Oregon
Tina Kotek, Governor

Board of Parole and Post-Prison Supervision
1321 Tandem Ave. NE
Salem, OR 97301
(503) 945-0900
http://egov.oregon.gov/BOPPPS

March 22, 2023

The Honorable Senator Floyd Prozanski, Chair
Senate Committee on Judiciary, Members

Testimony re: SB 1027

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

The Board of Parole (Board) has reviewed the proposed changes to the Oregon parole hearings process in SB 1027 and offers this testimony to identify some potential impacts a single hearings process would bring.

I. Requires the Board to release *before* rehabilitation actually occurs.

SB 1027 only requires that an Adult in Custody (AIC) demonstrate that they are likely to be rehabilitated within a reasonable period of time prior to being released to the community; it does not require an AIC to demonstrate *actual*, meaningful rehabilitation consistent with public safety. The ultimate outcome of this approach is that AICs who are not yet safe to be in the community will be released, within 60 days of their hearing, if the Board finds them likely to be rehabilitated within a reasonable period of time. As actual rehabilitation would no longer be a requirement for release, the necessary balance of risk and rehabilitation, and the exploration of the dynamic factors implicit in both, would fail to be addressed.

Additionally, SB 1027 removes the Board's authority to postpone a firm release date for those convicted of murder and aggravated murder once the release date is set. In practice, this means that the Board will no longer be able to rescind parole for AICs who engage in serious misconduct after a successful parole hearing, but prior to actual release.

II. Requires the Board to release without the benefit of a psychological evaluation.

SB 1027, by eliminating the Exit Interview under ORS 144.125, also eliminates the Board's clear authority to *order* psychological evaluations for use in parole release decisions, as well as the requirement that an AIC undergo a psychological evaluation prior to release. A psychological evaluation is the best piece of information that the Board has relative to an AIC's risk for future sexual or physical violence and is therefore an essential element in the analysis of risk and rehabilitation. Without these evaluations, which can be upwards of 40 pages long, the Board would be making critical decisions regarding the health and safety of our communities with incomplete information, which is incompatible with public safety.

Finally, because SB 1027 does not require an AIC to participate in a psychological evaluation prior to a hearing, an AIC can refuse to participate in an evaluation, and the Board would have no recourse but to proceed and potentially release an AIC who has made a threshold showing of being likely to be rehabilitated within a reasonable period of time based solely on historical information already contained in the record, and information gleaned from the AIC during the hearing. This would be a dramatic departure from current practice and hinder the Board's core task of analyzing current risk.

III. Concerns on how to operationalize the concept within the time frame as drafted.

Section 8 of the Bill requires that upon the effective date, anyone who has previously been found likely to be rehabilitated within a reasonable period of time, but who has not yet been deferred at an Exit Interview under ORS 144.125, is required to be released within 60 days if an Exit Interview is not accomplished. These additional hearings would create an undue burden on the Board, which is already stretched to its limit accommodating juvenile commutation hearings. The Board hearings schedule is created six months in advance, with psychological evaluations being ordered four months prior to a hearing, making additions to that schedule difficult, especially given the limited capacity of Department of Corrections institutions to adapt to last minute changes.

The frank reality of this provision is that a number of AICs convicted of murder and aggravated murder would have their prior prison term invalidated, and they would be released into the community prior to a finding by the Board that they do not have a present severe emotional disturbance such as to constitute a danger to the health or safety of the community.

SB 1027 requires the Board, upon a likely finding, to release an AIC within 60 days of the hearing date. This is an unrealistic timeline, given the work involved in safely transitioning someone to the community. The Board must rely on multiple community partners, including the Department of Corrections and Community Corrections, to investigate and approve housing, employment options, and programming opportunities. Additionally, this time frame does not account for those releasing on an Interstate Compact, or those who have special housing or intensive medical care requirements. Simply stated, release 60 days from the hearing date is not in the best interest of public safety, nor is it in the best interest of an AIC seeking a successful transition back into a community that is drastically different from the community they left.

IV. Changing landscape for victims

Finally, the consideration of victim's rights and the impacts that procedural changes bring is consistently in the forefront of the Board's mind. The Board routinely hears from victims that while the current hearings process can be arduous, they appreciate the bifurcation and the 'checks and balances' approach that it brings. Oregon is an opt-in state, and victims can choose to participate in all, none, or only certain hearings held before the Board. This participation can take many forms, including written and in person testimony.

The Board is in the unique position to regularly interact with survivors of sexual and physical assault, as well as the loved ones of those who have been taken through acts of tremendous violence. We are routinely told that they are in part able to heal from the trauma they have experienced by relying on the promises made by the criminal justice system, among the most important being the guarantee that their perpetrators will serve specific sentences. In the Board's experience, when we make release decisions, it often means a mother will have to relive the moment she heard that her son was killed; a daughter will have to revisit the moment she found the bodies of her dead parents; or a father will have to remember the moment he learned his daughter was raped and left for dead. The retroactive application of SB 1027 to include those who have been found likely at a Murder Review Hearing and are currently serving their imposed prison term further traumatizes victims and erodes the trust placed in the criminal justice system.

Oregon
Tina Kotek, Governor

Board of Parole and Post-Prison Supervision
1321 Tandem Ave. NE
Salem, OR 97301
(503) 945-0900
http://egov.oregon.gov/BOPPPS

No matter how many hearings are involved in the parole process, traumas will be brought to the surface and horrors will be relived. It is therefore incumbent upon the Board to make the most informed and thoughtful decisions possible at every turn, with the best and most evidence available, ensuring a safe and just process for victims and all Oregonians.

Thank you for taking the time to consider our concerns. We look forward to engaging with all stakeholder groups and participating in an official workgroup to collaboratively discuss any potential changes to this system.

Sincerely,

Greta Lowry
Board Chairwoman
Oregon Board of Parole