



**Written Testimony of Molly Gill, Vice President of Policy, FAMM
In Support of H.B. 3665
Illinois Senate Committee on Criminal Law
May 18, 2021**

I thank Chair Connor, Vice-Chair Sims, and the members of the Senate Committee on Criminal Law for the opportunity to write in support of H.B. 3665, which provides for early release for medical incapacity or terminal illness. I write on behalf of FAMM, a national organization of prisoners, their families and loved ones, and diverse people concerned about criminal justice reform. FAMM’s mission is to create a more fair and just criminal justice system that respects the values of individual accountability and dignity while maintaining community safety. We promote sentencing reform, particularly individualized sentencing; prison reform, ensuring individuals receive the support they need while incarcerated so they can return to their communities and succeed; and second look authorities, such as compassionate release of debilitated and dying people whose continued detention no longer advances the goals of incarceration.

In 2018, FAMM published the results of an in-depth research project that documented compassionate release programs¹ in the 50 states and the District of Columbia. We included an exhaustive review of statutes, agency regulations, and policies. We examined eligibility criteria, application requirements, documentation and decision-making, as well as post-decision and post-release issues. We published our findings in 51 memoranda on our website.²

We analyzed the findings in a report, “Everywhere and Nowhere: Compassionate Release in the States.”³ The report summarizes policies and practices that pose barriers to release and those that exemplify best practices. We also include a set of recommendations for states working to implement or update such programs.⁴

Our support for H.B. 3665 is informed by that research and our analysis, especially those best practices and recommendations we believe are reflected in the bill.

¹ While we use the term “compassionate release” to describe this authority, we are aware that many jurisdictions have different names for programs that enable early release for qualifying prisoners. Due to what we have learned of the insurmountable barriers to early release programs encountered by many sick and dying prisoners, we believe every program could benefit from taking a compassion-based look at what it means to go through the process. We call these programs “compassionate release” so that the human experience is foremost in our minds and those of policy makers.

² FAMM, Compassionate Release: State Memos (June 2018), <https://famm.org/our-work/compassionaterelease/everywhere-and-nowhere/#memos>. FAMM is currently revising and updating the 51 state memos.

³ Mary Price, Everywhere and Nowhere: Compassionate Release in the States (June 2018), (Everywhere and Nowhere), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>.

⁴ Everywhere and Nowhere, Executive Summary, <https://famm.org/wp-content/uploads/Exec-Summary2-page.pdf>.



FAMM welcomes the introduction of H.B. 3665. We noted in 2018 that incapacitated and dying individuals in Illinois prisons can only seek early release via executive clemency. It is an avenue technically on the books, but so rarely used that Illinois can fairly be said to rank at the very bottom of states with early medical release programs. Only Iowa, with no authority whatsoever, is worse.⁵

H.B. 3665 would fill the void by creating an early release mechanism for terminally ill and incapacitated individuals. The bill has benefitted from the input of national experts in this area and takes into consideration both public safety and the cost of incarcerating incapacitated and dying people – the most expensive people to imprison and the least likely to reoffend. H.B. 3665 includes thoughtful features that follow some of the best practices FAMM identified in its review of state programs. We point out a few below.

H.B. 3665 includes clear, commonsense, and objective eligibility criteria: Our 51- state review found a number of compassionate release programs that included easy-to-understand and comprehensive eligibility criteria.⁶ Such clarity is important for prisoners who are nearing the end of life or whose incarceration is more burdensome due to medical vulnerability. We find H.B. 3665 to state clear, straightforward, and not unduly restrictive criteria for its two eligibility categories: medical incapacitation and terminal illness.

For example, the criteria for incapacitation provides that an individual have a diagnosable condition that is chronic and prevents them from completing more than one activity of daily living without assistance. Such clarity helps evaluators as well as decision-makers determine if the individual meets statutory criteria.

Similarly, the criteria for terminal condition is a straightforward assessment of time left to live based on an individual assessment made in accordance with medical standards.⁷

H.B. 3665 provides clear guidance to decision-makers. When directions are unclear, staff and officials may be confused, apply subjective criteria, and even deny otherwise eligible applicants. H.B. 3665 does a fine job of laying out considerations the Prisoner Review Board may address in deciding whether to grant early release for medical incapacity or terminal illness. These include, among others, whether underlying criteria are met; the cost of continued incarceration, and its impact on the Department of Corrections' provision of medical care; danger to others that release could pose, and any victim input. This clear guidance removes uncertainty without unduly restricting the Board's judgment and discretion.

H.B. 3665 includes a straightforward review process. FAMM found many jurisdictions had complex and multi-layered evaluation and decision-making procedures. Some required multiple, duplicative documentation requirements and others, like Ohio, had applicants go through

⁵ Everywhere and Nowhere at 12; FAMM, Compassionate Release: Iowa (June 2018), https://famm.org/wp-content/uploads/Iowa_Final.pdf.

⁶ Everywhere and Nowhere at 17.

⁷ We will note that while FAMM counsels against time-left-to-live criteria, 18 months is generous and, in light of the strict timeframes for considering and ruling on requests, we think, reasonable.

multiple reviews with a dizzying number of hurdles and boxes to check.⁸ Under H.B. 3665, the process would be streamlined, while ensuring that the important information is gathered by the Department and provided to the Board, which is the final decision-maker. Such simplicity does not belie a thorough look, but evinces a refreshing level of trust in the reviewers and in the ultimate decision-maker.

H.B. 3665 provides reasonable timeframes and deadlines. FAMM found many states did not hold evaluators and decision-makers to any schedule when considering applications for compassionate release. The best programs provide deadlines that help move applications forward, but most do not. Lacking time frames means that delays are inevitable. This matters when the applicant is suffering or nearing death. The best states have steps that are both well set out and time constrained. Minnesota and California, for example, have such well-defined time frames.⁹

House Bill 3665 includes some clear deadlines for steps in the process. The bill's timeframes are meant to help move an application along without delay. For example, the Department must provide the Board with a medical evaluation of the applicant within 10 days of a request from the Board. The Board must hold a hearing (if requested) and issue a decision within 90 days of receiving the application. These requirements help put Illinois well ahead of many programs in the country and signal the state's commitment to promptly addressing and deciding requests made by suffering and dying prisoners.

Other forward-thinking reforms. We were pleased to see H.B. 3665 allows a wide variety of people to begin the process of identifying individuals who might be eligible for medical release. They include, besides the applicant, their attorney, their family or other loved ones, medical caregivers, and prison officials. FAMM has urged states to involve families and loved ones in the application process, and Illinois would be among those doing so.¹⁰

The legislation also follows another best practice: ensuring that **information about medical release is readily available** and advertised in and out of prison. It provides that application materials be posted on websites maintained by the Department and Board and available in the law library and infirmary.

House Bill 3665 is an important and overdue reform that would construct a thoughtful medical release program that the state sorely needs. We urge the committee to support H.B. 3665.

⁸ Everywhere and Nowhere at 15.

⁹ *Id.* at 18; FAMM Compassionate Release: Minnesota, https://famm.org/wpcontent/uploads/Minnesota_Final.pdf; FAMM Compassionate Release: California, https://famm.org/wpcontent/uploads/California_Final.pdf.

¹⁰ Everywhere and Nowhere at 16-17.