective date.

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

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

7 **(2)(a) An adult in custody who is serving a sentence required by ORS 137.635, 137.690,**
8 **137.700, 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011 is not eligible to apply for early**
9 **medical release under sections 1 to 7 of this 2022 Act on that sentence.**

10 **(b) A person serving a sentence of life imprisonment without the possibility of release**
11 **or parole under ORS 138.052 or 163.150 is not eligible to apply for early medical release under**
12 **sections 1 to 7 of this 2022 Act.**

13 **(3) As used in sections 1 to 7 of this 2022 Act, "adult in custody" means a person who is**
14 **committed to the legal and physical custody of the Department of Corrections by a sen-**
15 **tencing court under ORS 137.124 or 137.707.**

16 **SECTION 2. (1) There is established, within the State Board of Parole and Post-Prison**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **Supervision, the Medical Release Advisory Committee.**

2 **(2)(a) The Governor shall appoint at least five and up to 13 members of the committee.**
3 **Committee members are appointed to four-year terms, but serve at the pleasure of the**
4 **Governor. If the number of committee members falls below five for any cause, the Governor**
5 **shall make an appointment to become immediately effective for the unexpired term. A person**
6 **who has served as a committee member is eligible for reappointment.**

7 **(b) The committee members shall consist of physicians, physician assistants, nurse**
8 **practitioners and nurses, licensed by the Oregon Medical Board under ORS chapter 677 or**
9 **by the Oregon State Board of Nursing under ORS 678.010 to 678.410. At least one committee**
10 **member must be a licensed and board-certified physician, and at least three committee**
11 **members must be involved in direct patient care. The committee members may not be em-**
12 **ployees or contractors of the Department of Corrections or current adults in custody. When**
13 **making appointments to the committee, the Governor shall strive to appoint members of**
14 **communities of which the population of adults in custody are a part and members from his-**
15 **torically marginalized or underrepresented communities.**

16 **(3) The State Board of Parole and Post-Prison Supervision shall provide staff support to**
17 **the committee and shall compensate committee members for the performance of committee**
18 **work. A board member may not vote or participate in any deliberations of the committee**
19 **concerning whether to give recommendation for early medical release under sections 1 to 7**
20 **of this 2022 Act.**

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

23 **(5) The committee shall form at least two panels of at least five members each. At least**
24 **one panel shall receive and consider regular applications for early medical release and at**
25 **least one panel shall receive and consider expedited applications for early medical release.**

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

28 **(7) The committee shall develop an application form for early medical release under**
29 **sections 1 to 7 of this 2022 Act that is simple and easy to understand. The form must allow**
30 **the applicant to request expedited review of the application.**

31 **(8)(a) The committee shall adopt rules necessary to carry out the duties of the commit-**
32 **tee, including but not limited to:**

33 **(A) Rules further defining the criteria for early medical release described in section 3 (6)**
34 **of this 2022 Act.**

35 **(B) Rules further defining eligibility for reapplying for early medical release after denial**
36 **at any stage, including what constitutes a substantial change in a medical condition or other**
37 **circumstances.**

38 **(C) Rules establishing which applicants qualify for expedited applications for early med-**
39 **ical release under sections 1 to 7 of this 2022 Act.**

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

42 **(b) The committee shall annually review the rules adopted under this subsection to en-**
43 **sure that the rules are based on current medical understanding.**

44 **(9) Members of the committee have the same privileges and immunities from civil and**
45 **criminal proceedings arising by reason of official committee actions as prosecuting attorneys**

1 and judicial officers of the state.

2 **SECTION 3.** (1) An adult in custody who is eligible to apply for early medical release from
3 custody under section 1 of this 2022 Act may submit an application for early release to the
4 Medical Release Advisory Committee established under section 2 of this 2022 Act. The com-
5 mittee shall also receive direct referrals of adults in custody from the Department of Cor-
6 rections under section 6 of this 2022 Act.

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

9 (b) If an application is complete, the panel shall notify the applicant that the application
10 has been accepted and shall forward the application to the full committee for consideration.
11 The notice to the applicant must include the date on which the application was determined
12 to be complete.

13 (c) If an application is incomplete, the panel shall promptly notify the applicant con-
14 cerning what additional information is needed to review the application, including necessary
15 medical records, and allow the applicant an opportunity to provide the additional informa-
16 tion.

17 (d) If the panel determines that an applicant or a referred adult in custody is not eligible
18 for early medical release under section 1 of this 2022 Act, the panel shall notify the applicant
19 or referred adult in custody and cease any further review of the application or direct refer-
20 ral.

21 (e) Upon acceptance of an application to be considered by the committee, or upon receipt
22 of a direct referral from the Department of Corrections, the committee shall assign a release
23 navigator to assist the applicant or referred adult in custody with reentry planning and en-
24 suring continuity of care in the community. The release navigator shall assist the applicant
25 or referred adult in custody with planning for obtaining housing and medical care in the
26 community.

27 (3)(a) Except as provided in paragraphs (b) and (c) of this subsection, the committee shall
28 make a recommendation decision on a regular application or direct referral within 45 calen-
29 dar days, and a recommendation decision on an expedited application or a direct referral
30 concerning an adult in custody with a terminal illness with a prognosis of 12 months or less
31 to live, within 14 calendar days.

32 (b) The committee may, for good cause, make a decision on an application or direct re-
33 ferral up to 14 days after the time requirements described in paragraph (a) of this sub-
34 section.

35 (c) Upon the request of an applicant or referred adult in custody, the time requirements
36 described in paragraph (a) of this subsection are tolled until the applicant or referred adult
37 in custody subsequently requests that the panel proceed with considering the application or
38 direct referral.

39 (4)(a) The committee shall review each application or direct referral to determine
40 whether the applicant or referred adult in custody meets one or more of the criteria de-
41 scribed in subsection (6) of this section. The committee will evaluate the application or direct
42 referral and the criteria by assessing considerations including, but not limited to, the balance
43 between time the applicant or referred adult in custody has left to serve, the quality of life
44 living with the medical condition and whether continued care in a custodial setting is no
45 longer appropriate. If the committee determines, by a vote of the majority of the committee,

1 that the applicant or referred adult in custody meets one or more of the criteria described
2 in subsection (6) of this section, the committee shall recommend early release from custody
3 of the applicant or referred adult in custody based on medical need and compassion.

4 (b) A committee member may consult with an outside expert or specialist concerning an
5 application or direct referral under consideration before the panel. Upon request by the
6 committee, the State Board of Parole and Post-Prison Supervision shall authorize funds for
7 consultation with an expert or specialist that is necessary for the committee to carry out
8 the duties described in this section, contingent upon appropriation by the Legislative As-
9 ssembly to the board of funds for such consultations.

10 (c) The committee shall make a written recommendation decision, including written
11 findings, when recommending or declining to recommend release.

12 (d) Each month, the committee shall review no more than five applications to decide
13 whether to recommend early medical release. Direct referrals from the Department of
14 Corrections do not count toward the five-application limit. The committee shall give priority
15 to applications based on the applicant's having a terminal illness with a prognosis of 12
16 months or less to live, but shall otherwise consider applications in the order in which the
17 panel accepted the applications as complete under subsection (2) of this section.

18 (e) The limit on applications considered by the committee described in paragraph (d) of
19 this subsection may be exceeded during any month that a state of emergency has been de-
20 clared under ORS 401.165 or is ongoing, or a public health emergency has been declared un-
21 der ORS 433.441 or is ongoing, and the committee determines that the emergency presents
22 a serious risk to the health or safety of adults in custody at the specific correctional facility
23 in which the applicant is housed, but the committee shall continue to prioritize the consid-
24 eration of applications based on the applicant's having a terminal illness with a prognosis of
25 12 months or less to live.

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

27 (a) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall
28 provide for the representation of financially eligible applicants and referred adults in custody
29 at all subsequent proceedings, including hearings before the board under section 4 of this
30 2022 Act and before the court on motions for resentencing under section 5 of this 2022 Act.
31 If the commission determines that the applicant or referred adult in custody is not finan-
32 cially eligible for appointed counsel at state expense, the applicant or referred adult in cus-
33 tody may request review of the determination as provided in ORS 144.337.

34 (b) The release navigator assigned by the committee may coordinate with the department
35 or any other outside agency or organization in order to continue to assist the applicant or
36 referred adult in custody with reentry planning and ensuring continuity of care in the com-
37 munity.

38 (c) The committee shall submit the application or direct referral and recommendation to
39 the board for review as provided under section 4 of this 2022 Act.

40 (6) An applicant or referred adult in custody may be recommended for early medical re-
41 lease if the applicant or referred adult in custody meets one or more of the following criteria,
42 as further defined in the rules of the committee:

43 (a) The applicant or referred adult in custody has a terminal illness with a prognosis of
44 12 months or less to live;

45 (b) The applicant or referred adult in custody is unable to independently complete the

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

3 (c)(A) The applicant or referred adult in custody has an underlying condition that places
4 the applicant or referred adult in custody at increased risk of serious medical complications
5 or death if the applicant or referred adult in custody is exposed to disease;

6 (B) A state of emergency has been declared under ORS 401.165 or a public health emer-
7 gency has been declared under ORS 433.441; and

8 (C) The committee determines that the emergency presents a serious risk to the health
9 or safety of adults in custody at the specific correctional facility in which the applicant or
10 referred adult in custody is housed.

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

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

15 (b) New information has been obtained regarding the medical condition or other circum-
16 stance since the previous application.

17 (8) An early medical release recommendation decision, or a determination under sub-
18 section (2) of this section that an applicant or referred adult in custody is not eligible for
19 early medical release, is not subject to judicial review under ORS 144.335 or 183.480 to 183.497.

20 **SECTION 4.** (1) Except as otherwise provided in this section, the State Board of Parole
21 and Post-Prison Supervision shall review recommendations for early medical release of ap-
22 plicants and referred adults in custody from the Medical Release Advisory Committee under
23 section 3 of this 2022 Act to determine whether to accept the recommendation for early
24 medical release as provided in this section.

25 (2)(a) The board shall hold a hearing within 45 days of receiving the recommendation,
26 unless the board finds good cause to postpone the hearing, the board proceeds under para-
27 graph (c) of this subsection or no hearing is required, as described in subsection (3) of this
28 section.

29 (b) The board may require a psychological evaluation or risk assessment of an applicant
30 or referred adult in custody before proceeding on a recommendation from the advisory
31 committee.

32 (c) The board may accept a committee recommendation without a hearing, and shall
33 provide the decision in writing and promptly notify the applicant or referred adult in custody.

34 (d) The board shall accept the committee recommendation, advance the release date and
35 order the release of the applicant or referred adult in custody unless the board finds, by clear
36 and convincing evidence, that the applicant or referred adult in custody poses a danger to
37 the safety of another person or the public and the danger outweighs any compassionate
38 reasons for the release.

39 (3) If the board determines that an applicant or referred adult in custody is serving one
40 or more sentences that require the sentencing court to authorize early medical release, the
41 board shall first conduct the hearing described in subsection (2) of this section for any sen-
42 tences that the board determines do not require the sentencing court to authorize early
43 medical release. After completing the board hearing, or if no board hearing is required, the
44 board shall notify the applicant or referred adult in custody concerning the need to appear
45 before the sentencing court, and shall provide the applicant or referred adult in custody with:

1 (a) A certified copy of any committee recommendation provided to the board under sec-
2 tion 3 of this 2022 Act;

3 (b) A certified copy of any board decision accepting or declining to accept an early med-
4 ical release recommendation under subsection (2) of this section; and

5 (c) A statement identifying the sentences that the board has determined require the
6 sentencing court to authorize early medical release.

7 (4) If a victim has requested notification of the release of the applicant or referred adult
8 in custody, the board shall notify the victim immediately upon receiving a recommendation
9 under this section. If the victim so requests, the victim shall have the opportunity to be
10 heard during the hearing either by submitting a written statement or by addressing the
11 board. Nothing in this section is to be construed as limiting any rights a victim has under
12 the Oregon Constitution or any other law.

13 (5) A decision by the board to accept or not accept a recommendation under this section
14 is not subject to judicial review under ORS 144.335 or 183.480 to 183.497.

15 **SECTION 5.** (1) If an applicant under section 3 of this 2022 Act or adult in custody re-
16 ferred under section 6 of this 2022 Act receives notification from the Board of Parole and
17 Post-Prison Supervision under section 4 (3) of this 2022 Act that the board has determined
18 that the applicant or referred adult in custody is serving one or more sentences that require
19 the sentencing court to authorize early medical release, the applicant or referred adult in
20 custody, or the attorney for the applicant or referred adult in custody, may file a motion for
21 early medical release with the sentencing court. Copies of the documents described in section
22 4 (3) of this 2022 Act must be filed with the motion. The applicant or referred adult in cus-
23 tody, or the attorney for the applicant or referred adult in custody, shall serve a copy of the
24 motion on the district attorney of the county in which the sentencing court is located. The
25 district attorney shall make reasonable efforts to notify the victim or victims, if any, of the
26 filing of the motion and the hearing described in subsection (2) of this section.

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

30 (b) Upon the request of either party, the court may order a psychological evaluation or
31 risk assessment of the applicant or referred adult in custody before proceeding on a motion
32 for early medical release under this section. The requesting party is responsible for the costs
33 of the evaluation or assessment.

34 (c) The court may grant the motion and enter a supplemental judgment authorizing early
35 medical release without a hearing upon stipulation of the parties and agreement of the vic-
36 tim.

37 (d) If the victim is not present at the hearing, the court shall inquire of the district at-
38 torney whether the victim was notified of the hearing and whether the victim requested to
39 be heard during the hearing. If the victim so requests, the victim shall have the opportunity
40 to be heard during the hearing either by submitting a written statement or by addressing the
41 court. Nothing in this section is to be construed as limiting any rights a victim has under
42 the Oregon Constitution or any other law.

43 (3)(a) The court shall grant the motion and authorize early medical release from custody
44 unless the court finds, by clear and convincing evidence, that the applicant or referred adult
45 in custody poses a danger to the safety of another person or the public and the danger out-

1 weighs any compassionate reasons for the release.

2 (b) If the court grants the motion, the court shall enter a supplemental judgment au-
3 thorizing early medical release from custody for the sentences previously imposed by the
4 court.

5 (4) An applicant or referred adult in custody whose motion for resentencing is denied
6 under this section may apply or reapply to the Medical Release Advisory Committee for early
7 medical release provided that the applicant or referred adult in custody can show that:

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

10 (b) New information has been obtained regarding the medical condition or other circum-
11 stance since the previous application.

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

14 (b) Notwithstanding ORS 138.035 and 138.045, a supplemental judgment entered under this
15 section is not appealable and does not grant or extend any right to appellate or collateral
16 review of any decision or judgment previously entered in the case.

17 **SECTION 6.** (1) The Department of Corrections shall ensure that the process for obtain-
18 ing release under sections 1 to 7 of this 2022 Act is explained on the website of the depart-
19 ment and in any handbook provided to adults in custody.

20 (2) The department shall ensure that application forms for obtaining release under
21 sections 1 to 7 of this 2022 Act are made available for all adults in custody in department
22 facilities.

23 (3) The department, in its discretion, may directly refer an adult in custody to the Med-
24 ical Release Advisory Committee for early medical release under sections 1 to 7 of this 2022
25 Act. The department shall directly refer to the committee any adult in custody with a ter-
26 minal illness with a prognosis of 12 months or less to live, provided that the adult in custody
27 consents to the referral.

28 (4) The department, after receiving an order for or a supplemental judgment authorizing
29 early medical release under section 4 or 5 of this 2022 Act, shall assist the applicant or re-
30 ferred adult in custody with reentry into the community, shall complete a release plan for
31 review by the State Board of Parole and Post-Prison Supervision under ORS 144.096 and, af-
32 ter the release plan is approved, shall process the release of the applicant or referred adult
33 in custody within a reasonable amount of time.

34 **SECTION 7.** (1) The Medical Release Advisory Committee, in collaboration with the State
35 Board of Parole and Post-Prison Supervision and, as applicable, the Judicial Department,
36 shall track the following data on early medical release under sections 1 to 7 of this 2022 Act:

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

39 (b) The number of adults in custody directly referred to the committee by the Depart-
40 ment of Corrections under section 6 of this 2022 Act.

41 (c) The number of applications and direct referrals that resulted in a recommendation
42 by the committee for release, the number that did not result in a recommendation for re-
43 lease and the reasons for each decision.

44 (d) The number of applicants and referred adults in custody recommended by the com-
45 mittee for release that were released by the board, not released by the board, resentenced

1 **by the court and not resentenced by the court, and the reasons for each disposition.**

2 **(e) The number of applicants who reapplied for release.**

3 **(f) Demographic data for each of the applicants and direct referrals, organized by dispo-**
4 **sition.**

5 **(2) No later than December 31 each year, the board shall prepare a report containing the**
6 **data described in subsection (1) of this section from the preceding year and provide a copy**
7 **of the report to the committees of the Legislative Assembly related to the judiciary in the**
8 **manner provided in ORS 192.245.**

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

10 144.750. (1) To accord crime victims due dignity and respect, a victim of a crime that is the
11 subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision has the
12 following rights:

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

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

16 (c) The right to request the district attorney of the county in which the offender was convicted,
17 in the discretion of the district attorney, to participate in the proceeding.

18 (2)(a) The board must make a reasonable effort to notify the district attorney of the county in
19 which the offender was convicted and the victim, if the victim requests to be notified and furnishes
20 the board a current address, of any hearing conducted by the board. The board shall send written
21 notice to the current addresses of the district attorney and the victim no later than 30 days before
22 the hearing.

23 (b) The victim, personally or by counsel, and the district attorney of the county in which the
24 offender was convicted have the right to appear at a hearing conducted by the board and may sub-
25 mit written and oral statements adequately and reasonably expressing any views concerning the
26 crime and the offender.

27 (c) The victim, personally or by counsel, and the district attorney of the county in which the
28 offender was convicted shall be given access to the information that the board will rely upon in the
29 hearing. The victim and the district attorney shall be given adequate time to rebut the information.
30 The victim or the district attorney may request that the board, in the discretion of the board, obtain
31 and consider additional records, evaluations or other documents.

32 (3) The board must make a reasonable effort to notify the victim, if the victim requests to be
33 notified and furnishes the board with a current address, of any hearing or administrative decision
34 making process resetting or advancing a release date pursuant to ORS 144.122 or 144.126 **or**
35 **sections 1 to 7 of this 2022 Act.**

36 (4)(a) A supervisory authority must make a reasonable effort to notify the victim, if the victim
37 requests to be notified and furnishes the supervisory authority a current address, of any contested
38 hearing conducted by the supervisory authority. The supervisory authority shall send written notice
39 to the current address of the victim as soon as practicable.

40 (b) The victim, personally or by counsel, has the right to appear at a contested hearing con-
41 ducted by the supervisory authority and may submit written and oral statements adequately and
42 reasonably expressing any views concerning the crime and the offender.

43 (c) The victim, personally or by counsel, shall be given access to information that the supervi-
44 sory authority will rely upon in the contested hearing. The victim shall be given adequate time to
45 rebut the information. The victim may request that the supervisory authority, in the discretion of

1 the supervisory authority, obtain and consider additional records, evaluations or other documents.

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

4 **SECTION 9.** ORS 144.122 is amended to read:

5 144.122. (1) After the initial parole release date has been set under ORS 144.120 and after a
6 minimum period of time established by the State Board of Parole and Post-Prison Supervision under
7 subsection (2)(a) of this section, [*the prisoner*] **an adult in custody** may request that the parole re-
8 lease date be reset to an earlier date. The board may grant the request upon a determination by the
9 board that continued incarceration is cruel and inhumane and that resetting the release date to an
10 earlier date is not incompatible with the best interests of the [*prisoner*] **adult in custody** and soci-
11 ety and that the [*prisoner*] **adult in custody**:

12 (a) Has demonstrated an extended course of conduct indicating outstanding reformation;

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

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

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

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

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

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

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

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

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

32 **(6) As used in this section, "adult in custody" has the meaning given that term in section**
33 **1 of this 2022 Act.**

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

35 144.126. (1) The State Board of Parole and Post-Prison Supervision may advance the release date
36 of [*a prisoner*] **an adult in custody** who was sentenced in accordance with rules of the Oregon
37 Criminal Justice Commission or ORS 161.610. The release date may be advanced if the board de-
38 termines that continued incarceration is cruel and inhumane and that advancing the release date
39 of the [*prisoner*] **adult in custody** is not incompatible with the best interests of the [*prisoner*] **adult**
40 **in custody** and society and that the [*prisoner*] **adult in custody** is:

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

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

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

1 services for the person released.

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

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

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

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

10 135.418. (1) A prosecuting attorney may not condition a defendant’s plea offer on:

11 (a) The defendant’s waiver of:

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

13 (B) The ability to receive the audio recording of grand jury proceedings as permitted under ORS
14 132.270, if the indictment has been indorsed “a true bill.”

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

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

17 (E) Eligibility for any reduction in sentence, leave or release from custody or any other program
18 for which the executing or releasing authority may consider the defendant, including programs for
19 which the executing or releasing 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 1 to 7 of this 2022**
23 **Act.**

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

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

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

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

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

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

34 (2)(a) An adult in custody who is serving a sentence required by ORS 137.635, 137.690, 137.700,
35 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011 is *[not]* eligible to apply for early medical re-
36 lease under sections 1 to 7 of this 2022 Act, **but the State Board of Parole and Post-Prison**
37 **Supervision may not order release under section 4 of this 2022 Act, and the sentencing court**
38 **may not authorize release under section 5 of this 2022 Act**, on that sentence.

39 (b) A person serving a sentence of life imprisonment without the possibility of release or parole
40 under ORS 138.052 or 163.150 is not eligible to apply for early medical release under sections 1 to
41 7 of this 2022 Act.

42 (3) As used in sections 1 to 7 of this 2022 Act, “adult in custody” means a person who is com-
43 mitted to the legal and physical custody of the Department of Corrections by a sentencing court
44 under ORS 137.124 or 137.707.

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

1 **Sec. 3.** (1) An adult in custody who is eligible to apply for early medical release from custody
2 under section 1 of this 2022 Act may submit an application for early release to the Medical Release
3 Advisory Committee established under section 2 of this 2022 Act. The committee shall also receive
4 direct referrals of adults in custody from the Department of Corrections under section 6 of this 2022
5 Act.

6 (2)(a) After receipt of an application, a panel of the committee shall determine whether the ap-
7 plication is complete.

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

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

14 (d) If the panel determines that an applicant or a referred adult in custody is not eligible for
15 early medical release under section 1 of this 2022 Act, the panel shall notify the applicant or re-
16 ferred adult in custody and cease any further review of the application or direct referral.

17 (e) Upon acceptance of an application to be considered by the committee, or upon receipt of a
18 direct referral from the Department of Corrections, the committee shall assign a release navigator
19 to assist the applicant or referred adult in custody with reentry planning and ensuring continuity
20 of care in the community. The release navigator shall assist the applicant or referred adult in cus-
21 tody with planning for obtaining housing and medical care in the community.

22 (3)(a) Except as provided in paragraphs (b) and (c) of this subsection, the committee shall make
23 a recommendation decision on a regular application or direct referral within 45 calendar days, and
24 a recommendation decision on an expedited application or a direct referral concerning an adult in
25 custody with a terminal illness with a prognosis of 12 months or less to live, within 14 calendar
26 days.

27 (b) The committee may, for good cause, make a decision on an application or direct referral up
28 to 14 days after the time requirements described in paragraph (a) of this subsection.

29 (c) Upon the request of an applicant or referred adult in custody, the time requirements de-
30 scribed in paragraph (a) of this subsection are tolled until the applicant or referred adult in custody
31 subsequently requests that the panel proceed with considering the application or direct referral.

32 (4)(a) The committee shall review each application or direct referral to determine whether the
33 applicant or referred adult in custody meets one or more of the criteria described in subsection (6)
34 of this section. The committee will evaluate the application or direct referral and the criteria by
35 assessing considerations including, but not limited to, the balance between time the applicant or
36 referred adult in custody has left to serve, the quality of life living with the medical condition and
37 whether continued care in a custodial setting is no longer appropriate. If the committee determines,
38 by a vote of the majority of the committee, that the applicant or referred adult in custody meets one
39 or more of the criteria described in subsection (6) of this section, the committee shall recommend
40 early release from custody of the applicant or referred adult in custody based on medical need and
41 compassion.

42 (b) A committee member may consult with an outside expert or specialist concerning an appli-
43 cation or direct referral under consideration before the panel. Upon request by the committee, the
44 State Board of Parole and Post-Prison Supervision shall authorize funds for consultation with an
45 expert or specialist that is necessary for the committee to carry out the duties described in this

1 section, contingent upon appropriation by the Legislative Assembly to the board of funds for such
2 consultations.

3 (c) The committee shall make a written recommendation decision, including written findings,
4 when recommending or declining to recommend release.

5 *[(d) Each month, the committee shall review no more than five applications to decide whether to
6 recommend early medical release. Direct referrals from the Department of Corrections do not count
7 toward the five-application limit. The committee shall give priority to applications based on the
8 applicant's having a terminal illness with a prognosis of 12 months or less to live, but shall otherwise
9 consider applications in the order in which the panel accepted the applications as complete under sub-
10 section (2) of this section.]*

11 *[(e) The limit on applications considered by the committee described in paragraph (d) of this sub-
12 section may be exceeded during any month that a state of emergency has been declared under ORS
13 401.165 or is ongoing, or a public health emergency has been declared under ORS 433.441 or is ongo-
14 ing, and the committee determines that the emergency presents a serious risk to the health or safety of
15 adults in custody at the specific correctional facility in which the applicant is housed, but the committee
16 shall continue to prioritize the consideration of applications based on the applicant's having a terminal
17 illness with a prognosis of 12 months or less to live.]*

18 (5)(a) If committee recommends release under subsection (4) of this section:

19 [(a)] (A) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall
20 provide for the representation of financially eligible applicants and referred adults in custody at all
21 subsequent proceedings, including hearings before the board under section 4 of this 2022 Act and
22 before the court on motions for resentencing under section 5 of this 2022 Act. If the commission
23 determines that the applicant or referred adult in custody is not financially eligible for appointed
24 counsel at state expense, the applicant or referred adult in custody may request review of the de-
25 termination as provided in ORS 144.337.

26 [(b)] (B) The release navigator assigned by the committee may coordinate with the department
27 or any other outside agency or organization in order to continue to assist the applicant or referred
28 adult in custody with reentry planning and ensuring continuity of care in the community.

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

31 **(b) Notwithstanding paragraph (a) of this subsection, if the committee recommends re-**
32 **lease but the applicant or referred adult in custody is solely serving a sentence required by**
33 **ORS 137.635, 137.690, 137.700, 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011, the commit-**
34 **tee shall provide the applicant or referred adult in custody with a certified copy of the re-**
35 **lease recommendation but shall not submit the application or direct referral and**
36 **recommendation to the board for review.**

37 (6) An applicant or referred adult in custody may be recommended for early medical release if
38 the applicant or referred adult in custody meets one or more of the following criteria, as further
39 defined in the rules of the committee:

40 (a) The applicant or referred adult in custody has a terminal illness with a prognosis of 12
41 months or less to live;

42 (b) The applicant or referred adult in custody is unable to independently complete the activities
43 of eating, toileting, grooming, dressing, bathing or physical transfers or is unable to independently
44 move from place to place, even with the use of a mobility device; [or]

45 (c)(A) The applicant or referred adult in custody has an underlying condition that places the

1 applicant or referred adult in custody at increased risk of serious medical complications or death
2 if the applicant or referred adult in custody is exposed to disease;

3 (B) A state of emergency has been declared under ORS 401.165 or a public health emergency
4 has been declared under ORS 433.441; and

5 (C) The committee determines that the emergency presents a serious risk to the health or safety
6 of adults in custody at the specific correctional facility in which the applicant or referred adult in
7 custody is housed[.]; or

8 **(d) The applicant or referred adult in custody has a debilitating or progressively debili-**
9 **tating medical condition, including but not limited to an injury, illness or disease that:**

10 **(A) Poses an immediate risk to the applicant's or referred adult in custody's health or**
11 **life; or**

12 **(B) Requires complex medical intervention or intensive, high needs or specialized care.**

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

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

17 (b) New information has been obtained regarding the medical condition or other circumstance
18 since the previous application.

19 (8) An early medical release recommendation decision, or a determination under subsection (2)
20 of this section that an applicant or referred adult in custody is not eligible for early medical release,
21 is not subject to judicial review under ORS 144.335 or 183.480 to 183.497.

22 **SECTION 14.** ORS 144.005 is amended to read:

23 144.005. (1) A State Board of Parole and Post-Prison Supervision of at least three but no more
24 than [*five*] **six** members hereby is created. At least one member must be a woman.

25 (2)(a) Members of the board shall be appointed by the Governor and serve for a term of four
26 years.

27 (b) If the number of members falls below three for any cause, the Governor shall make an ap-
28 pointment to become immediately effective for the unexpired term.

29 (c) The Governor at any time may remove any member for inefficiency, neglect of duty or
30 malfeasance in office.

31 (3) Each member shall devote the member's entire time to the performance of the duties imposed
32 on the board and shall not engage in any partisan political activity.

33 (4) The members shall receive a salary set by the Governor. In addition, all members may re-
34 ceive actual and necessary travel and other expenses incurred in the performance of their official
35 duties within limits as provided by law or under ORS 292.220 and 292.230.

36 (5) The Director of the Department of Corrections shall serve as an ex officio nonvoting member
37 of the board and shall not be considered a member for the purposes of subsections (1) to (4) of this
38 section.

39 **SECTION 15.** (1) **The amendments to section 1 of this 2022 Act by section 12 of this 2022**
40 **Act become operative on January 1, 2025.**

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

43 **SECTION 16.** **This 2022 Act takes effect on the 91st day after the date on which the 2022**
44 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**