

SENATE JUDICIARY COMMITTEE
Senator Kellie Warren, Chair

KANSAS SENTENCING COMMISSION
Scott M. Schultz, Executive Director
January 26, 2021

Proponent Testimony – SB 7

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. The bill amends K.S.A. 2020 Supp. 22-3729 to extend the state’s compassionate release policy for inmates with a terminal medical condition likely to cause death within 120 days. Current law provides for a determination of death within 30 days. A similar bill, 2020 HB 2469, passed out of the House 120-5 last year.

Compassionate release allows prisoners facing imminent death, advancing age, or debilitating medical conditions to secure early release when those developments diminish the need for continued imprisonment. A number of well-documented reasons support a robust use of early release. Among them is the cost of housing, accommodating, and providing medical care for aging prisoners, prisoners who are ill or suffering from a significant and limiting disability, and prisoners nearing the end of their lives. These prisoners present unique challenges to prison systems poorly equipped to meet them. As prisoners age or experience declining health, their threat to public safety lessens, as do some of the justifications for continuing to hold them behind bars.

Elderly prisoners and those with complicated or age-related medical conditions are expensive to care for and house. Estimates are that older prisoners cost between three to nine times more per prisoner to incarcerate than younger ones.¹ Prisoners in Kansas age 55 and older increased 273% between 1990 and 2009.²

Caring for older prisoners and those with serious health conditions is expensive and will likely become more expensive in the years to come. Leaving prison affords them access to community-based health care or end-of-life supports at a fraction of the cost incurred behind bars.³ State criminal justice systems can use those savings to protect the public rather than spending criminal justice funds to warehouse elderly and dying men and women behind bars.

Prisoners who are older, those who are experiencing serious medical, cognitive, or mental health conditions, and those with terminal illnesses are not only among the most costly to care for; they are also the least likely to

¹ Cyrus Ahalt et al., *Paying the Price: The Pressing Need for Quality, Cost, and Outcomes Data to Improve Correctional Health Care for Older Prisoners*, 61 J. of the Am. Geriatrics Society 2013, 2014 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3984258/>.

² *Id* at Table 1.

³ Brie Williams et al., *For Seriously Ill Prisoners, Consider Evidence-Based Compassionate Release Policies*, Health Affairs Blog, Health Affairs (Feb. 2017), <https://www.healthaffairs.org/doi/10.1377/hblog20170206.058614/full/>.

be rearrested or returned to prison.⁴ A Department of Justice review of federal prisoners who received compassionate release found their recidivism rate to be 3.1 percent, a tiny number when compared with recidivism of full-term prisoners.⁵ A recent study of all federal prisoners released in 2005 who were followed for eight years found that nearly 50 percent were rearrested and 30 percent returned to prison.⁶ According to the U.S. Sentencing Commission, as people grow older, their risk of committing crimes drops. An eight-year study found that 13.4 percent of prisoners who were 65 years old or older when released were rearrested, compared with 65.4 percent of those released prior to age 21, and stated that “[o]lder offenders who do recidivate do so later in the follow-up period, do so less frequently, and had less serious recidivism offenses on average.”⁷

A handful of states that provide early release to terminally ill prisoners undercut the authority by requiring a prognosis of only 30 to 60 days. Given that compassionate release review processes can eat up weeks or months, it is virtually impossible for a prisoner with a short time to live to survive long enough to hear the decision.

Kansas is one of the most extreme examples.⁸ To be eligible for terminal medical condition release, a prisoner’s death must be expected within 30 days.⁹

Under K.S.A. 2020 Supp. 22-3729, multiple criteria are in place in addition to the 120-day time frame for a terminal medical condition release. Age, criminal history, length of sentence, time served, nature of the offense and risk or threat to the community and other relevant factors are statutory safeguards already built in to K.S.A. 22-3729 for the Prisoner Review Board. According to KDOC’s evaluation in their fiscal impact, based upon a review of medical cases of residents currently incarcerated, KDOC estimates that 9-10 people per year would be eligible for consideration for terminal medical release if the period was extended to 120 days. Based on the current 30-day period, in fiscal years 2016 through 2020, either 0 or 1 applications were submitted per year. While only a few would likely benefit under this amendment, the current timeframe barely allows for a review process by prison officials. The inmate is likely to die during the processing of the request.

Costs associated with housing these offenders and their dignity can be saved without sacrificing public safety. I appreciate your time and attention to the Kansas Sentencing Commission testimony, ask for your support, and would be happy to answer questions. Thank you.

⁴ See KiDeuk Kim & Bryce Peterson, *Aging Behind Bars: Trends and Implications of Graying Prisoners in the Federal Prison System* 21-22 (Washington DC: Urban Institute, 2014), <https://www.urban.org/sites/default/files/publication/33801/413222-Aging-Behind-Bars-Trends-and-Implications-of-Graying-Prisoners-in-the-Federal-Prison-System.PDF>; see also Office of the Inspector General, U.S. Dep’t of Justice, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* 38-41 (Feb. 2016), <https://oig.justice.gov/reports/2015/e1505.pdf>.

⁵ Office of the Inspector General, U.S. Dep’t of Justice, *The Federal Bureau of Prisons’ Compassionate Release Program* (Apr. 2013), note 2, at 49-51, <https://oig.justice.gov/reports/2013/e1306.pdf>.

⁶ U.S. Sentencing Comm’n, *Recidivism Among Federal Offenders: A Comprehensive Overview* 15 (Mar. 2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf.

⁷ U.S. Sentencing Comm’n, *The Effects of Aging on Recidivism Among Federal Offenders* 22 (Dec. 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

⁸ See Price, *Everywhere and Nowhere: Compassionate Release in the States* 16 (June 2018), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>.

⁹ K.S.A. 22-3729(a)(2); Kansas Department of Corrections, *Internal Management Policies and Procedures 11-110-Application for Release of Functionally Incapacitated Inmates or Release Pending Imminent Death* (2011), <https://www.doc.ks.gov/kdoc-policies/AdultIMPP/chapter-11/11110.pdf>.