



**Written Statement of
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Before the House Subcommittee on Public Safety, Virginia General Assembly**

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I thank Chair Levine and the members of the subcommittee for considering this written statement in support of HB 431 and HB 782, being reviewed today.

FAMM is a nonpartisan, nonprofit organization that advocates sentencing and prison policies that are individualized and fair, protect public safety, and preserve families. One of the policies we advocate is increased use of medical and geriatric release processes for people in prison who are seriously or terminally ill, or elderly, and who do not pose a threat to public safety. We are pleased to see the General Assembly consider two bills today that would improve Virginia’s conditional release process for the elderly and ill in the state’s prisons. **FAMM supports HB 431 and HB 782.**

FAMM is a national expert on medical and geriatric release programs. In our 2018 report, *Everywhere and Nowhere: Compassionate Release in the States*,¹ FAMM studied the geriatric and medical release systems in all 50 states and the District of Columbia. We found that virtually all states have some program to consider and authorize the release of people in prison who are elderly or ill. Unfortunately, we also found that almost no states – including Virginia – use their systems regularly to release eligible prisoners whose incarceration no longer protects public safety. Because elderly prisoners have significantly lower recidivism rates than younger prisoners, and because older and ill prisoners are more costly to incarcerate due to their increased medical needs, geriatric and medical release both reduces prison costs and reserves expensive prison beds for people more likely to reoffend. Importantly, medical and geriatric release also upholds human dignity and can reunite families in the solemn and sacred final moments of a loved one’s last days, weeks, or months of life.

Both HB 431 and HB 782 offer different but important improvements to Virginia’s current conditional release provision. Considered separately, each has merit. Taken together, these reforms could be revolutionary.

HB 782 would allow conditional release for both geriatric prisoners and incarcerated people who are “permanently physically disabled” or “terminally ill,” and the bill would define those terms in the statute, § 53.1-40.01. Virginia’s current conditional release process does not permit release for medical reasons. Rather, medical conditions and serious illness are grounds for release under

¹ Mary Price, *Everywhere and Nowhere: Compassionate Release in the States* (June 2018), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>.



the medical pardon or clemency process.² According to Department of Corrections regulations on medical pardon or clemency, a terminal illness is an illness expected to result in death within 10 to 12 months of the date of the physician's report, and imminent death means that the prisoner has three months or less to live.³ Medical pardon or clemency is available only to those who are not otherwise parole eligible. No data were publicly available on the use of medical clemency or pardon in Virginia in recent years.

HB 782 would improve current law by allowing conditional release – not just medical pardon or clemency – for age as well as for a host of medical reasons and for terminal illness. Under HB 782, “permanently physically disabled” people would be eligible for conditional release. That term would include a “chronic or progressive medical condition caused by injury, disease, or illness that renders a person permanently and irreversibly physically disabled.” This captures serious medical conditions like dementia or stroke, which may not trigger imminent death but nonetheless render people unable to commit additional crimes and require extensive and costly medical care. HB 782 would allow conditional release also for the “terminally ill,” those with “a chronic or progressive medical condition caused by injury, disease, or illness where the medical prognosis is the person's death within 12 months.” We believe these definitions are better than current law, and that conditional release will be granted more regularly than medical pardon or clemency under HB 782. In short, HB 782 will help ensure that fewer seriously ill people remain in prison at high cost to taxpayers but no risk to public safety.

HB 431 would grant conditional release, without Parole Board consideration, to people convicted of non-Class 1 felony offenses who are at least 60 years old and have served at least 10 years of the sentence, or those who are at least 65 years old and have served at least 5 years of the sentence. The Virginia Parole Board currently makes decisions regarding geriatric conditional release – and regrettably its grant rate is meager. Only 68 of more than 1,400 people who requested geriatric conditional release were granted it by the Parole Board between January 2014 and March 2017.⁴

HB 431 is a remarkable reform that would make Virginia a leader in the nation in its commitment to return elderly people to their homes. Elderly prisoners are among the least likely to recidivate. If public safety is Virginia's primary goal, it is appropriate that elderly prisoners be released promptly when they reach an age at which they are unlikely to commit further crime. HB 431 does not change Virginia's current time-served requirements of five and 10 years, so it is not abolishing punishment for crimes. Rather, HB 431 demonstrates a refusal to waste taxpayer money on elderly prisoners who pose little risk to public safety. FAMM believes this reform will save taxpayers money without harming public safety.

FAMM supports the reforms included in both HB 431 and HB 728. Please feel free to contact us at mgill@famm.org with additional questions. Thank you for considering our views.

² Va. Code Ann. § 53.1-229. For a detailed description of Virginia's current conditional release and medical pardon systems, see *Everywhere and Nowhere, Virginia State Summary*, <https://famm.org/wp-content/uploads/Virginia-Final.pdf>.

³ Virginia Dep't of Corr. Operating Procedure 820.2, § III (2017).

⁴ See Peter Dujuardin, “Virginia questions whether to release older prisoners,” *The Daily Press*, Apr. 24, 2017, <https://www.usnews.com/best-states/Virginia/articles/2017-04-24/Virginia-questions-whether-to-release-older-prisoners>.