



**TO: Sen. Floyd Prozanski, Chair
Members of the Senate Judiciary Committee**

FR: Oregon District Attorneys Association

RE: SB 1568

February 7, 2022

Thank you for the opportunity to provide testimony from the Oregon District Attorneys Association (ODAA) regarding SB 1568. ODAA wants to express its gratitude to Senator Dembrow, Rep. Reynolds and the SB 1568 workgroup for providing a fair and open forum for discussing the complex issues regarding the early release of incarcerated persons. While ODAA commends the progress this bill has made, especially regarding victims' rights, the Association continues to have 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 1568 creates a process where Adults In Custody can be reviewed for early release from prison. Unlike other parole board release processes, there is no minimum sentence requirement that the Adult In Custody (AIC) serve three-quarters, or half, or any specified amount of their sentence before this review.

SB 1568 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 medical criteria for early release goes far beyond those inmates in the final 12 months of their life or in hospice care. In addition to early medical release, the criteria also grants the committee the authority to release, when a state of emergency has been declared under ORS 401.165 or a public health emergency under ORS 433.441, an applicant who has an underlying condition that places them at increased risk of serious medical complications or death if the applicant is exposed to disease. Additionally, this criteria is further expanded after five years to include applicants who have a debilitating or progressively debilitating medical condition, including but not limited to an injury, illness or disease that: poses an immediate risk to the

applicant's health or life or requires complex medical intervention or intensive high needs or specialized care.

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. 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.

SB 1568 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. The Board can only override the medical committee's recommendation for victim or public safety reasons when it can establish that the adult in custody (AIC) poses a danger to the safety of another person or the public AND that the danger outweighs any compassionate reasons for release. Additionally, the Board would need to find by "clear and convincing evidence" that these conditions are met. 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 difficult for the Board to deny a medical release when there are valid victim or public safety concerns.

The bill also will erode the certainty crime victims and survivors of the most serious crimes have in the sentence of their abuser. 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 2025. 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 and as a result it will erode the confidence and certainty victims and survivors have in their abuser's sentence.

The bill will also require significant resources to implement. As it was noted during the workgroup meetings, the meetings had more attendees than the Board has full time employees. The bill establishes a medical committee comprised of five to thirteen members, the Board of Parole only has five fulltime members, and that the Board shall provide staff for the 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. Finally, the bill allows an AIC to return to the sentencing court to change their sentence so that they can be eligible for this early release and the bill provides that the Public Defense Services Commission shall provide legal representation at these court hearings for AICs who qualify. We appreciate that the bill has a five applicant a month cap, but this cap sunsets in 2025 and then there will be no constraint on the number of applicants or costs.

ODAA acknowledges the compassionate motivations for this bill and appreciates that feedback it provided 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.