

SENATE AMENDMENTS TO SENATE BILL 1568

By COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

February 15

1 On page 1 of the printed bill, line 2, after “135.418,” insert “144.005.”

2 Delete lines 5 through 20 and delete pages 2 through 12 and insert:

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

5 **“(2)(a) An adult in custody who is serving a sentence required by ORS 137.635, 137.690,**
6 **137.700, 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011 is not eligible to apply for early**
7 **medical release under sections 1 to 7 of this 2022 Act on that sentence.**

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

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

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

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

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

30 **“(3) The State Board of Parole and Post-Prison Supervision shall provide staff support**
31 **to the committee and shall compensate committee members for the performance of com-**
32 **mittee work. A board member may not vote or participate in any deliberations of the com-**
33 **mittee concerning whether to give recommendation for early medical release under sections**
34 **1 to 7 of this 2022 Act.**

35 **“(4) The committee shall elect one of its members to serve as chairperson. A majority**

1 of members of the committee constitutes a quorum for the transaction of business.

2 “(5) The committee shall form at least two panels of at least five members each. At least
3 one panel shall receive and consider regular applications for early medical release and at
4 least one panel shall receive and consider expedited applications for early medical release.

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

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

10 “(8)(a) The committee shall adopt rules necessary to carry out the duties of the com-
11 mittee, including but not limited to:

12 “(A) Rules further defining the criteria for early medical release described in section 3
13 (6) of this 2022 Act.

14 “(B) Rules further defining eligibility for reapplying for early medical release after denial
15 at any stage, including what constitutes a substantial change in a medical condition or other
16 circumstances.

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

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

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

23 “(9) Members of the committee have the same privileges and immunities from civil and
24 criminal proceedings arising by reason of official committee actions as prosecuting attorneys
25 and judicial officers of the state.

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

31 “(2)(a) After receipt of an application, a panel of the committee shall determine whether
32 the application is complete.

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

37 “(c) If an application is incomplete, the panel shall promptly notify the applicant con-
38 cerning what additional information is needed to review the application, including necessary
39 medical records, and allow the applicant an opportunity to provide the additional informa-
40 tion.

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

45 “(e) Upon acceptance of an application to be considered by the committee, or upon re-

1 ceipt of a direct referral from the Department of Corrections, the committee shall assign a
2 release navigator to assist the applicant or referred adult in custody with reentry planning
3 and ensuring continuity of care in the community. The release navigator shall assist the
4 applicant or referred adult in custody with planning for obtaining housing and medical care
5 in the community.

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

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

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

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

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

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

36 “(d) Each month, the committee shall review no more than five applications to decide
37 whether to recommend early medical release. Direct referrals from the Department of Cor-
38 rections do not count toward the five-application limit. The committee shall give priority to
39 applications based on the applicant’s having a terminal illness with a prognosis of 12 months
40 or less to live, but shall otherwise consider applications in the order in which the panel ac-
41 cepted the applications as complete under subsection (2) of this section.

42 “(e) The limit on applications considered by the committee described in paragraph (d) of
43 this subsection may be exceeded during any month that a state of emergency has been de-
44 clared under ORS 401.165 or is ongoing, or a public health emergency has been declared un-
45 der ORS 433.441 or is ongoing, and the committee determines that the emergency presents

1 a serious risk to the health or safety of adults in custody at the specific correctional facility
2 in which the applicant is housed, but the committee shall continue to prioritize the consid-
3 eration of applications based on the applicant's having a terminal illness with a prognosis of
4 12 months or less to live.

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

6 “(a) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall
7 provide for the representation of financially eligible applicants and referred adults in custody
8 at all subsequent proceedings, including hearings before the board under section 4 of this
9 2022 Act and before the court on motions for resentencing under section 5 of this 2022 Act.
10 If the commission determines that the applicant or referred adult in custody is not finan-
11 cially eligible for appointed counsel at state expense, the applicant or referred adult in cus-
12 tody may request review of the determination as provided in ORS 144.337.

13 “(b) The release navigator assigned by the committee may coordinate with the depart-
14 ment or any other outside agency or organization in order to continue to assist the applicant
15 or referred adult in custody with reentry planning and ensuring continuity of care in the
16 community.

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

19 “(6) An applicant or referred adult in custody may be recommended for early medical
20 release if the applicant or referred adult in custody meets one or more of the following cri-
21 teria, as further defined in the rules of the committee:

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

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

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

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

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

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

37 “(a) There has been a substantial change in the medical condition or other circum-
38 stances, as defined in rules adopted by the committee, since the previous application; or

39 “(b) New information has been obtained regarding the medical condition or other cir-
40 cumstance since the previous application.

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

44 “SECTION 4. (1) Except as otherwise provided in this section, the State Board of Parole
45 and Post-Prison Supervision shall review recommendations for early medical release of ap-

1 applicants and referred adults in custody from the Medical Release Advisory Committee under
2 section 3 of this 2022 Act to determine whether to accept the recommendation for early
3 medical release as provided in this section.

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

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

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

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

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

25 “(a) A certified copy of any committee recommendation provided to the board under
26 section 3 of this 2022 Act;

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

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

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

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

39 “SECTION 5. (1) If an applicant under section 3 of this 2022 Act or adult in custody re-
40 ferred under section 6 of this 2022 Act receives notification from the Board of Parole and
41 Post-Prison Supervision under section 4 (3) of this 2022 Act that the board has determined
42 that the applicant or referred adult in custody is serving one or more sentences that require
43 the sentencing court to authorize early medical release, the applicant or referred adult in
44 custody, or the attorney for the applicant or referred adult in custody, may file a motion for
45 early medical release with the sentencing court. Copies of the documents described in section

1 4 (3) of this 2022 Act must be filed with the motion. The applicant or referred adult in cus-
2 tody, or the attorney for the applicant or referred adult in custody, shall serve a copy of the
3 motion on the district attorney of the county in which the sentencing court is located. The
4 district attorney shall make reasonable efforts to notify the victim or victims, if any, of the
5 filing of the motion and the hearing described in subsection (2) of this section.

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

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

13 “(c) The court may grant the motion and enter a supplemental judgment authorizing
14 early medical release without a hearing upon stipulation of the parties and agreement of the
15 victim.

16 “(d) If the victim is not present at the hearing, the court shall inquire of the district
17 attorney whether the victim was notified of the hearing and whether the victim requested
18 to be heard during the hearing. If the victim so requests, the victim shall have the oppor-
19 tunity to be heard during the hearing either by submitting a written statement or by ad-
20 dressing the court. Nothing in this section is to be construed as limiting any rights a victim
21 has under the Oregon Constitution or any other law.

22 “(3)(a) The court shall grant the motion and authorize early medical release from custody
23 unless the court finds, by clear and convincing evidence, that the applicant or referred adult
24 in custody poses a danger to the safety of another person or the public and the danger out-
25 weighs any compassionate reasons for the release.

26 “(b) If the court grants the motion, the court shall enter a supplemental judgment au-
27 thORIZING early medical release from custody for the sentences previously imposed by the
28 court.

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

32 “(a) There has been a substantial change in the medical condition or other circum-
33 stances, as defined in rules adopted by the committee, since the previous application; or

34 “(b) New information has been obtained regarding the medical condition or other cir-
35 cumstance since the previous application.

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

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

41 “SECTION 6. (1) The Department of Corrections shall ensure that the process for ob-
42 taining release under sections 1 to 7 of this 2022 Act is explained on the website of the de-
43 partment and in any handbook provided to adults in custody.

44 “(2) The department shall ensure that application forms for obtaining release under
45 sections 1 to 7 of this 2022 Act are made available for all adults in custody in department

1 facilities.

2 “(3) The department, in its discretion, may directly refer an adult in custody to the
3 Medical Release Advisory Committee for early medical release under sections 1 to 7 of this
4 2022 Act. The department shall directly refer to the committee any adult in custody with a
5 terminal illness with a prognosis of 12 months or less to live, provided that the adult in
6 custody consents to the referral.

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

13 “SECTION 7. (1) The Medical Release Advisory Committee, in collaboration with the
14 State Board of Parole and Post-Prison Supervision and, as applicable, the Judicial Depart-
15 ment, shall track the following data on early medical release under sections 1 to 7 of this
16 2022 Act:

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

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

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

24 “(d) The number of applicants and referred adults in custody recommended by the com-
25 mittee for release that were released by the board, not released by the board, resentenced
26 by the court and not resentenced by the court, and the reasons for each disposition.

27 “(e) The number of applicants who reapplied for release.

28 “(f) Demographic data for each of the applicants and direct referrals, organized by dis-
29 position.

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

34 “SECTION 8. ORS 144.750 is amended to read:

35 “144.750. (1) To accord crime victims due dignity and respect, a victim of a crime that is the
36 subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision has the
37 following rights:

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

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

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

43 “(2)(a) The board must make a reasonable effort to notify the district attorney of the county in
44 which the offender was convicted and the victim, if the victim requests to be notified and furnishes
45 the board a current address, of any hearing conducted by the board. The board shall send written

1 notice to the current addresses of the district attorney and the victim no later than 30 days before
2 the hearing.

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

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

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

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

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

23 “(c) The victim, personally or by counsel, shall be given access to information that the super-
24 visory authority will rely upon in the contested hearing. The victim shall be given adequate time
25 to rebut the information. The victim may request that the supervisory authority, in the discretion
26 of the supervisory authority, obtain and consider additional records, evaluations or other documents.

27 “(5) For purposes of this section, the victim may appear personally through the victim’s next of
28 kin or a representative selected by the victim.

29 “**SECTION 9.** ORS 144.122 is amended to read:

30 “144.122. (1) After the initial parole release date has been set under ORS 144.120 and after a
31 minimum period of time established by the State Board of Parole and Post-Prison Supervision under
32 subsection (2)(a) of this section, [*the prisoner*] **an adult in custody** may request that the parole re-
33 lease date be reset to an earlier date. The board may grant the request upon a determination by the
34 board that continued incarceration is cruel and inhumane and that resetting the release date to an
35 earlier date is not incompatible with the best interests of the [*prisoner*] **adult in custody** and soci-
36 ety and that the [*prisoner*] **adult in custody**:

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

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

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

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

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

45 “(b) Detailing the criteria set forth under subsection (1) of this section for the resetting of a

1 parole release date; and

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

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

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

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

12 “(6) **As used in this section, ‘adult in custody’ has the meaning given that term in section**
13 **1 of this 2022 Act.**

14 “**SECTION 10.** ORS 144.126 is amended to read:

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

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

22 “(b) Elderly and permanently incapacitated in such a manner that the [prisoner] **adult in cus-**
23 **tody** is unable to move from place to place without the assistance of another person.

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

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

29 “(4) 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 “(5) **As used in this section, ‘adult in custody’ has the meaning given that term in section**
33 **1 of this 2022 Act.**

34 “**SECTION 11.** ORS 135.418 is amended to read:

35 “135.418. (1) A prosecuting attorney may not condition a defendant’s plea offer on:

36 “(a) The defendant’s waiver of:

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

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

40 “(C) Eligibility for transitional leave under ORS 421.168.

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

42 “(E) Eligibility for any reduction in sentence, leave or release from custody or any other pro-
43 gram for which the executing or releasing authority may consider the defendant, including programs
44 for which the executing or releasing authority determines eligibility and programs for which con-
45 sideration must be ordered by the sentencing court under ORS 137.750.

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

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

4 “(b) A requirement that the defendant or the defense attorney stipulate to the
5 unconstitutionality of an existing law.

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

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

9 “(3) As used in this section, ‘executing or releasing authority’ has the meaning given that term
10 in ORS 137.750.

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

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

14 “(2)(a) An adult in custody who is serving a sentence required by ORS 137.635, 137.690, 137.700,
15 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011 is [not] eligible to apply for early medical re-
16 lease under sections 1 to 7 of this 2022 Act, **but the State Board of Parole and Post-Prison**
17 **Supervision may not order release under section 4 of this 2022 Act, and the sentencing court**
18 **may not authorize release under section 5 of this 2022 Act,** on that sentence.

19 “(b) A person serving a sentence of life imprisonment without the possibility of release or parole
20 under ORS 138.052 or 163.150 is not eligible to apply for early medical release under sections 1 to
21 7 of this 2022 Act.

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

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

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

31 “(2)(a) After receipt of an application, a panel of the committee shall determine whether the
32 application is complete.

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

36 “(c) If an application is incomplete, the panel shall promptly notify the applicant concerning
37 what additional information is needed to review the application, including necessary medical re-
38 cords, and allow the applicant an opportunity to provide the additional information.

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

42 “(e) Upon acceptance of an application to be considered by the committee, or upon receipt of
43 a direct referral from the Department of Corrections, the committee shall assign a release navigator
44 to assist the applicant or referred adult in custody with reentry planning and ensuring continuity
45 of care in the community. The release navigator shall assist the applicant or referred adult in cus-

1 tody with planning for obtaining housing and medical care in the community.

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

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

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

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

22 “(b) A committee member may consult with an outside expert or specialist concerning an ap-
23 plication or direct referral under consideration before the panel. Upon request by the committee, the
24 State Board of Parole and Post-Prison Supervision shall authorize funds for consultation with an
25 expert or specialist that is necessary for the committee to carry out the duties described in this
26 section, contingent upon appropriation by the Legislative Assembly to the board of funds for such
27 consultations.

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

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

36 “[*e*] The limit on applications considered by the committee described in paragraph (d) of this
37 subsection may be exceeded during any month that a state of emergency has been declared under ORS
38 401.165 or is ongoing, or a public health emergency has been declared under ORS 433.441 or is ongo-
39 ing, and the committee determines that the emergency presents a serious risk to the health or safety of
40 adults in custody at the specific correctional facility in which the applicant is housed, but the committee
41 shall continue to prioritize the consideration of applications based on the applicant’s having a terminal
42 illness with a prognosis of 12 months or less to live.]

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

44 “[*a*] (A) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall
45 provide for the representation of financially eligible applicants and referred adults in custody at all

1 subsequent proceedings, including hearings before the board under section 4 of this 2022 Act and
2 before the court on motions for resentencing under section 5 of this 2022 Act. If the commission
3 determines that the applicant or referred adult in custody is not financially eligible for appointed
4 counsel at state expense, the applicant or referred adult in custody may request review of the de-
5 termination as provided in ORS 144.337.

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

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

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

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

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

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

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

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

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

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

35 **“(A) Poses an immediate risk to the applicant’s or referred adult in custody’s health or
36 life; or**

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

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

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

42 “(b) New information has been obtained regarding the medical condition or other circumstance
43 since the previous application.

44 “(8) An early medical release recommendation decision, or a determination under subsection (2)
45 of this section that an applicant or referred adult in custody is not eligible for early medical release,

1 is not subject to judicial review under ORS 144.335 or 183.480 to 183.497.

2 **“SECTION 14.** ORS 144.005 is amended to read:

3 “144.005. (1) A State Board of Parole and Post-Prison Supervision of at least three but no more
4 than [*five*] **six** members hereby is created. At least one member must be a woman.

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

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

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

11 “(3) Each member shall devote the member’s entire time to the performance of the duties im-
12 posed on the board and shall not engage in any partisan political activity.

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

16 “(5) The Director of the Department of Corrections shall serve as an ex officio nonvoting mem-
17 ber of the board and shall not be considered a member for the purposes of subsections (1) to (4) of
18 this section.

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

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

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