



**TO: Sen. Deb Patterson, Chair
Sen. Cedric Hayden, Vice Chair
Members of the Senate Health Care Committee**

**FR: Amanda Dalton
Oregon District Attorneys Association**

RE: SB 520 – OPPOSE w/ -1 Amendments

March 13, 2023

Thank you for the opportunity to provide testimony from the Oregon District Attorneys Association (ODAA) regarding SB 520 and the -1 Amendment. ODAA has participated in the workgroup over the past two years convened by Senator Dembrow and while we believe important changes have resulted from those conversations, there are still serious concerns regarding the bill's impact on victim and community safety, victim certainty in sentencing, and costs.

ODAA believes this bill does not adequately balance compassionate motivations for an offender's early release with victim and community safety. As you have heard, SB 520 creates a process where Adults In Custody (AICs) can be reviewed for early release from prison. Unlike other parole board release processes, there is no minimum sentence requirement that the AIC serve before review or release.

SB 520 creates a new entity housed at the Board of Parole but independent of the Board called the Medical Release Advisory Committee. Because the Committee's recommendation on early medical release must be followed by the Board and the Courts, absent certain circumstances, the Committee has significant authority over release decision. The new Medical Release Advisory Committee is made up of physicians, nurses, physician assistants and nurse practitioners. It does not have any public safety voices, nor those representing crime victims.

While there is significant movement in the -1 Amendment from previous versions, the criteria for consideration continues to be broad and is not merely limited to those AICs in the final 12 months of their life or in hospice care. It also includes AICs who are "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." See pg. 5, line 27-30.

After an AIC receives a recommendation from the Medical Release Advisory Committee for early release, the recommendation is sent to the Parole Board as a final check. While this safeguard is appreciated, the bill sets an almost impossible standard for the Parole Board to

disagree with the recommendation from the Medical Release Advisory Committee. The legal standard this bill would impose on the Parole Board to deny release when there are victim or community safety concerns are high and without comparison to other release decisions the Parole Board makes. The bill also allows the Parole Board to accept the Committee recommendation without a hearing which will further limit the ability for a crime victim to provide input. While Section 4(4) provides an opportunity for victim notification, it is unclear if the victim request a hearing that the Board is required to hold one.

Accordingly, SB 520 essentially mandates that the Board accept the Medical Release Advisory Committee's recommendation for release unless two conditions are met by the second highest legal standard of proof in our justice system (clear and convincing). The Board can only override the Medical Committee's recommendation for victim or public safety reasons when it can establish that (1) the AIC poses a danger to the safety of another person or the public AND (2) that the danger outweighs any compassionate reasons for release.

It is also important to note that in no other release decision is the Parole Board required to accept a recommendation from another body, while simultaneously having to meet a "clear and convincing evidence" burden of proof. The combination of these legal requirements will make it unnecessarily burdensome and almost impossible for the Board to deny a medical release when there are valid victim or public safety concerns. In addition, while SB 520 directs the release navigator to assist the AIC with planning for housing and medical care, it is not a requirement prior to release.

We appreciate that the bill does not allow for the release of Ballot Measure 11 offenders and that this reflects the violent nature of these crimes. However, the bill does allow BM 11 offenders to receive a RECOMMENDATION for early release. This will allow individuals convicted of serious violent and sexual crimes to apply for a "recommendation" from the medical committee beginning in 2026. The AIC can then use this recommendation to pursue early release from any other legal avenue such as a commutation order by the Governor. This provision, while not authorizing release of Measure 11 offenders, will help provide a pathway for that early release.

The bill will also require significant resources to implement. The bill establishes a Medical Committee comprised of five to thirteen members. The Board of Parole currently only has five fulltime members, and SB 520 requires that the Board provide staff for the newly created medical committee and compensate committee members for their work. Additionally, at least one "release navigator" is to be hired by the Board to support the committee and assist AICs applying for early release. Additional costs are expected as the AIC would return to the sentencing court to change their sentence so that they can be eligible for this early release, which will likely require court appointed defense counsel to those that qualify and court services. While the phase in (5 applicants a month through 2026) should help with these costs to a certain degree, after 2026 there is no constraint on the number of applicants or costs. In addition, the bill waives all limits of applications if there is a state of emergency or public health emergency.

ODAA acknowledges the compassionate motivations for this bill and appreciates that movement from proponents regarding victims' rights and other areas were acted upon by the workgroup. However, the bill's broad parameters still raise serious concerns about its impact on victim and community safety, victim certainty in sentencing, and costs.