

Arkansas provides compassionate release to eligible incarcerated individuals who are incapacitated or terminally ill through three different laws: (1) **Medical Parole**,¹ (2) **Early Release to Home Detention**,² and (3) **Executive Clemency Due to a Life-Threatening Medical Condition**.³

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition – To be eligible for Medical Parole, an incarcerated individual must be either permanently incapacitated or terminally ill.

- “Permanently incapacitated” means that, in two licensed physicians’ opinions, the individual has a medical condition that (1) causes permanent and irreversible incapacitation and (2) requires immediate and long-term medical care.⁴
- “Terminally ill” means that, in two licensed physicians’ opinions, the individual (1) has an incurable condition caused by illness or disease and (2) is likely to die within two years due to that illness or disease.⁵

According to the Arkansas Parole Board’s Policy Manual, individuals who are “suitable” candidates for hospice care can also be approved for Medical Parole.⁶

Exclusions – An individual is not eligible for Medical Parole when (1) under a sentence of death;⁷ (2) sentenced to life imprisonment without parole eligibility;⁸ or (3) required to register as a sex offender⁹ assessed as a “Level 3 offender or higher” or where the victim was 14 years old or younger.¹⁰

II. APPLICATION/REFERRAL

There is no application for the Medical Parole program. When two physicians¹¹ verify that incarcerated individuals are either terminally ill, permanently incapacitated, or would be suitable for hospice care,¹² the Director of either the Arkansas Division of Correction or Division of Community Correction must communicate to the Parole Board that the individuals should be considered for Medical Parole and transferred to community supervision.¹³

- Departmental policy states that the medical service provider and Divisions of Correction and Community Correction must establish a process to identify individuals who meet the Medical Parole criteria¹⁴ and that each Director must provide agency procedures for bringing those who are incapacitated or terminally ill to the Parole Board’s attention.¹⁵ However, other than a limited discussion of Medical Parole in the Arkansas Board of Corrections’

Administrative Rule 850, there are no publicly available policies or procedures on Medical Parole.

III. DOCUMENTATION AND ASSESSMENT

Medical Information: Parole Board – The only information provided on the assessment process is that upon receiving communication that an incarcerated person potentially meets the Medical Parole criteria, the Parole Board must gather all relevant information it needs to decide whether the individual is eligible.¹⁶

IV. DECISION-MAKING PROCESS

Decision-Maker – The Arkansas Parole Board makes the final decision in Medical Parole cases.

Decision-Making Process – The decision-making process is unclear because the Medical Parole statute and agency rules provide little information. The Parole Board rules do not state whether the general parole guidelines apply to Medical Parole cases.

- **Hearings** – The Parole Board Manual states that the Board will conduct an “open meeting” for each eligible parole candidate¹⁷ but then says that “all hearings will be conducted in privacy” and are closed to the public.¹⁸ A single member can conduct an initial case review, but the entire Parole Board must review all cases prior to final decisions.¹⁹
- **Decision Factors** – If the Parole Board is satisfied that the facts show that the incarcerated individual’s medical condition is such that there is no threat to public safety, it can approve release on Medical Parole and immediately transfer the person to community supervision.²⁰
- **Victim Input** – Under the general parole rules, the Parole Board usually permits victims to present a written statement at a “victim impact hearing.”²¹ It is not clear whether this applies in Medical Parole cases.

Conditions and Prerelease Planning – With the help of Division of Correction staff, including medical and mental health personnel, the Parole Board is directed to generate a release plan that addresses the incarcerated individual’s medical and/or mental health needs.²² The Parole Board Manual includes the following additional details on “discharge planning,” although it is unclear whether those apply to Medical Parole:

- The Parole Board carries out “a coordinated program of discharge planning” to ensure “effective and efficient reentry” of an individual who is being paroled. At least 120 days before a person’s anticipated release date, the Parole Board

will work with the Divisions of Correction and Community Correction²³ to complete a prerelease assessment and reentry plan.

- Note that 120 days may be too long for many individuals who are terminally ill, so this guidance may not be applicable to some Medical Parole requests. However, it indicates that the Parole Board is generally responsible for discharge planning.
- The Parole Board chair designates one or more Board members or support staff to monitor the process and ensure that all required programs and release conditions are part of the reentry plan.²⁴

V. POST-DECISION

Supervision – The Division of Community Correction supervises individuals released on parole, including Medical Parole.²⁵

Revocation/Termination – The Parole Board can revoke Medical Parole if the individual’s medical condition improves and no longer meets the eligibility criteria.²⁶

VI. REPORTING/STATISTICS

The Parole Board is directed to file a monthly report to the chairs of the Arkansas State Legislature’s House and Senate Judiciary Committees, the Legislative Council, the Parole Board of Corrections, the Governor’s Office, and the Commission on Disparity in Sentencing.²⁷ However, there is no specific guidance on tracking Medical Parole cases, and the Parole Board’s annual reports do not reference Medical Parole.

- The Parole Board did not respond to FAMM’s request for information on the number of individuals granted Medical Parole.

EARLY RELEASE TO HOME DETENTION

Under Arkansas law, eligible incarcerated individuals may also be considered for Early Release to Home Detention and a transfer to parole supervision if they are permanently incapacitated, terminally ill, or suitable for hospice care.²⁸ However, the relevant statute and policy guidance include only limited information on this program.

I. ELIGIBILITY

Medical Condition – To be eligible for Early Release to Home Detention, an individual must meet at least one of the following definitions:

- “Permanently incapacitated,” meaning that the incarcerated individual has a medical condition causing permanent and irreversible incapacitation that requires immediate and long-term care;²⁹
- “Terminally ill,” meaning that the individual has an incurable condition caused by illness or disease that is likely to cause death within two years;³⁰ or
- “Suitable for hospice care,³¹ meaning that the individual has a condition that would benefit from hospice care. Arkansas law defines hospice care as an “autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and homelike inpatient care...which employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses that are experienced during the final stages of illness and during dying and bereavement.”³²

Exclusions – Incarcerated individuals serving life sentences without parole are not eligible for Early Release to Home Detention.³³

II. APPLICATION/REFERRAL

There is no application for Early Release to Home Detention. To start the process, the Department’s medical personnel refer individuals who meet the eligibility criteria to the Parole Board for consideration.³⁴

III. DOCUMENTATION AND ASSESSMENT

A Division of Correction or Community Correction physician and a consulting physician must document the individual’s medical condition and then communicate that to the Arkansas Parole Board.³⁵ No other information is provided on the assessment process.

IV. DECISION-MAKING PROCESS

Decision-Maker – The Arkansas Parole Board makes the final decision to grant Early Release to Home Detention.³⁶

Hearing/Decision Factors – There is no publicly available information on how the Parole Board makes decisions to grant Early Release to Home Detention due to an individual’s physical incapacitation, terminal illness, or suitability for hospice care. Note that the Arkansas statutes say that the Arkansas Board of Corrections will establish policy and procedures for the home detention program, including program criteria, terms, and conditions of release;³⁷ however, none of the publicly available documents reflect the existence of any such policy or procedures.

Conditions – An individual granted Early Release to Home Detention may be released to the care of family members or friends or to a facility, subject to Parole Board approval.³⁸

V. POST-DECISION

Supervision – The statute provides a definition of electronic monitoring devices but then does not actually use the term again. Given the inclusion of the definition, it is assumed that individuals who are granted Early Release to Home Detention must wear such a device.³⁹

- An approved electronic monitoring or supervising device is defined as “an electronic device approved by the Arkansas Board of Corrections that meets the minimum Federal Communications Commission regulations and requirements and that utilizes available technology that is able to track and monitor a person’s location.”⁴⁰

Term – The Home Detention term does not exceed the maximum number of years of imprisonment or supervision to which incarcerated individuals were sentenced.⁴¹ Note that the length of time individuals participate in Home Detention is credited against their sentence.⁴²

Revocation/Termination – Individuals released to Home Detention who improve to the point where they are no longer terminally ill, incapacitated, or suitable for hospice care are returned to custody and reconsidered for parole.⁴³

VI. REPORTING/STATISTICS

The annual reports issued by the Arkansas Division of Correction, Division of Community Correction, and Parole Board do not include any statistics on the number of individuals granted Early Release to Home Detention on the basis of incapacitating medical conditions, terminal illnesses, or suitability for hospice care. None of those agencies answered FAMM’s requests for information on the number of individuals released in 2019 and 2020.

EXECUTIVE CLEMENCY DUE TO A LIFE-THREATENING MEDICAL CONDITION

Under the Executive Clemency rules, the Arkansas Governor can commute an incarcerated individual’s sentence,⁴⁴ and a “life-threatening” medical condition is listed as an appropriate reason for such a commutation.⁴⁵

I. ELIGIBILITY

Medical Condition – Although a life-threatening medical condition can be the basis of a Clemency/Commutation application, no definition of “life-threatening” is provided.

Exclusions – The Executive Clemency statute and regulations do not list any incarcerated individuals as ineligible for consideration.⁴⁶

II. APPLICATION/REFERRAL

Applications – Incarcerated individuals applying for Executive Clemency must submit a “Commutation (Time Cut) Application”⁴⁷ through their Institutional Release Officers (IROs).⁴⁸ They must sign the applications “under oath”⁴⁹ and include a certified copy of their original judgment and commitment order.⁵⁰

- The form requires that individuals applying on the basis of health must attach a statement explaining their life-threatening conditions.⁵¹
- Individuals must provide medical information releases so that the Arkansas Parole Board can view their medical records.⁵²

All Executive Clemency applications are referred to the Parole Board for investigation.⁵³

III. DOCUMENTATION AND ASSESSMENT

Investigation: Parole – The Parole Board is responsible for investigating each Executive Clemency request.⁵⁴

- Subpoenas – The Parole Board chair, or a designee, has the power to subpoena witnesses to appear, testify, and bring any relevant records and documents before the Parole Board.⁵⁵
- Recommendations
 - The Parole Board must solicit the written or oral recommendations of the committing court, prosecuting attorney, and sheriff of the county where the individual was sentenced.⁵⁶
 - Before considering clemency applications from individuals who have committed certain felonies,⁵⁷ the Parole Board must notify victims (or their relatives) if they have filed a notice request with the prosecuting attorney. When the Parole Board provides such notice, it must solicit their written or oral recommendations regarding granting Executive Clemency.⁵⁸

- Note that the recommendations from the above parties are not binding upon the Parole Board in advising the Governor whether to grant Executive Clemency.⁵⁹

Review and Recommendation: Parole Board

- Screening and Vote – At least five Parole Board members individually review each clemency application.⁶⁰ Each member then votes to (1) recommend that the application is with or without merit or (2) schedule a hearing before the Parole Board.⁶¹ Five affirmative votes are required to issue a recommendation or schedule a hearing.
- Hearing – When the Parole Board decides to hold a hearing, it must notify the victim, or victim’s relatives, of the hearing date, time, and place at least 30 days before it is held.⁶²
 - The individual applying for Executive Clemency may be accompanied by “supporters,” including an attorney, when appearing before the Parole Board.⁶³
 - The Parole Board considers the statements of the incarcerated individual and anyone speaking on the individual’s behalf, the person’s correctional institution files, law enforcement and presentence reports, and any documents presented by the individual or other “interested persons,” including the victim or victim’s relatives.⁶⁴
 - On the basis of all the information presented, the Parole Board votes to recommend that (1) an individual’s application for Executive Clemency is “with merit” or (2) the individual’s application is “without merit.”⁶⁵ If the Parole Board recommends that the application is with merit, it can specify the nature and terms of the commutation.⁶⁶

Submission to Governor: Parole Board – The Parole Board submits all Executive Clemency applications to the Governor along with its investigation report, nonbinding recommendation, and any other information it has about the incarcerated individual being considered.⁶⁷

- Notice – At least 30 days before submitting an Executive Clemency recommendation to the Governor, the Parole Board must issue a public notice of its intention to make such a recommendation and send a notice to the circuit judge who presided over the individual’s trial, the prosecuting attorney, the sheriff of the county in which the individual was convicted, and – if applicable – to the victim or victim’s relatives.⁶⁸

IV. DECISION-MAKING PROCESS

Decision-Maker – The Governor makes the final decision to grant Executive Clemency.

Written Order – If the Governor grants Executive Clemency, the reasons for granting the application are put in a written order and copies are filed with the Arkansas Senate and House of Representatives.⁶⁹

- If the Governor does **not** grant the application for clemency within 240 days of receiving the Parole Board’s recommendation, the application is considered denied.⁷⁰ If the Governor grants the application after the 240-day period, it is considered “null and void.”⁷¹

Notice of the Decision – At least 30 days before granting Executive Clemency, the Governor must file with the Secretary of State a notice of intention to grant the application.⁷² The Governor also directs the Division of Correction to send a notice of intention to the judge, prosecuting attorney, and sheriff of the county in which the individual was convicted and, if applicable, to the victim or victim’s relatives.⁷³

V. POST-DECISION

Appeals and Denials – An individual applying for Executive Clemency cannot appeal either the Parole Board’s recommendation or the Governor’s decision.⁷⁴

- If the Governor denies an incarcerated person’s request for Executive Clemency in writing, the individual is generally not eligible to submit a new application for another four to eight years, depending on the sentence being served.⁷⁵ Note, however, that for applications considered denied because the Governor did not make a decision within 240 days of receiving the Parole Board’s recommendation,⁷⁶ individuals may immediately file a new application for Executive Clemency.⁷⁷
- If it has been at least 12 months after the filing date of a denied application **and** the individual’s physical or mental health has “substantially deteriorated,” the Parole Board can waive the waiting period for filing a new application.⁷⁸

VI. REPORTING/STATISTICS

The Governor’s office publishes a monthly press release on the number of individuals granted Executive Clemency. However, there is no cumulative information stating how many individuals have been granted clemency based on life-threatening medical conditions.⁷⁹

ARKANSAS COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

MEDICAL PAROLE

Statute

Arkansas Code, § 12-29-404 (2020), available through the Arkansas State Legislature, <https://advance.lexis.com/container?config=00JAA3ZTU0NTIzYy0zZDEyLTRhYmQtYmRmMS1iMWlxNDgxYWMxZTQKAFBvZENhdGFsb2cubRW4ifTiwi5vLw6cl1uX&crd=ce030cbf-89da-41d1-a255-09c5604d7ada>.

Agency Policy

Arkansas Parole Board, Policy Manual (2015), § 2.16, <https://www.sos.arkansas.gov/uploads/rulesRegs/Arkansas%20Register/2015/oct2015/158.00.15-001E.pdf>.

Arkansas Board of Corrections, Administrative Rule 850 (2013), https://doc.arkansas.gov/wp-content/uploads/2020/09/AR_0850_Terminal_Illness_or_Permanent_Incapacitation.pdf.

EARLY RELEASE TO HOME DETENTION

Statute

Arkansas Code, § 16-93-708 (2020), available through the Arkansas State Legislature, <https://advance.lexis.com/container?config=00JAA3ZTU0NTIzYy0zZDEyLTRhYmQtYmRmMS1iMWlxNDgxYWMxZTQKAFBvZENhdGFsb2cubRW4ifTiwi5vLw6cl1uX&crd=ce030cbf-89da-41d1-a255-09c5604d7ada>.

EXECUTIVE CLEMENCY DUE TO A LIFE-THREATENING MEDICAL CONDITION

Statute

Arkansas Code, §§ 16-93-204 and 16-93-207 (2020), available through the Arkansas State Legislature, <https://advance.lexis.com/container?config=00JAA3ZTU0NTIzYy0zZDEyLTRhYmQtYmRmMS1iMWlxNDgxYWMxZTQKAFBvZENhdGFsb2cubRW4ifTiwi5vLw6cl1uX&crd=ce030cbf-89da-41d1-a255-09c5604d7ada>.

Agency Policy

Arkansas Parole Board, Policy Manual (2015), § 4.3, <https://www.sos.arkansas.gov/uploads/rulesRegs/Arkansas%20Register/2015/oct2015/158.00.15-001E.pdf>.

NOTES

* *Id.* means see prior note.

¹ Ark. Code Ann. § 12-29-404; Arkansas Parole Board of Corrections Administrative Rule 850 (Corrections AR 850); Arkansas Parole Board Policy Manual (Parole Board Manual), § 2.16.

² Ark. Code Ann. § 16-93-708.

³ Ark. Code Ann. §§ 16-93-204 and 16-93-207.

⁴ Ark. Code Ann. § 12-29-404 (a) (1); Arkansas Parole Board of Corrections AR 850, §§ IV and V; Parole Board Manual, § 2.16.

⁵ Ark. Code Ann. at § 12-29-404 (a) (2); Corrections AR 850, §§ IV and V; Parole Board Manual § 2.16.

⁶ Parole Board Manual § 2.16.

⁷ Corrections AR 850, § V (A). Note that this exclusion is listed only in Administrative Rule 850 and is not in the statute.

⁸ *Id.* at § V-B. Incarcerated individuals are also excluded from consideration if they are sentenced “to life imprisonment (sentence not commuted to a term of years by executive clemency pursuant to Ark. Code Ann. § 16-93-601 et seq.).” *Id.* Again, these exclusions are listed only in Corrections AR 850.

⁹ See Sex Offender Registration Act of 1997 (as amended), Ark. Code Ann §§ 12-12-901 through 12-12-920.

¹⁰ Ark. Code Ann. § 12-29-404 (d); Corrections AR 850, § V (D); Parole Board Manual at 2.16. Note that the provision regarding the ineligibility of sex offenders is worded differently in each of these three sources.

¹¹ One physician must be an Arkansas Division of Correction physician or Division of Community Correction physician, and the second must be a “consultant physician.” Ark. Code Ann. § 12-29-404 (b).

¹² Parole Board Manual § 2.16. Note that the reference to hospice care is in the Parole Board Manual but not the statute.

¹³ Ark. Code Ann. § 12-29-404 (b); Parole Board Manual § 2.16.

¹⁴ Corrections AR 850, § III.

¹⁵ *Id.* at § VI-A.

¹⁶ Ark. Code Ann. at § 12-29-404 (c) (1); Parole Board Manual § 2.16.

¹⁷ Parole Board Manual § 1.

¹⁸ Parole Board Manual § 2.14.

¹⁹ Parole Board Manual at § 1.1. General “release hearing” guidelines are also provided in the Parole

Board Manual’s §§ 2.11 and 2.14, but there is no reference as to whether these procedures apply to Medical Parole.

²⁰ Ark. Code Ann. § 12-29-404 (c) (2); Parole Board Manual § 2.16.

²¹ Parole Board Manual § 2.10.

²² Corrections AR 850, § VI (B).

²³ Note that as of 2019, the Arkansas Department of Corrections includes a Division of Correction and a Division of Community Correction. Although the older policies still refer to “departments,” the two are now referred to as divisions.

²⁴ Parole Board Manual § 2.23.

²⁵ Id. at § 2.1.

²⁶ Ark. Code Ann. § 12-29-404 (e); Parole Board Manual § 2.16. Note that the Parole Board Manual says Medical Parole revocation proceedings follow all the requirements applicable to “regular” parole. Parole Board Manual § 2.16.

²⁷ Parole Board Manual § 5.14.

²⁸ Ark. Code Ann. § 16-93-708 (b) (1). Note that the statute says the individual “may be incarcerated in a home detention program [emphasis added].” Id. at (b) (1) (A). A later section in the same statute, though, calls it “parole” and not “incarceration”: “An inmate...who is released on parole under this section...” Id. at § (d) (2). Whether or not an individual is considered incarcerated can be important for purposes of obtaining health care coverage. Generally individuals who are classified as incarcerated are not eligible for either Medicaid or Medicare; however, individuals on home confinement may be eligible for coverage under the Affordable Care Act.

²⁹ Ark. Code Ann. §§ 16-93-708 (a) (3) and (b) (1) (A).

³⁰ Id.

³¹ Ark. Code Ann. § 16-93-708 (b) (1) (A).

³² Id. at (a) (2).

³³ Id. at (d) (2).

³⁴ Id. at (b) (2).

³⁵ Id. at (b) (1) (B).

³⁶ Id. at (b) (1) and (b) (2).

³⁷ Id. at (b) (2) and (d) (1).

³⁸ Id. at (d) (2).

³⁹ Id. See also Arkansas Parole Board of Corrections Administrative Rule 7.12, Electronic Monitoring after 120 Days Served (2013), https://doc.arkansas.gov/wp-content/uploads/2020/09/AR_1317_Electronic_Monitoring.pdf. Note that according to this rule, the individuals on Home Detention – not the Division of Community Correction – must pay for all the costs of electronic monitoring.

⁴⁰ Ark. Code Ann. § 16-93-708 (a) (1).

⁴¹ Id. at (c) (2) (A).

⁴² Id. at (c) (2) (B).

⁴³ Id. at (e).

⁴⁴ See Ark. Code Ann. §§ 16-93-204 and 16-93-207.

⁴⁵ Parole Board Manual § 4.3.

⁴⁶ Incarcerated individuals serving sentences for capital murder and other serious felonies who file for Executive Clemency are subject to different notice requirements. Id. at § 4.5.

⁴⁷ The Arkansas Parole Board's *Commutation (Time-Cut) Application* is available online at <https://doc.arkansas.gov/wp-content/uploads/2020/09/CommutationApplication021909.pdf>.

⁴⁸ Parole Board Manual § 4.3.

⁴⁹ Ark. Code Ann. § 16-93-204 (a) (1) (A).

⁵⁰ Id. at (a) (2).

⁵¹ Arkansas Parole Board, *Commutation (Time Cut) Application*, 2.

⁵² Id.

⁵³ Ark. Code Ann. § 16-93-204 (a) (3).

⁵⁴ Id. at (b).

⁵⁵ Id. at (c).

⁵⁶ Id. at (d); Parole Board Manual § 4.5.

⁵⁷ This is done for clemency applications submitted by individuals convicted of capital murder or a Class Y, A, or B felony. See Ark. Code Ann. § 16-93-204 (d) (2) (A).

⁵⁸ Ark. Code Ann. §§ 16-93-204 (d) (2) (A) and (B); Parole Board Manual § 4.5.

⁵⁹ Ark. Code Ann. § 16-93-204 (d) (4). Copies of the recommendations are kept in the Parole Board's file and the incarcerated individual's file. See also § 16-93-204 (d) (3).

⁶⁰ Parole Board Manual § 4.6.

⁶¹ Id. Note that a hearing is required for individuals serving a death sentence.

⁶² Id. See also Ark. Code Ann. §§ 16-93-204 (d) (5) (A) and (B). Note that the statutory language seems to say that victims are only notified if the Parole Board wants to solicit their recommendations; the wording in the Parole Board Manual is slightly different.

⁶³ Parole Board Manual § 4.7.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id. Note that for individuals sentenced to death there are some process differences. See the Parole Board Manual § 4.8.

⁶⁷ Ark. Code Ann. § 16-93-204 (b); Parole Board Manual § 4.9.

⁶⁸ Ark. Code Ann. § 16-93-204 (e). Note that although § 16-93-204 states the Parole Board recommends whether an application should be “granted” or “denied,” the Parole Board Manual states that the Parole Board recommends only that an application is with or without merit.

⁶⁹ Ark. Code Ann. § 16-93-207 (e). Note that the order must contain the incarcerated individual’s name, the offense for which the individual was convicted, the sentence imposed and the date it was imposed, and the effective date of the pardon or commutation of sentence.

⁷⁰ Id. at (b).

⁷¹ Id.

⁷² Id. at (a) (1) (A). Note that the statute says that the filing of the notice does not preclude the Governor from later denying the application but that any “pardon, commutation of sentence, or remission of fine or forfeiture” that is granted without filing a notice is null and void. Id. at (a) (2).

⁷³ Id. at (a) (1) (B).

⁷⁴ Parole Board Manual § 4.10.

⁷⁵ Ark. Code Ann. §§ 16-93-207 (c) and (d).

⁷⁶ Id. at (b).

⁷⁷ Id. at (d) (2).

⁷⁸ Id. at (3) (A).

⁷⁹ See the official Arkansas Governor’s Clemency and Extraditions webpage at <https://governor.arkansas.gov/our-office/clemency-and-extraditions>.