

# Senate Bill 1568

Sponsored by Senator DEMBROW, Representative REYNOLDS, Senator PROZANSKI, Representative BYNUM; Senators GOLDEN, SOLLMAN, Representatives ALONSO LEON, DEXTER, GRAYBER, MARSH, WILDE (Presession 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, 2025. Provides for appointment of attorney upon release recommendation.

Directs board to accept release recommendation of committee unless person poses specific 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 release process and develop application form. Authorizes department to directly refer adults in custody to board for early medical release.

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.

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,  
3 144.122, 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 2022 Act.**

7 **(2) 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, or serving a sentence of life**  
9 **imprisonment without the possibility of release or parole under ORS 138.052 or 163.150, is not**  
10 **eligible to apply for early medical release under sections 1 to 7 of this 2022 Act.**

11 **(3) As used in sections 1 to 7 of this 2022 Act, "adult in custody" means a person who is**  
12 **committed to the legal and physical custody of the Department of Corrections by a sen-**  
13 **tencing court under ORS 137.124 or 137.707.**

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

16 **(2)(a) The Governor shall appoint at least seven and up to 13 members of the committee.**  
17 **Committee members are appointed to four-year terms, but serve at the pleasure of the**  
18 **Governor. If the number of committee members falls below seven for any cause, the Gover-**  
19 **nor shall make an appointment to become immediately effective for the unexpired term. A**  
20 **person who has served as a committee member is eligible for reappointment.**

**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 (b) The committee members shall consist of licensed physicians, physician assistants,  
2 nurse practitioners and nurses. At least one committee member must be a licensed and  
3 board-certified physician, and at least four committee members must be involved in direct  
4 patient care. The committee members may not be employees or contractors of the Depart-  
5 ment of Corrections or current adults in custody. When making appointments to the com-  
6 mittee, the Governor shall strive to appoint members of communities of which the population  
7 of adults in custody are a part and members from historically marginalized or underrepre-  
8 sented communities.

9 (3) The board shall provide staff support to the committee and shall compensate com-  
10 mittee members for the performance of committee work. A board member may not vote or  
11 participate in any deliberations of the committee concerning whether to give recommen-  
12 dation for early medical release under sections 1 to 7 of this 2022 Act.

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

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

18 (6) The board shall hire at least one release navigator to support the committee and as-  
19 sist persons applying for early medical release as described in section 3 of this 2022 Act.

20 (7) The committee shall develop an application form for early medical release under  
21 sections 1 to 7 of this 2022 Act that is simple and easy to understand. The form must allow  
22 the applicant to request expedited review of the application and be made available in multiple  
23 languages.

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

26 (A) Rules further defining the criteria for early medical release described in section 3 (6)  
27 of this 2022 Act.

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

31 (C) Rules establishing which applicants qualify for expedited applications for early med-  
32 ical release under sections 1 to 7 of this 2022 Act.

33 (D) Rules adopted in consultation with the Oregon Health Authority and the Governor  
34 concerning applicants who are described in section 3 (6)(c) of this 2022 Act.

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

37 **SECTION 3.** (1) An adult in custody who is eligible to apply for early medical release from  
38 custody under section 1 of this 2022 Act may submit an application for early release to the  
39 Medical Release Advisory Committee established under section 2 of this 2022 Act.

40 (2)(a) After receipt of the application, a panel of the committee shall determine whether  
41 the application is complete.

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

1 (c) If the application is incomplete, the panel shall promptly notify the applicant con-  
2 cerning what additional information is needed to review the application, including necessary  
3 medical records, and allow the applicant an opportunity to provide the additional informa-  
4 tion.

5 (d) If the panel determines that an applicant is not eligible for early medical release un-  
6 der section 1 of this 2022 Act, the panel shall notify the applicant and cease any further re-  
7 view of the application.

8 (e) Upon acceptance of an application to be considered by the committee, the committee  
9 shall assign a release navigator to assist the applicant with reentry planning and ensuring  
10 continuity of care in the community. The release navigator shall assist the applicant with  
11 planning for obtaining housing and medical care in the community.

12 (3)(a) Except as provided in paragraphs (b) and (c) of this subsection, the committee shall  
13 make a recommendation decision on a regular application within 45 calendar days, and a  
14 recommendation decision on an expedited application within 14 calendar days.

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

17 (c) Upon the request of an applicant, the time requirements described in paragraph (a)  
18 of this subsection are tolled until the applicant subsequently requests that the panel proceed  
19 with considering the application.

20 (4)(a) The committee shall review each application to determine whether the applicant  
21 meets one or more of the criteria described in subsection (6) of this section. The committee  
22 will evaluate the application and the criteria by assessing considerations including, but not  
23 limited to, the balance between time the applicant has left to serve, the quality of life living  
24 with the medical condition and whether continued care in a custodial setting is no longer  
25 appropriate. If the committee determines, by a vote of the majority of the committee, that  
26 the applicant meets one or more of the criteria described in subsection (6) of this section,  
27 the committee shall recommend early release of the applicant from custody based on medical  
28 need and compassion.

29 (b) A committee member may consult with an outside expert or specialist concerning an  
30 application under consideration before the panel.

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

33 (d) Each month, the committee shall review no more than five applications to decide  
34 whether to recommend early medical release. The committee shall give priority to applica-  
35 tions based on the applicant's having a terminal illness with a prognosis of 12 months or less  
36 to live, but shall otherwise consider applications in the order in which the panel accepted the  
37 applications as complete under subsection (2) of this section.

38 (e) The limit on applications considered by the committee described in paragraph (d) of  
39 this subsection may be exceeded during any month that a state of emergency has been de-  
40 clared under ORS 401.165 or is ongoing, or a public health emergency has been declared un-  
41 der ORS 433.441 or is ongoing, but the committee shall continue to prioritize the  
42 consideration of applications based on the applicant's having a terminal illness with a  
43 prognosis of 12 months or less to live.

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

45 (a) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall

1 provide for the representation of financially eligible applicants at all subsequent proceedings,  
 2 including hearings before the State Board of Parole and Post-Prison Supervision under sec-  
 3 tion 4 of this 2022 Act and before the court on motions for resentencing under section 5 of  
 4 this 2022 Act. If the commission determines that the applicant is not financially eligible for  
 5 appointed counsel at state expense, the applicant may request review of the determination  
 6 as provided in ORS 144.337.

7 (b) The release navigator assigned by the committee may coordinate with the Depart-  
 8 ment of Corrections or any other outside agency or organization in order to continue to as-  
 9 sist the applicant with reentry planning and ensuring continuity of care in the community.

10 (c) The committee shall submit the application and recommendation to the board for  
 11 review as provided under section 4 of this 2022 Act.

12 (6) An applicant may be recommended for early medical release if the applicant meets  
 13 one or more of the following criteria, as further defined in the rules of the committee:

14 (a) The applicant has a terminal illness with a prognosis of 12 months or less to live;

15 (b) The applicant is unable to independently complete the activities of eating, toileting,  
 16 grooming, dressing, bathing or physical transfers or is unable to independently move from  
 17 place to place, even with the use of a mobility device; or

18 (c) The applicant has an underlying condition that places the applicant at increased risk  
 19 of illness, medical complications or death if the applicant is exposed to disease, and:

20 (A) A state of emergency has been declared under ORS 401.165; or

21 (B) A public health emergency has been declared under ORS 433.441.

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

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

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

28 (8) An early medical release recommendation decision, or a determination under sub-  
 29 section (2) of this section that an applicant is not eligible for early medical release, is not  
 30 subject to judicial review under ORS 144.335 or 183.480 to 183.497.

31 **SECTION 4.** (1) Except as otherwise provided in this section, the State Board of Parole  
 32 and Post-Prison Supervision shall review recommendations for early medical release of ap-  
 33 plicants from the Medical Release Advisory Committee under section 3 of this 2022 Act, and  
 34 direct referrals for early medical release of adults in custody from the Department of Cor-  
 35 rections under section 6 of this 2022 Act, to determine whether to accept the recommen-  
 36 dation or referral for early medical release as provided in this section.

37 (2)(a) The board shall hold a hearing within 45 days of receiving the recommendation or  
 38 referral, unless the board finds good cause to postpone the hearing, the board proceeds under  
 39 paragraph (c) of this subsection or no hearing is required, as described in subsection (3) of  
 40 this section.

41 (b) The board may require a psychological evaluation or risk assessment of an applicant  
 42 before proceeding on a recommendation from the advisory committee.

43 (c) The board may accept a committee recommendation or a department referral without  
 44 a hearing, and shall provide the decision in writing and promptly notify the applicant or re-  
 45 ferred adult in custody.

1 (d) The board shall accept the committee recommendation or department referral, ad-  
2 vance the release date and order the release of the applicant or referred adult in custody  
3 unless the board finds, by clear and convincing evidence, that the applicant or referred adult  
4 in custody poses a danger to the safety of another person or the public and the danger out-  
5 weighs any compassionate reasons for the release.

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

13 (a) A certified copy of any committee recommendation provided to the board under sec-  
14 tion 3 of this 2022 Act, or any direct referral provided to the board under section 6 of this  
15 2022 Act;

16 (b) A certified copy of any board decision accepting or declining to accept an early med-  
17 ical release recommendation under subsection (2) of this section; and

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

20 (4) If a victim has requested notification of the release of the applicant or referred adult  
21 in custody, the board shall notify the victim immediately upon receiving a recommendation  
22 or referral under this section.

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

25 **SECTION 5.** (1) If an applicant under section 3 of this 2022 Act or adult in custody re-  
26 ferred under section 6 of this 2022 Act receives notification from the Board of Parole and  
27 Post-Prison Supervision under section 4 (3) of this 2022 Act that the board has determined  
28 that the applicant or referred adult in custody is serving one or more sentences that require  
29 the sentencing court to authorize early medical release, the attorney for the applicant or  
30 referred adult in custody may file a motion for early medical release with the sentencing  
31 court. Copies of the documents described in section 4 (3) of this 2022 Act must be filed with  
32 the motion. The attorney shall serve a copy of the motion on the district attorney of the  
33 county in which the sentencing court is located. The district attorney shall make reasonable  
34 efforts to notify the victim or victims, if any, of the filing of the motion and the hearing  
35 described in subsection (2) of this section.

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

39 (b) The court may require a psychological evaluation or risk assessment of the applicant  
40 or referred adult in custody before proceeding on a motion for early medical release under  
41 this section.

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

45 (d) If the victim is not present at the hearing, the court shall inquire of the district at-

1 torney whether the victim was notified of the hearing and whether the victim requested to  
2 be heard during the hearing.

3 (3)(a) The court shall grant the motion and authorize early medical release from custody  
4 if the court finds that the applicant or referred adult in custody meets one or more of the  
5 criteria described in section 3 (6) of this 2022 Act unless the court finds, by clear and con-  
6 vincing evidence, that the early medical release of the applicant or referred adult in custody  
7 would create a substantial threat to public safety in light of the circumstances of the appli-  
8 cant or referred adult in custody. The court shall give substantial weight to any recommen-  
9 dation of the Medical Release Advisory Committee when making a decision under this  
10 section.

11 (b) If the court grants the motion, the court shall enter a supplemental judgment au-  
12 thORIZING early medical release from custody for the sentences previously imposed by the  
13 court.

14 (4) An applicant or referred adult in custody whose motion for resentencing is denied  
15 under this section may apply or reapply for early medical release provided that the applicant  
16 or referred adult in custody can show that:

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

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

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

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

26 **SECTION 6.** (1) The Department of Corrections shall ensure that the process for obtain-  
27 ing release under sections 1 to 7 of this 2022 Act is explained on the website of the depart-  
28 ment and in any handbook provided to adults in custody.

29 (2) The department shall ensure that application forms for obtaining release under  
30 sections 1 to 7 of this 2022 Act are made available for all adults in custody in department  
31 facilities.

32 (3) The department, in its discretion, may directly refer an adult in custody to the Board  
33 of Parole and Post-Prison Supervision for early medical release if the department determines  
34 that an adult in custody meets one of the criteria described in section 3 (6) of this 2022 Act.  
35 When determining whether to refer an adult in custody under this subsection, the depart-  
36 ment shall give priority to those adults in custody with a terminal illness with a prognosis  
37 of 12 months or less to live.

38 (4) The department, after receiving an order or a supplemental judgment authorizing  
39 early medical release under section 4 or 5 of this 2022 Act, shall assist the applicant or re-  
40 ferred adult in custody with reentry into the community and shall process the applicant's  
41 or referred adult in custody's release within a reasonable amount of time.

42 **SECTION 7.** (1) The Medical Release Advisory Committee, in collaboration with the State  
43 Board of Parole and Post-Prison Supervision, shall track the following data on early medical  
44 release under sections 1 to 7 of this 2022 Act:

45 (a) The number of applications each year for release under sections 1 to 7 of this 2022

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2 (b) **The number of applications that resulted in a recommendation by the committee for**  
 3 **release, the number that did not result in a recommendation for release and the reasons for**  
 4 **each decision.**

5 (c) **The number of applicants recommended by the committee for release that were re-**  
 6 **leased by the board, not released by the board, resentenced by the court and not resentenced**  
 7 **by the court, and the reasons for each disposition.**

8 (d) **The number of applicants who reapplied for release.**

9 (e) **Demographic data for each of the applicants, organized by disposition.**

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

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

15 144.750. (1) To accord crime victims due dignity and respect, a victim of a crime that is the  
 16 subject of a proceeding conducted by the State Board of Parole and Post-Prison Supervision has the  
 17 following rights:

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

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

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

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

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

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

37 (3) The board must make a reasonable effort to notify the victim, if the victim requests to be  
 38 notified and furnishes the board with a current address, of any hearing or administrative decision  
 39 making process resetting or advancing a release date pursuant to ORS 144.122 or 144.126 **or**  
 40 **sections 1 to 7 of this 2022 Act.**

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

45 (b) The victim, personally or by counsel, has the right to appear at a contested hearing con-

1 ducted by the supervisory authority and may submit written and oral statements adequately and  
2 reasonably expressing any views concerning the crime and the offender.

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

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

9 **SECTION 9.** ORS 144.122 is amended to read:

10 144.122. (1) After the initial parole release date has been set under ORS 144.120 and after a  
11 minimum period of time established by the State Board of Parole and Post-Prison Supervision under  
12 subsection (2)(a) of this section, [*the prisoner*] **an adult in custody** may request that the parole re-  
13 lease date be reset to an earlier date. The board may grant the request upon a determination by the  
14 board that continued incarceration is cruel and inhumane and that resetting the release date to an  
15 earlier date is not incompatible with the best interests of the [*prisoner*] **adult in custody** and soci-  
16 ety and that the [*prisoner*] **adult in custody**:

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

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

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

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

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

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

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

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

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

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

37 **(6) As used in this section, "adult in custody" has the meaning given that term in section**  
38 **1 of this 2022 Act.**

39 **SECTION 10.** ORS 144.126 is amended to read:

40 144.126. (1) The State Board of Parole and Post-Prison Supervision may advance the release date  
41 of [*a prisoner*] **an adult in custody** who was sentenced in accordance with rules of the Oregon  
42 Criminal Justice Commission or ORS 161.610. The release date may be advanced if the board de-  
43 termines that continued incarceration is cruel and inhumane and that advancing the release date  
44 of the [*prisoner*] **adult in custody** is not incompatible with the best interests of the [*prisoner*] **adult**  
45 **in custody** and society and that the [*prisoner*] **adult in custody** is:

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

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

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

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

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

12 (5) **As used in this section, “adult in custody” has the meaning given that term in section**  
 13 **1 of this 2022 Act.**

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

15 135.418. (1) A prosecuting attorney may not condition a defendant’s plea offer on:

16 (a) The defendant’s waiver of:

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

18 (B) The ability to receive the audio recording of grand jury proceedings as permitted under ORS  
 19 132.270, if the indictment has been indorsed “a true bill.”

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

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

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

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

27 (G) **Eligibility for early medical release from custody under sections 1 to 7 of this 2022**  
 28 **Act.**

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

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

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

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

36 **SECTION 12.** Section 1 of this 2022 Act is amended to read:

37 **Sec. 1.** (1) Except as provided in subsection (2) of this section, an adult in custody may apply  
 38 for early medical release from custody under sections 1 to 7 of this 2022 Act.

39 (2) An adult in custody who is serving a sentence required by ORS 137.635, 137.690, [137.700,  
 40 137.707,] 164.061, 475.907, 475.925, 475.930 or 813.011, or serving a sentence of life imprisonment  
 41 without the possibility of release or parole under ORS 138.052 or 163.150, is not eligible to apply for  
 42 early medical release under sections 1 to 7 of this 2022 Act.

43 (3) As used in sections 1 to 7 of this 2022 Act, “adult in custody” means a person who is com-  
 44 mitted to the legal and physical custody of the Department of Corrections by a sentencing court  
 45 under ORS 137.124 or 137.707.

1       **SECTION 13.** Section 3 of this 2022 Act is amended to read:

2       **Sec. 3.** (1) An adult in custody who is eligible to apply for early medical release from custody  
3 under section 1 of this 2022 Act may submit an application for early release to the Medical Release  
4 Advisory Committee established under section 2 of this 2022 Act.

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

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

10       (c) If the application is incomplete, the panel shall promptly notify the applicant concerning  
11 what additional information is needed to review the application, including necessary medical re-  
12 cords, and allow the applicant an opportunity to provide the additional information.

13       (d) If the panel determines that an applicant is not eligible for early medical release under sec-  
14 tion 1 of this 2022 Act, the panel shall notify the applicant and cease any further review of the ap-  
15 plication.

16       (e) Upon acceptance of an application to be considered by the committee, the committee shall  
17 assign a release navigator to assist the applicant with reentry planning and ensuring continuity of  
18 care in the community. The release navigator shall assist the applicant with planning for obtaining  
19 housing and medical care in the community.

20       (3)(a) Except as provided in paragraphs (b) and (c) of this subsection, the committee shall make  
21 a recommendation decision on a regular application within 45 calendar days, and a recommendation  
22 decision on an expedited application within 14 calendar days.

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

25       (c) Upon the request of an applicant, the time requirements described in paragraph (a) of this  
26 subsection are tolled until the applicant subsequently requests that the panel proceed with consid-  
27 ering the application.

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

36       (b) A committee member may consult with an outside expert or specialist concerning an appli-  
37 cation under consideration before the panel.

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

40       [(d) Each month, the committee shall review no more than five applications to decide whether to  
41 recommend early medical release. The committee shall give priority to applications based on the  
42 applicant's having a terminal illness with a prognosis of 12 months or less to live, but shall otherwise  
43 consider applications in the order in which the panel accepted the applications as complete under sub-  
44 section (2) of this section.]

45       [(e) The limit on applications considered by the committee described in paragraph (d) of this sub-

1 *section may be exceeded during any month that a state of emergency has been declared under ORS*  
 2 *401.165 or is ongoing, or a public health emergency has been declared under ORS 433.441 or is ongo-*  
 3 *ing, but the committee shall continue to prioritize the consideration of applications based on the*  
 4 *applicant's having a terminal illness with a prognosis of 12 months or less to live.]*

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

6 [(a)] (A) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall  
 7 provide for the representation of financially eligible applicants at all subsequent proceedings, in-  
 8 cluding hearings before the State Board of Parole and Post-Prison Supervision under section 4 of  
 9 this 2022 Act and before the court on motions for resentencing under section 5 of this 2022 Act. If  
 10 the commission determines that the applicant is not financially eligible for appointed counsel at  
 11 state expense, the applicant may request review of the determination as provided in ORS 144.337.

12 [(b)] (B) The release navigator assigned by the committee may coordinate with the Department  
 13 of Corrections or any other outside agency or organization in order to continue to assist the appli-  
 14 cant with reentry planning and ensuring continuity of care in the community.

15 [(c)] (C) The committee shall submit the application and recommendation to the board for review  
 16 as provided under section 4 of this 2022 Act.

17 **(b) Notwithstanding paragraph (a) of this subsection, if the committee recommends re-**  
 18 **lease but the applicant is serving a sentence required by ORS 137.700 or 137.707, the com-**  
 19 **mittee shall provide the applicant with a certified copy of the release recommendation but**  
 20 **shall not submit the application and recommendation to the board for review.**

21 (6) An applicant may be recommended for early medical release if the applicant meets one or  
 22 more of the following criteria, as further defined in the rules of the committee:

23 (a) The applicant has a terminal illness with a prognosis of 12 months or less to live;

24 (b) The applicant is unable to independently complete the activities of eating, toileting, groom-  
 25 ing, dressing, bathing or physical transfers or is unable to independently move from place to place,  
 26 even with the use of a mobility device; [or]

27 (c) The applicant has an underlying condition that places the applicant at increased risk of ill-  
 28 ness, medical complications or death if the applicant is exposed to disease, and:

29 (A) A state of emergency has been declared under ORS 401.165; or

30 (B) A public health emergency has been declared under ORS 433.441[.]; or

31 **(d) The applicant has a debilitating or progressively debilitating medical condition, in-**  
 32 **cluding but not limited to an injury, illness, disease, physiological or psychological condition**  
 33 **or disorder that:**

34 **(A) Poses an immediate risk to the applicant's health or life;**

35 **(B) Requires complex medical intervention or intensive, high needs or specialized care;**  
 36 **or**

37 **(C) Is otherwise described in the rules of the committee.**

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

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

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

44 (8) An early medical release recommendation decision, or a determination under subsection (2)  
 45 of this section that an applicant is not eligible for early medical release, is not subject to judicial

1 review under ORS 144.335 or 183.480 to 183.497.

2 **SECTION 14. (1) The amendments to section 1 of this 2022 Act by section 12 of this 2022**  
3 **Act become operative on January 1, 2025.**

4 **(2) The amendments to section 3 of this 2022 Act by section 13 of this 2022 Act become**  
5 **operative on January 1, 2025.**

6 **SECTION 15. This 2022 Act takes effect on the 91st day after the date on which the 2022**  
7 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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