



Written Testimony of Mary Price
General Counsel of FAMM
In Support of S.B. 1568
Oregon Senate Committee on Judiciary and Ballot Measure 110 Implementation
February 8, 2022

I thank Chair Prozanski, Vice-Chair Thatcher, and members of the Committee for the opportunity to provide testimony today in support of SB 1568, a bill to improve Oregon’s mechanisms for early medical release of adults in custody. I write on behalf of FAMM, a national sentencing and corrections reform organization. We unite currently and formerly incarcerated people, their families and loved ones, and diverse people working for reform.

For more than two decades, FAMM has been a leading voice for measures that allow for the safe release of medically vulnerable and dying individuals from our nation’s prisons. Our system incarcerates people to deter crimes, punish those who commit them, protect the public, and rehabilitate those who will return home one day. FAMM believes that people should have a meaningful opportunity to be released when their continued incarceration no longer advances those purposes of punishment. At a minimum, we should consider people who are dying and those who are too debilitated to further offend, too compromised to benefit from rehabilitation, or too impaired to be aware they are being punished.

Since 2018, FAMM has conducted comprehensive research into state compassionate release programs.¹ We maintain a set of memos on our website that document every program in the 50 states and the District of Columbia.² For each jurisdiction we describe eligibility criteria, application requirements, documentation, and decision-making, as well as post-decision and post-release issues. We most recently updated these memoranda in December 2021.

We set out our findings in a report, “Everywhere and Nowhere: Compassionate Release in the States.”³ Our most disturbing finding was that while nearly every state has some form of compassionate release, it is too seldom used. To understand why that is so, we examined and reported on the policies and practices that pose barriers to release. We also explored those that

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

² FAMM, Compassionate Release: State Memos (Dec. 2021), <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos>.

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

exemplify best practices. Finally, we included a set of recommendations for states working to implement or update such programs.⁴

That research and analysis informs our support of S.B. 1568. The reforms it contains are sorely needed. Oregon's current Early Medical Release program has some good features, but also includes a number of barriers, such as narrow eligibility and missing guidance. This has led to poor outcomes. Only eight people were released from 2013 to 2020. In that same period, 11 people died awaiting assessment, decision, or release. Two people granted early parole waited over a year for release due to difficulties finding placements.⁵

Some features of S.B. 1568 will address the barriers that exist in current law that have likely contributed to these outcomes. Other features build on existing practices and/or benefit from the insights gained when the pandemic struck the prison system. We commend this bill to the committee because we believe it will make possible the more efficient and robust use of Early Medical Release in Oregon.

Improvements to Eligibility Criteria

In many states, narrow eligibility criteria limit the number of people who can apply for release. Poorly defined criteria frustrate program objectives because corrections and parole authorities are left to supply their own definitions of qualifying conditions. Without sufficient guidance, the people who assess incarcerated people for eligibility and those who make the final decision whether to release them cannot be confident they are identifying and/or releasing the right people at the right time. They may fail to act on deserving individuals. The problem is caused in part by the failure to involve medical professionals in the design and implementation of the programs.

Senate Bill 1568, if enacted, would put Oregon at the forefront of states that are working to identify and assess for early release medically vulnerable and dying people, by putting the assessment in the hands of medical professionals, who would be using criteria designed and refined by medical professionals.

Currently, people incarcerated in Oregon who are not statutorily ineligible or barred due to terms of the judgment can benefit from early release if they are (1) suffering from a severe medical condition or (2) elderly and permanently incapacitated, resulting in their inability to move from place to place without assistance from another person.⁶

Senate Bill 1568 would expand and target medical criteria to directly address terminal illness for people with a year or less to live, and open a path to release for individuals who are unable to complete activities of daily living or unable to move about independently without use of a mobility device. Additional grounds will be phased in, with additions provided in 2025 for

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

⁵ Letter from Michelle Dodson, Oregon Dep't of Corrections to Hawah Cyllah, FAMM (Jan. 14, 2021) (on file in FAMM Office of the General Counsel).

⁶ Or. Rev. Stat. §§ 144.122 (1) (c) and 144,126 (1) (b); Or. Admin. R. 255-040-0028 (1).

people with a currently or progressively debilitating medical condition that meet certain parameters.

Besides expanding statutory criteria, S.B. 1568 creates a Medical Release Advisory Committee (MRAC), made up of licensed medical professionals, and empowers it to refine medical eligibility criteria, make the rules for those who would qualify for expedited consideration, and assess which applicants meet the medical criteria. Because not everyone who qualifies for release deserves it, their referral to the courts or the Board of Parole would arrive with a rebuttable presumption of release, which can be overcome by a finding that the individual poses a danger to the safety of another person or the public.

In another groundbreaking provision, Oregon takes the lessons learned over the last two years and provides a way for the state to address pandemic medical vulnerability head-on, should doing so become necessary. The pandemic struck prisons especially hard. With S.B. 1568, in the event of another public health crisis, Oregon would provide an avenue to evaluate individuals with underlying conditions that make them vulnerable to serious medical complications or death to determine if they can be safely released.

The pandemic revealed that in nearly every state the medical release eligibility criteria were inadequate to the task of rescuing individuals who were at serious risk from COVID-19. Through June 2021, 2,715 incarcerated people died from the virus and 398,627 contracted the disease.⁷ Oregon was not spared; 4,839 adults in custody have tested positive and 44 individuals died.⁸

When COVID struck, no state in the nation had a medical release authority that could be used to release at-risk people from custody.⁹ Only two jurisdictions, the District of Columbia¹⁰ and Minnesota,¹¹ were able to act quickly enough to alter their compassionate release laws or rules to account for COVID.

This bill would make people eligible for early medical release if they have an underlying condition that increases their risk for serious medical complications or death should they be exposed to a contagious disease. This provision will allow Oregon to release individuals it

⁷ “A State by State Look at Coronavirus in Prisons,” The Marshall Project, Updated March 25, 2021, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (visited January 24, 2022).

⁸ Oregon Department of Corrections, COVID-19 Status at Oregon Corrections Facilities, <https://www.oregon.gov/doc/covid19/Pages/covid19-tracking.aspx> (visited January 24, 2022).

⁹ Several states, including Minnesota, adopted pandemic release mechanisms that were used to thin corrections populations. See Minnesota Dep’t of Corrections, Conditional Medical Release, Policy No. 203.200 at N (Dec. 15, 2020), http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=203.200.htm.

¹⁰ In March 2020, the D.C. Council passed emergency legislation that was enacted permanently in April 2021 that included a COVID-19 provision. D.C. Code § 24-403.04 (as added April 27, 2021, D.C. Law 23-274, § 1203 (b)).

¹¹ In 2020 and 2021, due to the COVID-19 pandemic, the Department of Corrections accepted applications for “COVID-19 Conditional Medical Release” for incarcerated people who were at a higher risk for “bad outcomes” if they were to contract the virus. That program ended on May 12, 2021. Minnesota Dep’t of Corrections, Internal Memo re: COVID Conditional Medical Release (May 12, 2021). Under the program, the Commissioner of Corrections, who makes all final medical release decisions, granted 156 individuals a COVID-19 Conditional Medical Release in 2020.

cannot protect when the next pandemic strikes and would put Oregon in the forefront of states who are amending their early release programs.

Senate Bill 1568 includes a straightforward review process by a committee of medical professionals.

FAMM found many jurisdictions had complex and multi-layered evaluation and decision-making procedures. Some required multiple, duplicative documentation requirements and others, like Ohio, had applicants go through multiple reviews with a dizzying number of hurdles and boxes to check.¹² Unsurprisingly, those jurisdictions release very few people.

Under S.B. 1568, the process would be streamlined and lean, while ensuring that important information is gathered and evaluated by the MRAC and provided to the Board of Parole and Post-Release Supervision Board or the court. Health experts, including those directly involved in patient care would make up the MRAC. This ensures that licensed medical professionals will assess eligibility from a medical needs and public health perspective. This approach lays out an objective and comprehensive review to ensure the individual meets the medical criteria established by the law.

This design is forward-looking and ensures Oregon makes the best use of its resources and talent. Medical professionals will make medical assessments and the ultimate decision-maker, either the Parole Board or court, are freed to concentrate their review on public safety concerns.

S.B. 1568 provides reasonable timeframes and deadlines.

FAMM found many states did not hold evaluators and decision-makers to any schedule when considering applications for compassionate release. Lacking timeframes means that delays are inevitable. This matters when the applicant is suffering or nearing death. The best states have steps that are both well explained and time-constrained. California, for example, includes clear timeframes.¹³

Since 2013, more people died in Oregon's prisons awaiting assessment or disposition than were granted medical release. Senate Bill 1568 includes commendably clear deadlines for steps in the process. The bill's timeframes are meant to move an application along without delay. For example, the MRAC is to make its decision within 45 days of receiving an application.

Furthermore, the bill provides for expedited consideration of certain cases, with decisions due on those in 14 days, and wisely leaves to the MRAC professionals the task of defining which cases should get such swift processing. It also provides that terminally ill people referred to the MRAC by the Department of Corrections will not count against the committee's monthly cap.

¹² Everywhere and Nowhere at 15.

¹³ *Id.* at 18; FAMM Compassionate Release: California, https://famm.org/wp-content/uploads/California_Final.pdf.

These provisions will put Oregon well ahead of many programs in the country and signal the state's commitment to promptly addressing and deciding requests made for the release of suffering and dying prisoners.

Other forward-thinking reforms

Senate Bill 1568 would provide a **release navigator** for each individual deemed eligible by the MRAC. The navigator would assist with reentry planning and ensure continuity of care in the community. Several people passed away in the last several years before a placement could be found for them, and others waited for months following a grant of release by the Board because a placement could not be found. Returning individuals who are seriously ill, elderly, or dying often need assistance with one or more supports such as housing, health care, public benefits, and securing adaptive technology. The release navigator can minimize delays and ensure that people who are medically vulnerable and terminally ill have the resources and support they need to return safely to the community.

The legislation follows another best practice: ensuring that **information about medical release is readily available** and advertised in and out of prison. It provides that application materials be posted on websites maintained by the Department. Oregon would ensure that those who need the program are able to easily learn about and apply for it.

Senate Bill 1568 would add a thorough **data gathering and reporting requirement**. One of the most difficult challenges scholars and advocates such as FAMM encounter is the lack of information about how and whether corrections systems use early release programs. Stakeholders and policy makers cannot hope to understand whether reforms work or are needed if they cannot access information about outcomes. The data reporting aspect of S.B. 1568 is commendable and will assist future lawmakers.

The bill would provide the **right to counsel** for individuals applying for early release. Very few states permit, much less provide, lawyers to assist applicants. Senate Bill 1568 would ensure that incarcerated people who are limited due to illness, a terminal condition, or other limiting conditions identified in the bill, would not have to face the Board or court alone.

Conclusion

Senate Bill 1568 is an important and commendable reform that would construct a thoughtful medical release program that the state sorely needs. We urge the committee to support S.B. 1568.