



Oregon

Board of Parole and Post-Prison Supervision

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February 7, 2022

Dear Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee,

The Board of Parole recognizes that the early medical release process should be improved, and we have been in conversation with the Department of Corrections since 2019 to work on improving the process. We have also engaged with Senator Dembrow and Representative Reynold's workgroup for this bill and have raised some operational concerns with the bill as it is currently written. We feel that we should highlight those concerns in the hopes that the bill can be improved and to highlight possible future implementation issues.

1. Recruitment of Committee Members

The bill, in Section 2, provides that the Governor will appoint at least 7 and up to 13 medical professionals to serve on the Early Medical Release Committee. During the pandemic, most medical professionals have been heavily burdened and stretched to their limits. Anecdotally, we have heard that it is difficult to recruit medical professionals to serve on volunteer or semi-volunteer boards, commissions, and committees. We hope medical professionals will step up and volunteer for the Early Medical Release Committee, but we have some concerns about finding up to 13 medical professional who will do so and also strive to meet the criteria, in (2)(b), of having the committee reflect the demographics of the Department of Corrections adult-in-custody population.

2. Uncertainty of Workload Due to Shifting Criteria

The bill sets a 5-application limit to the Early Medical Release Committee per month, but that limit is subject to exceptions. Section 3, 4(e) of the bill provides that the 5-application cap may be exceeded during a Governor's declaration of emergency. It does not specify what type of emergency needs to be declared, so floods or other natural disasters, for example, could trigger the change in criteria.

The criteria for eligible medical conditions expand during states of emergency and will not be limited to only those who are close to the end of their life or cannot provide for their basic needs. During a state of emergency, the criteria will include any AIC at risk of serious medical complications from disease. Section 4, (6)(e). The Board of Parole has asked the Criminal Justice Commission to estimate the number of applicants that would become eligible under a state of

emergency. The Criminal Justice Commission is hesitant to do so given the difficulty in predicting the population that will fit this criteria. The Board is concerned that without a meaningful way to estimate how many people will qualify under a state of emergency, we will be backlogged with applications, making it difficult to focus on those with the most severe medical needs, and will be pressured to make mass release decisions without the ability to conduct meaningful case-by-case analysis of each individual's risk to reoffend. The Board is a small agency. Our expertise and training do not lend itself to making mass release decisions. We function best when we can analyze and assess individual cases to make case-by-case determinations of risk.

Furthermore, Section 13 of the bill expands the criteria in 2025 to 1) eliminate the 5-application cap, 2) include release possibility for those who have debilitating or progressively debilitating medical condition, including but not limited to an injury, illness, disease, physiological or psychological condition or disorder, and 3) allow those serving Measure 11 sentences to apply for a certificate from the Early Medical Release Committee that they meet the medical criteria for release, but not actual release. The Criminal Justice Commission estimates that 340 people will qualify to apply. Many more who would not qualify medically may likely apply as well which will significantly increase the workload of the committee and the parole board. These changes will require an increase in funding in 2025.

3. Clear and Convincing Burden of Proof

Section 4, (2)(d) provides that if the Early Medical Release Committee recommends release, the AIC is presumed to be released. The burden is then on the Board to prove dangerousness to a clear and convincing standard to be able to deny release. Unlike a court where there are litigants who gather evidence and a trier of fact who weighs the evidence, the Board will be responsible for both gathering the evidence and weighing the evidence for these decisions. The Board is unsure how to ascertain if it has proven an issue to a clear and convincing degree to itself. Rather, the Board would be more comfortable with a substantial evidence standard of proof that applies to all our other decisions and is the typical standard of proof for agency decisions. Furthermore, a clear and convincing standard of proof will require the Board to hire investigators so that we can do our due diligence in examining the risk an individual may pose to the community. This will be an added cost for this bill.

An early medical release process that delegates release decisions to a committee of medical experts would be, to our knowledge, the first of its kind in the United States. On the one hand, this could be an exciting advancement in how the criminal justice system determines which individuals should be released for medical reasons. On the other hand, there is no blueprint to follow, no official guide on best practices to implement, or precise estimates of how effective such a program will be. If this bill, or a variation of this bill passes, we hope the concept is one that will be successful. Certainly, we will endeavor to use our expertise to build a program that can hopefully be a model for others to replicate.

The Board of Parole is a small agency with 26 FTE. This program will be a significant increase in our agency staffing and workload. We will need time to grow responsibly, significant investments to implement this concept, and patience in working out issues as they arise. When debating this bill, we ask that you consider our concerns. Also, we will need a measure of grace and forgiveness should we run

into operational issues. We thank Senator Dembrow and Representative Reynolds for their leadership on this bill and the workgroup participants for their expertise, advice, and patience as we worked on this concept over the last several months.

Sincerely,

A handwritten signature in black ink that reads "Michael Hsu". The signature is written in a cursive style with a large initial "M".

Michael Hsu
Chairperson

A handwritten signature in black ink that reads "Greta Lowry". The signature is written in a cursive style with a large initial "G".

Greta Lowry
Vice Chairwoman

A handwritten signature in black ink that reads "Dylan Arthur". The signature is written in a cursive style with a large initial "D".

Dylan Arthur
Executive Director