

Senate Bill 520

Sponsored by Senator DEMBROW; Senators PROZANSKI, SOLLMAN, Representatives DEXTER, REYNOLDS
(Pre-session filed.)

SUMMARY

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

Establishes Medical Release Advisory Committee within State Board of Parole and Post-Prison Supervision. Specifies qualifications of members of committee. Establishes procedures by which adults in custody may apply for early medical release from custody and standards by which committee recommends release. Establishes cap on number of applications per month committee may consider until January 1, 2026. Provides for appointment of attorney upon release recommendation.

Directs board to accept release recommendation of committee unless person poses danger to another person or public that outweighs compassionate reasons for release. Directs board to refer applicant to sentencing court for sentences requiring court authorization for early medical release.

Establishes procedures for sentencing court to consider motion authorizing early medical release and enter supplemental judgment.

Directs Department of Corrections to inform adults in custody concerning early medical release process and ensure application forms are available to all adults in custody. Authorizes department to directly refer adults in custody to committee for early medical release. Directs department to refer to committee certain adults in custody with terminal illness. Specifies release process when early medical release is ordered or authorized.

Directs committee to annually report data concerning early medical release to committees of Legislative Assembly related to judiciary.

Prohibits prosecuting attorney from conditioning plea offer on waiver of early medical release eligibility.

Increases maximum number of board members from five to six.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to early medical release from custody; creating new provisions; amending ORS 135.418,
3 144.005, 144.122, 144.126 and 144.750; and prescribing an effective date.

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

5 **SECTION 1. (1) Except as provided in subsection (2) of this section, an adult in custody**
6 **may apply for early medical release from custody under sections 1 to 7 of this 2023 Act.**

7 **(2)(a) An adult in custody who is serving a sentence required by ORS 137.635, 137.690,**
8 **137.700, 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011 is not eligible to apply for early**
9 **medical release under sections 1 to 7 of this 2023 Act on that sentence.**

10 **(b) A person serving a sentence of life imprisonment without the possibility of release**
11 **or parole under ORS 138.052 or 163.150 is not eligible to apply for early medical release under**
12 **sections 1 to 7 of this 2023 Act.**

13 **(3) As used in sections 1 to 7 of this 2023 Act, "adult in custody" means a person who is**
14 **committed to the legal and physical custody of the Department of Corrections by a sen-**
15 **tencing court under ORS 137.124 or 137.707.**

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

18 **(2)(a) The Governor shall appoint at least five and up to 13 members of the committee.**
19 **Committee members are appointed to four-year terms, but serve at the pleasure of the**

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

1 Governor. If the number of committee members falls below five for any cause, the Governor
2 shall make an appointment to become immediately effective for the unexpired term. A person
3 who has served as a committee member is eligible for reappointment.

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

13 (3) The State Board of Parole and Post-Prison Supervision shall provide staff support to
14 the committee and shall compensate committee members for the performance of committee
15 work. A board member may not vote or participate in any deliberations of the committee
16 concerning whether to give recommendation for early medical release under sections 1 to 7
17 of this 2023 Act.

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

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

23 (6) The board shall hire at least one release navigator to support the committee and as-
24 sist persons applying for early medical release as described in section 3 of this 2023 Act.

25 (7) The committee shall develop an application form for early medical release under
26 sections 1 to 7 of this 2023 Act that is simple and easy to understand. The form must allow
27 the applicant to request expedited review of the application.

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

30 (A) Rules further defining the criteria for early medical release described in section 3 (6)
31 of this 2023 Act.

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

35 (C) Rules establishing which applicants qualify for expedited applications for early med-
36 ical release under sections 1 to 7 of this 2023 Act.

37 (D) Rules adopted in consultation with the Oregon Health Authority and the Governor
38 concerning applicants who are described in section 3 (6)(c) of this 2023 Act.

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

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

44 **SECTION 3.** (1) An adult in custody who is eligible to apply for early medical release from
45 custody under section 1 of this 2023 Act may submit an application for early release to the

1 **Medical Release Advisory Committee established under section 2 of this 2023 Act. The com-**
2 **mittee shall also receive direct referrals of adults in custody from the Department of Cor-**
3 **rections under section 6 of this 2023 Act.**

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

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

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

14 **(d) If the panel determines that an applicant or a referred adult in custody is not eligible**
15 **for early medical release under section 1 of this 2023 Act, the panel shall notify the applicant**
16 **or referred adult in custody and cease any further review of the application or direct refer-**
17 **ral.**

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

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

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

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

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

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

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

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

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

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

24 (a) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall
25 provide for the representation of financially eligible applicants and referred adults in custody
26 at all subsequent proceedings, including hearings before the board under section 4 of this
27 2023 Act and before the court on motions for resentencing under section 5 of this 2023 Act.
28 If the commission determines that the applicant or referred adult in custody is not finan-
29 cially eligible for appointed counsel at state expense, the applicant or referred adult in cus-
30 tody may request review of the determination as provided in ORS 144.337.

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

35 (c) The committee shall submit the application or direct referral and recommendation to
36 the board for review as provided under section 4 of this 2023 Act.

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

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

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

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

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

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

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

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

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

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

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

17 **SECTION 4.** (1) Except as otherwise provided in this section, the State Board of Parole
18 and Post-Prison Supervision shall review recommendations for early medical release of ap-
19 plicants and referred adults in custody from the Medical Release Advisory Committee under
20 section 3 of this 2023 Act to determine whether to accept the recommendation for early
21 medical release as provided in this section.

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

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

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

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

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

43 (a) A certified copy of any committee recommendation provided to the board under sec-
44 tion 3 of this 2023 Act;

45 (b) A certified copy of any board decision accepting or declining to accept an early med-

1 ical release recommendation under subsection (2) of this section; and

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

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

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

12 **SECTION 5.** (1) If an applicant under section 3 of this 2023 Act or adult in custody re-
13 ferred under section 6 of this 2023 Act receives notification from the Board of Parole and
14 Post-Prison Supervision under section 4 (3) of this 2023 Act that the board has determined
15 that the applicant or referred adult in custody is serving one or more sentences that require
16 the sentencing court to authorize early medical release, the applicant or referred adult in
17 custody, or the attorney for the applicant or referred adult in custody, may file a motion for
18 early medical release with the sentencing court. Copies of the documents described in section
19 4 (3) of this 2023 Act must be filed with the motion. The applicant or referred adult in cus-
20 tody, or the attorney for the applicant or referred adult in custody, shall serve a copy of the
21 motion on the district attorney of the county in which the sentencing court is located. The
22 district attorney shall make reasonable efforts to notify the victim or victims, if any, of the
23 filing of the motion and the hearing described in subsection (2) of this section.

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

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

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

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

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

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

1 court.

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

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

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

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

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

14 **SECTION 6.** (1) The Department of Corrections shall ensure that the process for obtain-
15 ing release under sections 1 to 7 of this 2023 Act is explained on the website of the depart-
16 ment and in any handbook provided to adults in custody.

17 (2) The department shall ensure that application forms for obtaining release under
18 sections 1 to 7 of this 2023 Act are made available for all adults in custody in department
19 facilities.

20 (3) The department, in its discretion, may directly refer an adult in custody to the Med-
21 ical Release Advisory Committee for early medical release under sections 1 to 7 of this 2023
22 Act. The department shall directly refer to the committee any adult in custody with a ter-
23 minal illness with a prognosis of 12 months or less to live, provided that the adult in custody
24 consents to the referral.

25 (4) The department, after receiving an order for or a supplemental judgment authorizing
26 early medical release under section 4 or 5 of this 2023 Act, shall assist the applicant or re-
27 ferred adult in custody with reentry into the community, shall complete a release plan for
28 review by the State Board of Parole and Post-Prison Supervision under ORS 144.096 and, af-
29 ter the release plan is approved, shall process the release of the applicant or referred adult
30 in custody within a reasonable amount of time.

31 **SECTION 7.** (1) The Medical Release Advisory Committee, in collaboration with the State
32 Board of Parole and Post-Prison Supervision and, as applicable, the Judicial Department,
33 shall track the following data on early medical release under sections 1 to 7 of this 2023 Act:

34 (a) The number of applications each year for release under sections 1 to 7 of this 2023
35 Act.

36 (b) The number of adults in custody directly referred to the committee by the Depart-
37 ment of Corrections under section 6 of this 2023 Act.

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

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

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

45 (f) Demographic data for each of the applicants and direct referrals, organized by dispo-

1 **sition.**

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

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

7 144.750. (1) To accord crime victims due dignity and respect, a victim of a crime that is the
 8 subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision has the
 9 following rights:

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

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

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

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

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

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

29 (3) The board must make a reasonable effort to notify the victim, if the victim requests to be
 30 notified and furnishes the board with a current address, of any hearing or administrative decision
 31 making process resetting or advancing a release date pursuant to ORS 144.122 or 144.126 **or**
 32 **sections 1 to 7 of this 2023 Act.**

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

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

40 (c) The victim, personally or by counsel, shall be given access to information that the supervi-
 41 sory authority will rely upon in the contested hearing. The victim shall be given adequate time to
 42 rebut the information. The victim may request that the supervisory authority, in the discretion of
 43 the supervisory authority, obtain and consider additional records, evaluations or other documents.

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

SECTION 9. ORS 144.122 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(6) As used in this section, “adult in custody” has the meaning given that term in section 1 of this 2023 Act.

SECTION 10. ORS 144.126 is amended to read:

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

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

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

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

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

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

4 (5) **As used in this section, “adult in custody” has the meaning given that term in section**
 5 **1 of this 2023 Act.**

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

7 135.418. (1) A prosecuting attorney may not condition a defendant’s plea offer on:

8 (a) The defendant’s waiver of:

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

10 (B) The ability to receive the audio recording of grand jury proceedings as permitted under ORS
 11 132.270, if the indictment has been indorsed “a true bill.”

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

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

14 (E) Eligibility for any reduction in sentence, leave or release from custody or any other program
 15 for which the executing or releasing authority may consider the defendant, including programs for
 16 which the executing or releasing authority determines eligibility and programs for which consider-
 17 ation must be ordered by the sentencing court under ORS 137.750.

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

19 (G) **Eligibility for early medical release from custody under sections 1 to 7 of this 2023**
 20 **Act.**

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

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

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

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

28 **SECTION 12.** Section 1 of this 2023 Act is amended to read:

29 **Sec. 1.** (1) Except as provided in subsection (2) of this section, an adult in custody may apply
 30 for early medical release from custody under sections 1 to 7 of this 2023 Act.

31 (2)(a) An adult in custody who is serving a sentence required by ORS 137.635, 137.690, 137.700,
 32 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011 is [not] eligible to apply for early medical re-
 33 lease under sections 1 to 7 of this 2023 Act, **but the State Board of Parole and Post-Prison**
 34 **Supervision may not order release under section 4 of this 2023 Act, and the sentencing court**
 35 **may not authorize release under section 5 of this 2023 Act**, on that sentence.

36 (b) A person serving a sentence of life imprisonment without the possibility of release or parole
 37 under ORS 138.052 or 163.150 is not eligible to apply for early medical release under sections 1 to
 38 7 of this 2023 Act.

39 (3) As used in sections 1 to 7 of this 2023 Act, “adult in custody” means a person who is com-
 40 mitted to the legal and physical custody of the Department of Corrections by a sentencing court
 41 under ORS 137.124 or 137.707.

42 **SECTION 13.** Section 3 of this 2023 Act is amended to read:

43 **Sec. 3.** (1) An adult in custody who is eligible to apply for early medical release from custody
 44 under section 1 of this 2023 Act may submit an application for early release to the Medical Release
 45 Advisory Committee established under section 2 of this 2023 Act. The committee shall also receive

1 direct referrals of adults in custody from the Department of Corrections under section 6 of this 2023
2 Act.

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

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

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

11 (d) If the panel determines that an applicant or a referred adult in custody is not eligible for
12 early medical release under section 1 of this 2023 Act, the panel shall notify the applicant or re-
13 ferred adult in custody and cease any further review of the application or direct referral.

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

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

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

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

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

38 (b) A committee member may consult with an outside expert or specialist concerning an appli-
39 cation or direct referral under consideration before the panel. Upon request by the committee, the
40 State Board of Parole and Post-Prison Supervision shall authorize funds for consultation with an
41 expert or specialist that is necessary for the committee to carry out the duties described in this
42 section, contingent upon appropriation by the Legislative Assembly to the board of funds for such
43 consultations.

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

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

7 *[(e) The limit on applications considered by the committee described in paragraph (d) of this sub-*
 8 *section may be exceeded during any month that a state of emergency has been declared under ORS*
 9 *401.165 or is ongoing, or a public health emergency has been declared under ORS 433.441 or is ongo-*
 10 *ing, and the committee determines that the emergency presents a serious risk to the health or safety of*
 11 *adults in custody at the specific correctional facility in which the applicant is housed, but the committee*
 12 *shall continue to prioritize the consideration of applications based on the applicant's having a terminal*
 13 *illness with a prognosis of 12 months or less to live.]*

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

15 [(a)] (A) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall
 16 provide for the representation of financially eligible applicants and referred adults in custody at all
 17 subsequent proceedings, including hearings before the board under section 4 of this 2023 Act and
 18 before the court on motions for resentencing under section 5 of this 2023 Act. If the commission
 19 determines that the applicant or referred adult in custody is not financially eligible for appointed
 20 counsel at state expense, the applicant or referred adult in custody may request review of the de-
 21 termination as provided in ORS 144.337.

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

25 [(c)] (C) The committee shall submit the application or direct referral and recommendation to
 26 the board for review as provided under section 4 of this 2023 Act.

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

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

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

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

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

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

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

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

6 (A) **Poses an immediate risk to the health or life of the applicant or referred adult in**
 7 **custody; or**

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

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

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

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

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

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

19 144.005. (1) A State Board of Parole and Post-Prison Supervision of at least three but no more
 20 than [*five*] **six** members hereby is created. At least one member must be a woman.

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

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

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

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

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

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

35 **SECTION 15.** (1) **The amendments to section 1 of this 2023 Act by section 12 of this 2023**
 36 **Act become operative on January 1, 2026.**

37 (2) **The amendments to section 3 of this 2023 Act by section 13 of this 2023 Act become**
 38 **operative on January 1, 2026.**

39 **SECTION 16.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**
 40 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**