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Senator Dembrow Testimony to Senate Health Care on SB 520, 3/13/23

Colleagues, every state has a system of compassionate medical release for adults in custody who are near the end of life and/or who are no longer able to care for themselves independently. Ours here in Oregon is in crisis.

The problem in Oregon is a function of two contributing factors:

- An increasingly older population in our prisons. Our prison population is among the oldest of any of the states. And with age comes health problems, particularly in a prison setting.
- A compassionate medical release system that everyone agrees isn't working, based on statutes that are seriously flawed.

We have a number of AICs who are either on hospice or need full-time care because they can't independently perform the activities of daily living: dressing, toileting, eating, or even moving around with a walker or wheelchair without assistance. They frequently need to be taken off-site to the hospital to get the care that they need, a difficult, cumbersome, and painful process for all involved.

The result is a Corrections system that is becoming increasingly expensive, unnecessarily so. If these AICs were released from closed custody into post-prison supervision, their care would be paid for by the federal government through Medicare and Medicaid. As it is, we have to foot the bill.

To address this complex problem, Representative Lisa Reynolds and I formed a work group during the summer and fall of 2021 to really study the problem and try to find solutions to it. It was a large very comprehensive workgroup, with representation from a number of different interests and agencies, including the following:

- Board of Parole and Probation
- Department of Corrections
- Oregon Department of Justice
- Oregon Justice Department
- Oregon District Attorneys Association
- Oregon Office of Public Defender Services

- Multnomah County Department of Community Justice
- Yamhill County Community Corrections
- Oregon Justice Resource Center
- Oregon Physicians for Social Responsibility
- Justice Action Network
- Oregon Crime Victims Law Center
- Judiciary Staff

The work group met every two weeks for several months, plus meetings of smaller sub-groups, in order to address technical issues, of which there were many.

That work led to SB 1568 during the 2022 short session. It passed out of Senate Judiciary, but then it died in Ways and Means, not as a result of its fiscal, but due to short-session hiccups and perceived politics at the time around anything related to prisons and criminal justice.

SB 520 is essentially that same bill, but with a few changes made to clarify and simplify the process and to be responsive to lingering concerns from the district attorneys.

Here is a quick overview of what's in it:

- SB 520 creates a standing Medical Review Advisory Committee or MRAC. The MRAC will consist of a group of medical professionals, who will provide impartial, professional judgment of the medical conditions of those applying for release. It will sit within the Board of Parole and Post-Prison Supervision but will be operationally independent both from the Board and the DOC. It will make recommendations for or against release, solely and objectively from a medical and public health perspective using criteria established in the bill.
- If the MRAC recommends release, the applicant will be appointed counsel to assist them with the release court and the Board of Parole's review.
- The sentencing courts and the Parole Board can affirm MRAC's recommendation for release or deny release if the board finds, by clear and convincing evidence, that the AIC still poses a danger to the safety of another person or the public and the danger outweighs any compassionate reasons for the release.
- Even if compassionate release is deemed appropriate, it will not occur until a compassionate-release navigator (a position newly created by the legislation) is able to find an appropriate placement for the person in custody.
- From passage until 2026, the number of cases coming before the MRAC will be limited to five a month, so that we can get the new program off the ground in a manageable manner.
- The Department of Corrections itself can refer individuals in hospice directly to the MRAC process (with the consent of the AIC). These direct referrals don't count towards the monthly limit of five.
- SB 520 will include funding to make sure that the Parole Board has the positions needed to take on this extra work.
- And finally, SB 520 clarifies that those with Measure 11 offenses will not be eligible for release through the Board of Parole because of the constitutional restrictions around Measure 11. After 2026 they will be eligible for an MRAC review, which could help

inform a commutation decision or a decision by the relevant district attorney to petition the court for an exceptional early release.

Who is eligible for a compassionate release recommendation? The applicant (or person directly referred by the DOC) must meet the following criteria, laid out in Section 6 of the bill:

- They have a terminal illness with a prognosis of 12 months or less to live;
- They 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, even with the use of a mobility device; or
- They have a debilitating or progressively debilitating medical condition that poses an immediate risk to their health or life, or that requires complex medical intervention or intensive or high-needs care.

These are the only grounds under which an adult in custody could be recommended for early release. Colleagues, I think you'll agree that it is extremely unlikely that a person in such a condition would be a threat to public safety if released; nevertheless, if the Parole Board and the court find compelling evidence to the contrary, the release cannot go through. *"Clear and convincing evidence" is a high standard, but most would agree that it's an appropriate standard, given how severely debilitated the AIC must be to qualify for release.*

Colleagues, a number of legislators, including Chair Patterson, have recently had the opportunity to go inside two of our state prisons—the Oregon State Penitentiary for men and Coffee Creek Correctional Facility for women. At OSP we were able to spend time with several AICs who volunteer for hospice duty and an AIC in hospice with terminal cancer and just months left to live. He still has several years on his sentence, but clearly he's not going to reach it. At Coffee Creek we spent time with a woman with advanced MS, who has been completely bedridden for at least a year and according to the doctors may still have several years before her death, several years of increasing debilitation. It makes little sense for her to remain at Coffee Creek.

Colleagues, AICs like these two who would be eligible for a compassionate release review by the MRAC are those with the most terminal or debilitating conditions. Their cases are what compassionate medical release processes are for. SB 520 creates a clear, objective, medically-based process that will result in a more appropriate use of corrections resources. It will save the state millions of dollars over the next ten years, dollars that could be much better spent improving conditions within the institutions for hard-pressed corrections staff and AICs with less severe healthcare needs.

I urge the committee to pass this bill.