

Requested by Senator DEMBROW

**PROPOSED AMENDMENTS TO
SENATE BILL 1568**

1 On page 1 of the printed bill, delete lines 5 through 20 and delete pages
2 2 through 12 and insert:

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

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

10 **“(b) A person serving a sentence of life imprisonment without the**
11 **possibility of release or parole under ORS 138.052 or 163.150 is not eli-**
12 **gible to apply for early medical release under sections 1 to 7 of this**
13 **2022 Act.**

14 **“(3) As used in sections 1 to 7 of this 2022 Act, ‘adult in custody’**
15 **means a person who is committed to the legal and physical custody**
16 **of the Department of Corrections by a sentencing court under ORS**
17 **137.124 or 137.707.**

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

21 **“(2)(a) The Governor shall appoint at least five and up to 13 mem-**

1 **bers of the committee. Committee members are appointed to four-year**
2 **terms, but serve at the pleasure of the Governor. If the number of**
3 **committee members falls below five for any cause, the Governor shall**
4 **make an appointment to become immediately effective for the unex-**
5 **pired term. A person who has served as a committee member is eligi-**
6 **ble for reappointment.**

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

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

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

28 **“(5) The committee shall form at least two panels of at least five**
29 **members each. At least one panel shall receive and consider regular**
30 **applications for early medical release and at least one panel shall re-**

1 ceive and consider expedited applications for early medical release.

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

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

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

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

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

16 “(C) Rules establishing which applicants qualify for expedited ap-
17 plications for early medical release under sections 1 to 7 of this 2022
18 Act.

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

22 “(b) The committee shall annually review the rules adopted under
23 this subsection to ensure that the rules are based on current medical
24 understanding.

25 “(9) Members of the committee have the same privileges and im-
26 munities from civil and criminal proceedings arising by reason of of-
27 ficial committee actions as prosecuting attorneys and judicial officers
28 of the state.

29 **“SECTION 3. (1) An adult in custody who is eligible to apply for**
30 **early medical release from custody under section 1 of this 2022 Act**

1 may submit an application for early release to the Medical Release
2 Advisory Committee established under section 2 of this 2022 Act. The
3 committee shall also receive direct referrals of adults in custody from
4 the Department of Corrections under section 6 of this 2022 Act.

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

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

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

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

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

28 “(3)(a) Except as provided in paragraphs (b) and (c) of this sub-
29 section, the committee shall make a recommendation decision on a
30 regular application or direct referral within 45 calendar days, and a

1 recommendation decision on an expedited application or a direct re-
2 ferral concerning an adult in custody with a terminal illness with a
3 prognosis of 12 months or less to live, within 14 calendar days.

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

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

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

26 “(b) A committee member may consult with an outside expert or
27 specialist concerning an application or direct referral under consider-
28 ation before the panel. Upon request by the committee, the State
29 Board of Parole and Post-Prison Supervision shall authorize funds for
30 consultation with an expert or specialist that is necessary for the

1 committee to carry out the duties described in this section, contingent
2 upon appropriation by the Legislative Assembly to the board of funds
3 for such consultations.

4 “(c) The committee shall make a written recommendation decision,
5 including written findings, when recommending or declining to re-
6 commend release.

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

15 “(e) The limit on applications considered by the committee de-
16 scribed in paragraph (d) of this subsection may be exceeded during any
17 month that a state of emergency has been declared under ORS 401.165
18 or is ongoing, or a public health emergency has been declared under
19 ORS 433.441 or is ongoing, but the committee shall continue to prior-
20 itize the consideration of applications based on the applicant’s having
21 a terminal illness with a prognosis of 12 months or less to live.

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

24 “(a) Pursuant to ORS 151.216 and 151.219, the Public Defense Ser-
25 vices Commission shall provide for the representation of financially
26 eligible applicants and referred adults in custody at all subsequent
27 proceedings, including hearings before the board under section 4 of
28 this 2022 Act and before the court on motions for resentencing under
29 section 5 of this 2022 Act. If the commission determines that the ap-
30 plicant or referred adult in custody is not financially eligible for ap-

1 **pointed counsel at state expense, the applicant or referred adult in**
2 **custody may request review of the determination as provided in ORS**
3 **144.337.**

4 **“(b) The release navigator assigned by the committee may coordi-**
5 **nate with the department or any other outside agency or organization**
6 **in order to continue to assist the applicant or referred adult in custody**
7 **with reentry planning and ensuring continuity of care in the commu-**
8 **nity.**

9 **“(c) The committee shall submit the application or direct referral**
10 **and recommendation to the board for review as provided under section**
11 **4 of this 2022 Act.**

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

16 **“(a) The applicant or referred adult in custody has a terminal ill-**
17 **ness with a prognosis of 12 months or less to live;**

18 **“(b) The applicant or referred adult in custody is unable to inde-**
19 **pendently complete the activities of eating, toileting, grooming,**
20 **dressing, bathing or physical transfers or is unable to independently**
21 **move from place to place, even with the use of a mobility device; or**

22 **“(c) The applicant or referred adult in custody has an underlying**
23 **condition that places the applicant or referred adult in custody at in-**
24 **creased risk of serious medical complications or death if the applicant**
25 **or referred adult in custody is exposed to disease, and:**

26 **“(A) A state of emergency has been declared under ORS 401.165; or**

27 **“(B) A public health emergency has been declared under ORS**
28 **433.441.**

29 **“(7) If the committee declines to recommend an applicant for early**
30 **medical release, the applicant may reapply for release provided that**

1 the applicant can show that:

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

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

7 “(8) An early medical release recommendation decision, or a deter-
8 mination under subsection (2) of this section that an applicant or re-
9 ferred adult in custody is not eligible for early medical release, is not
10 subject to judicial review under ORS 144.335 or 183.480 to 183.497.

11 **“SECTION 4. (1) Except as otherwise provided in this section, the**
12 **State Board of Parole and Post-Prison Supervision shall review rec-**
13 **ommendations for early medical release of applicants and referred**
14 **adults in custody from the Medical Release Advisory Committee under**
15 **section 3 of this 2022 Act to determine whether to accept the recom-**
16 **mendation for early medical release as provided in this section.**

17 “(2)(a) The board shall hold a hearing within 45 days of receiving
18 the recommendation, unless the board finds good cause to postpone
19 the hearing, the board proceeds under paragraph (c) of this subsection
20 or no hearing is required, as described in subsection (3) of this section.

21 “(b) The board may require a psychological evaluation or risk as-
22 sessment of an applicant or referred adult in custody before proceeding
23 on a recommendation from the advisory committee.

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

27 “(d) The board shall accept the committee recommendation, ad-
28 vance the release date and order the release of the applicant or re-
29 ferred adult in custody unless the board finds, by clear and convincing
30 evidence, that the applicant or referred adult in custody poses a dan-

1 ger to the safety of another person or the public and the danger out-
2 weighs any compassionate reasons for the release.

3 “(3) If the board determines that an applicant or referred adult in
4 custody is serving one or more sentences that require the sentencing
5 court to authorize early medical release, the board shall first conduct
6 the hearing described in subsection (2) of this section for any sen-
7 tences that the board determines do not require the sentencing court
8 to authorize early medical release. After completing the board hear-
9 ing, or if no board hearing is required, the board shall notify the ap-
10 plicant or referred adult in custody concerning the need to appear
11 before the sentencing court, and shall provide the applicant or referred
12 adult in custody with:

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

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

18 “(c) A statement identifying the sentences that the board has de-
19 termined require the sentencing court to authorize early medical re-
20 lease.

21 “(4) If a victim has requested notification of the release of the ap-
22 plicant or referred adult in custody, the board shall notify the victim
23 immediately upon receiving a recommendation under this section. If
24 the victim so requests, the victim shall have the opportunity to be
25 heard during the hearing either by submitting a written statement or
26 by addressing the board. Nothing in this section is to be construed as
27 limiting any rights a victim has under the Oregon Constitution or any
28 other law.

29 “(5) A decision by the board to accept or not accept a recommen-
30 dation under this section is not subject to judicial review under ORS

1 144.335 or 183.480 to 183.497.

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

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

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

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

26 **“(d) If the victim is not present at the hearing, the court shall in-**
27 **quire of the district attorney whether the victim was notified of the**
28 **hearing and whether the victim requested to be heard during the**
29 **hearing. If the victim so requests, the victim shall have the opportu-**
30 **nity to be heard during the hearing either by submitting a written**

1 statement or by addressing the court. Nothing in this section is to
2 be construed as limiting any rights a victim has under the Oregon
3 Constitution or any other law.

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

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

12 “(4) An applicant or referred adult in custody whose motion for re-
13 sentencing is denied under this section may apply or reapply for early
14 medical release provided that the applicant or referred adult in cus-
15 tody can show that:

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

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

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

23 “(b) Notwithstanding ORS 138.035 and 138.045, a supplemental judg-
24 ment entered under this section is not appealable and does not grant
25 or extend any right to appellate or collateral review of any decision
26 or judgment previously entered in the case.

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

1 “(2) The department shall ensure that application forms for ob-
2 taining release under sections 1 to 7 of this 2022 Act are made available
3 for all adults in custody in department facilities.

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

9 “(4) The department, after receiving an order for or a supplemental
10 judgment authorizing early medical release under section 4 or 5 of this
11 2022 Act, shall assist the applicant or referred adult in custody with
12 reentry into the community and shall process the applicant’s or re-
13 ferred adult in custody’s release within a reasonable amount of time.

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

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

21 “(b) The number of adults in custody directly referred to the com-
22 mittee by the Department of Corrections under section 6 of this 2022
23 Act.

24 “(c) The number of applications and direct referrals that resulted
25 in a recommendation by the committee for release, the number that
26 did not result in a recommendation for release and the reasons for
27 each decision.

28 “(d) The number of applicants and referred adults in custody re-
29 commended by the committee for release that were released by the
30 board, not released by the board, resentenced by the court and not

1 **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 refer-**
4 **als, organized by disposition.**

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

10 **“SECTION 8.** ORS 144.750 is amended to read:

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

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

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

19 **“(c) The right to request the district attorney of the county in which the**
20 **offender was convicted, in the discretion of the district attorney, to partic-**
21 **ipate in the proceeding.**

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

28 **“(b) The victim, personally or by counsel, and the district attorney of the**
29 **county in which the offender was convicted have the right to appear at a**
30 **hearing conducted by the board and may submit written and oral statements**

1 adequately and reasonably expressing any views concerning the crime and
2 the offender.

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

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

15 “(4)(a) A supervisory authority must make a reasonable effort to notify
16 the victim, if the victim requests to be notified and furnishes the supervisory
17 authority a current address, of any contested hearing conducted by the su-
18 pervisory authority. The supervisory authority shall send written notice to
19 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
21 contested hearing conducted by the supervisory authority and may submit
22 written and oral statements adequately and reasonably expressing any views
23 concerning the crime and the offender.

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

30 “(5) For purposes of this section, the victim may appear personally

1 through the victim’s next of kin or a representative selected by the victim.

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

3 “144.122. (1) After the initial parole release date has been set under ORS
4 144.120 and after a minimum period of time established by the State Board
5 of Parole and Post-Prison Supervision under subsection (2)(a) of this section,
6 [*the prisoner*] **an adult in custody** may request that the parole release date
7 be reset to an earlier date. The board may grant the request upon a deter-
8 mination by the board that continued incarceration is cruel and inhumane
9 and that resetting the release date to an earlier date is not incompatible with
10 the best interests of the [*prisoner*] **adult in custody** and society and that the
11 [*prisoner*] **adult in custody**:

12 “(a) Has demonstrated an extended course of conduct indicating out-
13 standing reformation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 “135.418. (1) A prosecuting attorney may not condition a defendant’s plea
9 offer on:

10 “(a) The defendant’s waiver of:

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

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

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

16 “(D) Eligibility for a reduction in the term of incarceration under ORS
17 421.120 or 421.121.

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

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

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

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

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

30 “(b) A prohibited provision described in subsection (1) of this section in

1 a plea agreement is contrary to public policy and is void and unenforceable.

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

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

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

8 “(2)(a) An adult in custody who is serving a sentence required by ORS
9 137.635, 137.690, 137.700, 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011
10 is [not] eligible to apply for early medical release under sections 1 to 7 of
11 this 2022 Act, **but the State Board of Parole and Post-Prison Super-**
12 **vision may not order release under section 4 of this 2022 Act, and the**
13 **sentencing court may not authorize release under section 5 of this 2022**
14 **Act,** on that sentence.

15 “(b) A person serving a sentence of life imprisonment without the possi-
16 bility of release or parole under ORS 138.052 or 163.150 is not eligible to
17 apply for early medical release under sections 1 to 7 of this 2022 Act.

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

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

22 **“Sec. 3.** (1) An adult in custody who is eligible to apply for early medical
23 release from custody under section 1 of this 2022 Act may submit an appli-
24 cation for early release to the Medical Release Advisory Committee estab-
25 lished under section 2 of this 2022 Act. The committee shall also receive
26 direct referrals of adults in custody from the Department of Corrections un-
27 der section 6 of this 2022 Act.

28 “(2)(a) After receipt of an application, a panel of the committee shall de-
29 termine whether the application is complete.

30 “(b) If an application is complete, the panel shall notify the applicant that

1 the application has been accepted and shall forward the application to the
2 full committee for consideration. The notice to the applicant must include
3 the date on which the application was determined to be complete.

4 “(c) If an application is incomplete, the panel shall promptly notify the
5 applicant concerning what additional information is needed to review the
6 application, including necessary medical records, and allow the applicant an
7 opportunity to provide the additional information.

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

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

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

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

28 “(c) Upon the request of an applicant or referred adult in custody, the
29 time requirements described in paragraph (a) of this subsection are tolled
30 until the applicant or referred adult in custody subsequently requests that

1 the panel proceed with considering the application or direct referral.

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

14 “(b) A committee member may consult with an outside expert or specialist
15 concerning an application or direct referral under consideration before the
16 panel. Upon request by the committee, the State Board of Parole and Post-
17 Prison Supervision shall authorize funds for consultation with an expert or
18 specialist that is necessary for the committee to carry out the duties de-
19 scribed in this section, contingent upon appropriation by the Legislative
20 Assembly to the board of funds for such consultations.

21 “(c) The committee shall make a written recommendation decision, in-
22 cluding written findings, when recommending or declining to recommend re-
23 lease.

24 “[*(d) Each month, the committee shall review no more than five applications*
25 *to decide whether to recommend early medical release. Direct referrals from the*
26 *Department of Corrections do not count toward the five-application limit. The*
27 *committee shall give priority to applications based on the applicant’s having*
28 *a terminal illness with a prognosis of 12 months or less to live, but shall oth-*
29 *erwise consider applications in the order in which the panel accepted the ap-*
30 *plications as complete under subsection (2) of this section.*]

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

8 “(5)(a) If committee recommends release under subsection (4) of this sec-
9 tion:

10 “[(a)] (A) Pursuant to ORS 151.216 and 151.219, the Public Defense Ser-
11 vices Commission shall provide for the representation of financially eligible
12 applicants and referred adults in custody at all subsequent proceedings, in-
13 cluding hearings before the board under section 4 of this 2022 Act and before
14 the court on motions for resentencing under section 5 of this 2022 Act. If the
15 commission determines that the applicant or referred adult in custody is not
16 financially eligible for appointed counsel at state expense, the applicant or
17 referred adult in custody may request review of the determination as pro-
18 vided in ORS 144.337.

19 “[(b)] (B) The release navigator assigned by the committee may coordi-
20 nate with the department or any other outside agency or organization in
21 order to continue to assist the applicant or referred adult in custody with
22 reentry planning and ensuring continuity of care in the community.

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

26 “(b) **Notwithstanding paragraph (a) of this subsection, if the com-**
27 **mittee recommends release but the applicant or referred adult in cus-**
28 **tody is solely serving a sentence required by ORS 137.635, 137.690,**
29 **137.700, 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011, the committee**
30 **shall provide the applicant or referred adult in custody with a certified**

1 **copy of the release recommendation but shall not submit the applica-**
2 **tion or direct referral and recommendation to the board for review.**

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

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

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

13 “(c) The applicant or referred adult in custody has an underlying condi-
14 tion that places the applicant or referred adult in custody at increased risk
15 of serious medical complications or death if the applicant or referred adult
16 in custody is exposed to disease, and:

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

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

19 **or**

20 **“(d) The applicant or referred adult in custody has a debilitating**
21 **or progressively debilitating medical condition, including but not lim-**
22 **ited to an injury, illness or disease that:**

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

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

27 “(7) If the committee declines to recommend an applicant for early med-
28 ical release, the applicant may reapply for release provided that the appli-
29 cant can show that:

30 “(a) There has been a substantial change in the medical condition or

1 other circumstances, as defined in rules adopted by the committee, since the
2 previous application; or

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

5 “(8) An early medical release recommendation decision, or a determi-
6 nation under subsection (2) of this section that an applicant or referred adult
7 in custody is not eligible for early medical release, is not subject to judicial
8 review under ORS 144.335 or 183.480 to 183.497.

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

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

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

16
