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### **M E M O R A N D U M**

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**TO:** Honorable Sen. Patterson, Chair

**FROM:** Aaron Knott, MCDA Policy Director

**SUBJECT:** Testimony in support of SB 520

**DATE:** 3/11/23

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#### **BACKGROUND**

Multiple studies have established that people are generally less likely to commit crimes as they age. This is also logically true for individuals who are profoundly unwell. For those who are in hospice care or unable to meet their basic needs without significant assistance, the odds that a person will commit an additional crime diminish even further.

Oregon has a significant geriatric population within our correctional system. This population has extensive medical needs which elevates their per-bed usage costs far beyond that of a typical adult in custody. Housing a person in a correctional facility at the end of their life is not only inhumane, especially for lesser offenses where the public safety risk is lower, but expensive. Their release, in addition to being merciful and cost effective, hazards very little in terms of a risk of recidivism or risk to public safety. The current system of compassionate release in Oregon is drastically underutilized. Indeed, even in Oregon's largest county it was difficult to locate a single example of the existing statutory language ever having resulted in a successful petition for compassionate release. Oregon's current rules are draconian, difficult to access and slow to process, with many petitioners simply dying in prison.

Senate Bill 520 offers a measured approach to allowing the release of individuals who are too sick to meet their needs when this can be done consistently with the interests of public safety. While this is an objective worth supporting and we urge the bill's passage, we also note a few shortcomings in the current language of the bill which would benefit from further refinement before the bill moves out of committee.

## **THE CURRENT RELEASE CRITERION ARE PRONE TO OVERAPPLICATION**

SB 520 lists three bases for compassionate release at Sec. 1(6):

- (1) The applicant... has a terminal illness with a prognosis of 12 months or less to live;*
- (2) The applicant... is unable to independently complete the activities of eating, toileting, grooming, dressing, bathing or physical transfers or is unable to independently move from place to place, even with the use of a mobility device; or*
- (3)(a) The applicant... has an underlying condition that places the applicant... at increased risk of serious medical complications or death if the applicant... is exposed to disease;*
  - (b) A state of emergency has been declared under ORS 401.165 or a public health emergency has been declared under ORS 433.441; and*
  - (c) The committee determines that the emergency presents a serious risk to the health or safety of the adults in custody at the specific correctional facility in which the applicant... is housed.*

As to (1), we are fully supportive and have no additional observations.

As to (2), we would prefer to see a requirement that the underlying condition be degenerative, progressive, or at the least not present at the time of sentencing. Under the current language, a person with a pre-existing spinal injury could be eligible for compassionate release at the very moment they are sentenced, which seems contrary to the purposes of the statute. While this is somewhat accounted for in the instruction to the Medical Release Advisory Committee in (4)(a) to consider the balance of the sentenced served by any petitioner, this is only one of several factors.

As to (3), it is impossible to ignore the specter of the COVID-19 outbreak, the only recent application of a state of emergency which would create an "exposure to disease" as required by the terms of this section of the bill. While the COVID pandemic has undoubtedly served to expose the fragility underpinning many of our social systems, and Oregon must do much better by our adults in custody during periods of disease or other disaster, the answer cannot simply be to release all adults in custody who can

credibly claim some possibility of prospective medical complications. The Center for Disease Control and Prevention lists over 20 factors that can put a person at elevated risk of medical complications from the COVID-19 virus, including obesity, current or prior smoking, substance use disorder, physical inactivity and mental health conditions, including depression.<sup>1</sup> While Oregon's custodial facilities certainly must do better in anticipating and responding to the possibility of a large scale pandemic in the future, the number of adults in custody who might theoretically be eligible for compassionate release because of the presence of coronavirus or a similar contagion has the potential to overrun the already extensive bureaucracy which is being created to implement SB 520, strain the victim notification requirements, and otherwise exceed the functional capacity of the Parole Board to execute the requirements of this legislation. This seems to be exacerbated by language in (6)(c) cited above which limits the calculation to the "specific correctional facility in which the applicant or referred adult in custody is housed," a requirement which seems to prevent the possibility of an adult in custody simply being transferred to a different facility, temporary or otherwise, where the risk of contagion might be more effectively contained.

## **SB 520 REMAINS WORTHY OF PASSAGE**

These caveats aside, the need to reform Oregon's system of compassionate release is manifest. The current system does not reflect the data driven realities of recidivism or public safety, is wastefully expensive and deeply unmerciful. The few remaining questions around SB 520 can be expeditiously resolved during the 2023 legislative session. We urge the passage of SB 520.

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#:~:text=Older%20adults%20are%20at%20highest,people%20ages%2018%2D29%20years.>