



**Written Statement of Molly Gill
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Before the House Courts of Justice Committee
Senate Bill No. 5018 Conditional Release of Geriatric or Terminally Ill Prisoners
September 22, 2020**

I thank Chair Herring and the members of the committee for considering this written statement in support of Senate Bill No. 5018, being considered today.

FAMM is a nonpartisan, nonprofit organization that advocates sentencing and prison policies that are individualized and fair, protect public safety, and preserve families. Among 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 committee consider a bill today that would improve Virginia’s conditional release process for the elderly and terminally ill in the state’s prisons. While **FAMM supports SB 5018, we encourage the committee to amend it to include permanently disabled individuals.**

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 furthers 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. The Fiscal Impact Statement on the bill under consideration bears this out. 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.

As originally introduced, SB 5018 would have extended conditional release to cover both terminally ill prisoners and those who are “permanently physically disabled.” In that version, permanent physical disability was defined as “*having a chronic or progressive medical condition caused by injury, disease, or illness that renders a person permanently and irreversibly physically disabled and such condition renders the person no longer a threat to society.*” This captures serious medical conditions like dementia or stroke, which may not trigger imminent death but nonetheless leave people unable to commit additional crimes and which require extensive and costly medical care.

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



Neglecting to include any medical grounds (other than terminal illness) for conditional release means that Virginia will remain an outlier among states that offer some form of early release based on changed circumstances. In our 50-state survey, FAMM found that every state that offers any form of compassionate release (49 states and the District of Columbia) includes one or more provisions addressing medical condition. Virginia is alone among the states in failing to use its early release authority in this manner.² We urge the committee to consider including permanent physical disability in Virginia’s conditional release authority.

SB 5018 would cover terminal illness, defined as having “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 extending conditional release to individuals with terminal illness is an important improvement. At present, people who are terminally ill may be considered for executive medical clemency if their death is imminent, meaning they have three months or less to live. That timeframe is unrealistic for a number of reasons, including that doctors are reluctant to make such end of life predictions and that three months is too short a time frame to give a clemency applicant the consideration necessary to make a clemency decision.³ We believe SB 5018, by adding terminal illness as a condition with an end of life trajectory of 12 months, will help lead to more terminally ill people considered for release.

In its Fiscal Impact Statement, the Department of Planning and Budget raised an important point: any savings realized by conditional release depends on the number of people actually released from prison. “[I]n order for offenders to be released, housing placement must be secured for them in the community before they are released. In the event that housing placement cannot be secured for an offender, the individual must remain in the care of the [Department of Corrections] for public safety reasons, and any associated savings would not be realized.”⁴

In our review of best practices among the states, we discovered that some states build release planning into their early release authorities. The best systems assign staff to assist elderly and terminally ill prisoners with pre- and post-release planning, including applying for public assistance, veterans’ benefits, housing and medical facility placements, Medicaid, Medicare and other supports.⁵ Minnesota, New York, and North Carolina include such common sense requirements. North Carolina, for example, provides a social worker who begins comprehensive release planning, working with the prisoner to develop a release and medical plan and helping apply for resources.⁶

We encourage Virginia to consider developing regulations addressing supportive release planning.

Thank you for considering our views. Please feel free to contact us at mgill@famm.org with additional questions.

² See Everywhere and Nowhere at 28-33 (State-by-State chart).

³ *Id.* at 15-16 (discussing unreasonable time frames).

⁴ Dep’t of Planning and Budget, 2020 Special Session I – Fiscal Impact Statement at 1-2.

⁵ See Everywhere and Nowhere at 18-19.

⁶ *Id.*