

Idaho provides compassionate release to eligible incarcerated individuals with serious medical conditions through **Medical Parole**.<sup>1</sup>

## **MEDICAL PAROLE**

### **I. ELIGIBILITY**

**Medical Condition** – To be eligible for Medical Parole, an incarcerated individual must be:

- Permanently and irreversibly physically incapacitated by reason of an existing physical condition that is not terminal and no threat to society due to that condition;<sup>2</sup> or
- Irreversibly terminally ill, having an incurable condition caused by illness or disease, and no threat to society due to that condition.<sup>3</sup>

**Exclusion** – Individuals under a sentence of death are not eligible for any form of parole.<sup>4</sup>

### **II. APPLICATION/REFERRAL**

Any of the following individuals can start the Medical Parole process by submitting a “written referral” to the facility’s Deputy Warden:<sup>5</sup> (1) the incarcerated person;<sup>6</sup> (2) an incarcerated individual’s family member;<sup>7</sup> (3) Department of Correction (Department) staff;<sup>8</sup> (4) the Department or facility health authority;<sup>9</sup> or (5) the Idaho Commission of Pardons and Parole (Commission).<sup>10</sup>

The referral must include the incarcerated person’s name, the reason for the referral, and how the individual meets the Medical Parole requirements.<sup>11</sup>

### **III. DOCUMENTATION AND ASSESSMENT**

**Evaluation Request: Deputy Warden** – Within three working days of receiving a referral, the Deputy Warden must ask the facility health authority for a medical evaluation that includes the incarcerated person’s diagnosis, prognosis, and needed level of care upon release (e.g., hospital, nursing home, hospice, or outpatient care).<sup>12</sup>

**Medical Evaluation: Facility Health Authority** – Within five days of receiving the Deputy Warden’s request, the facility health authority must have a physician complete a medical review and provide the Deputy Warden with the required information about the individual.<sup>13</sup>

- Note that an incarcerated person serving a sentence for certain crimes or whose history and conduct indicate the individual is “sexually dangerous” must also be examined and evaluated by “one or more psychiatrists, psychologists, or mental health professionals the Department has designated for this purpose.”<sup>14</sup>

**Review: Deputy Warden** – The Deputy Warden reviews all of the information to determine whether the individual meets the medical criteria:<sup>15</sup>

- When an individual does not meet the Medical Parole criteria, the Deputy Warden must notify the person and, if appropriate, anyone who submitted the referral on the individual’s behalf and, within three days, forward the evaluation report to the Commission and the facility health authority.<sup>16</sup> The correctional facility’s process ends at that point, although if the individual’s condition worsens, there can be another review.<sup>17</sup>
- If the evaluation indicates that the incarcerated person **does** meet the medical criteria, the process continues.<sup>18</sup>

**Parole Packet and Plan: Deputy Warden** – The Deputy Warden must prepare a parole “packet” and a parole plan for the individual.<sup>19</sup>

- Packet – Within five days, the Deputy Warden must prepare a parole packet that includes:
  - A completed *Request for Parole Consideration* form;
  - The physician’s report;
  - The individual’s presentence report;
  - A psychological or mental health evaluation, if available;
  - Commitment orders; and
  - If the Commission requests one, a current progress report.<sup>20</sup>
- Parole Plan – The Deputy Warden also completes a parole plan for the individual that includes the following information:
  - Proposed living arrangements that are consistent with the physician’s recommendations;
  - A description of the medical care that has been arranged;
  - Resources available to pay for living and medical expenses;

- Family and friend support available to the individual; and
- Transportation arrangements, including medical transportation if needed.<sup>21</sup>

Note that if the incarcerated person’s family members and/or friends want to help with developing the parole plan, they must contact the Deputy Warden responsible for preparing the plan.<sup>22</sup>

The Deputy Warden then forwards the packet and the parole plan to the Warden/Facility Head.<sup>23</sup>

**Review and Comment: Warden** – The Warden reviews the packet; includes comments, if any, on the *Request for Parole Consideration* form;<sup>24</sup> and then forwards everything to the Executive Director of the Commission, with a copy to the health authority.<sup>25</sup>

#### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The Commission of Pardons and Parole reviews and makes the final decisions on all Medical Parole requests.<sup>26</sup>

**Decision** – In making its decision, the Commission may (1) conduct a review of the case; (2) conduct a hearing; and/or (3) designate Commission staff to gather any needed additional medical information, including a proposed treatment or care plan.<sup>27</sup> The Commission will also consider any letters and phone calls in favor or against an incarcerated person’s Medical Parole.<sup>28</sup>

- If the Commission holds a Medical Parole hearing, the individual “is encouraged” to be present; however, it can also make a final decision based on the available documents and written information.<sup>29</sup>

**Notice** – If the Commission grants Medical Parole, it must notify the Warden of the facility in which the incarcerated person is housed.<sup>30</sup>

#### **V. POST-DECISION**

It appears that the general parole rules apply, because there are no additional requirements or post-release rules specific to Medical Parole mentioned in the statute, administrative code, or Department and Commission procedures.<sup>31</sup>

#### **VI. REPORTING/STATISTICS**

Idaho law directs the Commission to send an annual report containing the name, medical condition, and current status of each individual granted Medical Parole to the

Idaho House and Senate Judiciary Committees.<sup>32</sup> It is unknown whether that information has been reported, because there is no information available on the Commission’s website.

- The Commissioner reported to FMM that it released just one person on Medical Parole in 2019 and one person in 2020.<sup>33</sup>

## **IDAHO COMPASSIONATE RELEASE** **PRIMARY LEGAL SOURCES**

### **MEDICAL PAROLE**

#### **Statute**

Idaho Code, § 20-223 (8) (2020), available through the Idaho Legislature, <https://legislature.idaho.gov/statutesrules/idstat/title20/t20ch2/sect20-223/>.

#### **Regulations**

Idaho Administrative Code, § 50.01.01.250-05 (2020), available through the Idaho Office of the Administrative Rules Coordinator, <https://adminrules.idaho.gov/rules/current/50/500101.pdf>.

#### **Agency Policy**

Idaho Department of Correction, Standard Operating Procedures/Offender Management, Policy 324.02.01.002: Parole of Offenders with a Terminal Disease or Permanent Incapacitation (2008), <http://forms.idoc.idaho.gov/WebLink/0/edoc/280958/Parole%20of%20Offenders%20with%20a%20Terminal%20Disease%20or%20Permanent%20Incapacitation.pdf>.

## **NOTES**

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\* *Id.* means see prior note.

<sup>1</sup> Idaho Code § 20-223 (8); Idaho Admin. Code § 50.01.01.250-05; Idaho Department of Correction Standard Operating Procedure (DOC Procedure) 324.02.01.002, Parole of Offenders with a Terminal Disease or Permanent Incapacitation.

<sup>2</sup> Idaho Code § 20-223 (8); Idaho Admin. Code § 50.01.01.250-05 (a); DOC Procedure 324.02.01.002, § 1.

<sup>3</sup> *Id.*

<sup>4</sup> Idaho Code § 20-223 (2).

<sup>5</sup> DOC Procedure 324.02.01.002, § 2 at Step 1.

<sup>6</sup> Idaho Admin. Code § 50.01.01.250-05 (b); DOC Procedure 324.02.01.002, § 2.

<sup>7</sup> DOC Procedure 324.02.01.002, § 2.

<sup>8</sup> Idaho Admin. Code § 50.01.01.250-05 (b); DOC Procedure 324.02.01.002, § 2.

<sup>9</sup> DOC Procedure 324.02.01.002, § 2. The Department health authority is the person responsible for managing the Department’s medical and mental health services, sometimes referred to in Department policy as the “Health Services Director.” The “facility health authority” is the contract medical provider employee primarily responsible for overseeing the delivery of medical services in an Idaho Department of Correction facility. DOC Procedure 324.02.01.002, Definitions.

<sup>10</sup> DOC Procedure 324.02.01.002, § 2.

<sup>11</sup> Id. at Step 1.

<sup>12</sup> Id. at Step 2, referencing DOC Procedure 324.02.01.002, Appendix A: Request for a Medical Evaluation.

<sup>13</sup> Id. at Steps 3 and 4.

<sup>14</sup> Idaho Code § 20-223 (4). Those specific crimes are rape, incest, committing a lewd act upon a child, a crime against nature, or an assault with intent to commit any such crimes. In addition, the Commission may require a similar examination and evaluation for individuals serving sentences for other crimes, although no examples or additional information are given.

<sup>15</sup> DOC Procedure 324.02.01.002, § 2 at Step 5. Note that the Deputy Warden can designate someone to carry out these duties.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at Step 6.

<sup>20</sup> Id.

<sup>21</sup> Id. Note that the five-day time frame appears to apply to the parole packet but not the parole plan.

<sup>22</sup> Id. at § 3.

<sup>23</sup> Id. at § 2, Step 7.

<sup>24</sup> Id. at Step 8.

<sup>25</sup> Id. at Step 9.

<sup>26</sup> Idaho Code § 20-223 (8); Idaho Admin. Code § 50.01.01.250-05; DOC Procedure 324.02.01.002, § 2 at Step 10.

<sup>27</sup> Idaho Admin. Code § 50.01.01.250-05 (c).

<sup>28</sup> DOC Procedure 324.02.01.002, § 3.

<sup>29</sup> Idaho Admin. Code § 50.01.01.200-05 (e).

<sup>30</sup> DOC Procedure 324.02.01.002, § 2 at Step 10.

<sup>31</sup> See Idaho Admin. Code § 50.01.01.

<sup>32</sup> Idaho Code § 20-223 (9).

<sup>33</sup> Notice of Action on Public Records Request from the Idaho Commission on Pardons and Paroles to FMM (April 13, 2021) (on file with FMM, Office of the General Counsel). Note that the ACLU reported that Idaho releases “about 20” individuals on Medical Parole each year, primarily to nursing facilities. Based on the Commission’s response to FMM, this appears to not have been the case in 2019 and 2020. See American Civil Liberties Union, Blueprint for Smart Justice Idaho (2019), <https://50stateblueprint.aclu.org/states/idaho/>.