

Kentucky provides compassionate release to eligible incarcerated individuals with serious or terminal medical conditions through **Early Medical Consideration** (sometimes referred to as **Early Parole**).<sup>1</sup>

- Note that although the relevant Kentucky statute is titled “Parole of Prisoners with Documented Terminal Medical Conditions,” individuals may also be eligible for **Early Medical Consideration (Early Parole)** due to certain serious medical conditions that are not terminal.

## **EARLY MEDICAL CONSIDERATION (EARLY PAROLE)**

### **I. ELIGIBILITY**

**Medical Condition** – To be eligible for Early Medical Consideration, an incarcerated individual must have one of the following:<sup>2</sup>

- A documented terminal medical condition likely to result in death within one year;
- Severe chronic lung disease, end-stage heart disease, or severe neuromuscular disease (such as multiple sclerosis);
- Severely limited mobility because of a stroke, disease, or trauma; or
- Dependency on external life support systems.

**Additional Eligibility Criteria** – To be eligible for Early Medical Consideration, an individual must also not pose a threat to society if paroled.<sup>3</sup>

**Exclusions** – There are no incarcerated individuals specifically excluded from consideration.

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

The statute says that the Kentucky Parole Board can review the case of any individual who meets the medical criteria.<sup>4</sup> There is no further information about applications or referrals in the relevant statute or Department of Corrections (Department) policies.

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

**Medical Documentation: Department Medical Staff** – The Department medical staff must provide the Medical Director with written documentation of the incarcerated individual’s diagnosis and prognosis, supporting the conclusion that the person (1) has

a terminal medical condition likely to result in death within one year or (2) because of one of the other serious medical conditions in the statute (listed above under Eligibility) is substantially dependent on others to carry out activities of daily living.<sup>5</sup>

**Recommendation: Medical Director** – The Department Medical Director reviews the documentation and makes a recommendation to the Department Commissioner (or a designee) for or against parole review.<sup>6</sup>

**Approval and Submission to Parole Board: Department Commissioner** – Upon approving the recommendation for Early Medical Consideration, the Commissioner forwards the request for parole review, the Medical Director’s recommendation, and the medical documentation to the Parole Board.<sup>7</sup>

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

**Decision-Maker** – The Kentucky Parole Board makes the decision to approve or deny Early Medical Consideration (Early Parole).<sup>8</sup>

- A majority of the full Parole Board must make the decision to review the case of any individual with a qualifying medical condition.<sup>9</sup>

**Hearings** – The Parole Board will hold hearings for specific individuals requesting Early Medical Consideration:

- State law says the Parole Board must conduct hearings for individuals if they are serving a sentence for a Class A or B felony or for a Class C felony involving violence or a sexual offense.<sup>10</sup>
  - That appears to indicate that the Parole Board does **not** have to hold hearings for individuals who meet the medical criteria and are serving sentences for crimes that do not fall into those categories.
- The Parole Board must provide notice of the time, date, and place of a scheduled hearing 15-30 days before the hearing to (1) the Commonwealth’s attorney, who must notify the sheriff of every county and chief of police of every city and county in which the individual committed the felony,<sup>11</sup> and (2) all identified victims of the crime or the relatives of victims who are deceased.<sup>12</sup>
- An incarcerated individual who is too ill to appear at a hearing may have the date deferred, or if the condition is “acute,” the Parole Board may conduct the hearing without the individual present.<sup>13</sup>

**Decision Factors** – The statute says that an individual’s medical information will not constitute the only reason for granting parole and that the Parole Board must consider

other relevant information.<sup>14</sup> In addition to medical documentation, the Board may consider the person's prior record, mental status, and conduct while in prison; the parole discharge plan; and other factors related to public safety or the incarcerated individual's needs.<sup>15</sup>

## **V. POST-DECISION**

There is no specific information in the statute or regulations related to what happens after a release for medical reasons, nor is there any detail on revocation of parole if an individual's condition improves or is not terminal.

## **VI. REPORTING/STATISTICS**

**Reporting** – Kentucky law does not require the Parole Board to report the number of individuals granted Early Medical Consideration. However, in response to FAMM's request for information, the Parole Board provided the following statistics:<sup>16</sup>

- In 2019, the Parole Board received 37 requests for Early Medical Consideration (Early Parole). The Board granted six requests and denied 21 requests; in addition, three individuals were ineligible and seven individuals died.
- In 2020, the Parole Board received 20 requests for Early Medical Consideration (Early Parole). The Board granted seven requests and denied five requests; in addition, four individuals were ineligible, three individuals died, and one request was pending at the end of 2020.

**Other Medically Related Releases** – Note that in 2020, due to COVID-19, Governor Andy Beshear commuted the sentences of 307 incarcerated individuals who were considered medically vulnerable: 186 people in April 2020 and 121 people in August 2020.<sup>17</sup>

## **KENTUCKY COMPASSIONATE RELEASE**

### **PRIMARY LEGAL SOURCES**

#### **EARLY MEDICAL CONSIDERATION (EARLY PAROLE)\***

##### **Statute**

Kentucky Revised Statutes § 439.3405 (2020), available through the Kentucky General Assembly's Kentucky Law page by entering the section number in the search box, <https://legislature.ky.gov/Law/Statutes/Pages/default.aspx>.

##### **Agency Policy/Publications**

Kentucky Corrections Policies and Procedures, Policy 13.2 (Feb. 26, 2016), § II (O), <https://corrections.ky.gov/About/cpp/Documents/13/ CPP%2013.2.pdf>.

Kentucky Parole Board Policies and Procedures, Policy 10-01 (Dec. 4, 2015), <https://justice.ky.gov/Boards-Commissions/paroleboard/Documents/Old%20Site/Statutes%20and%20Regulations/KYPB%2010-01%20ParoleReleaseHearings%20eff%2012-4-15.pdf>.

*\* Note that the Kentucky compassionate release law goes by several names, with none of them being used frequently or consistently. In addition to Early Medical Consideration, it is also referred to in various policy documents and press reports as Early Parole, Parole of Prisoners with Documented Terminal Medical Conditions, Early Parole Consideration for Medical Reasons, Emergency Medical Parole, Medical Parole, and Compassionate Release. All of those names appear to refer to the same policy.*

## **NOTES**

\* *Id.* means see prior note.

<sup>1</sup> Ky. Rev. Stat. Ann. § 439.3405; Kentucky Parole Board Policies and Procedures (Parole Policy), KYPB 10-01, Parole Release Hearings; Kentucky Corrections Policies and Procedures (DOC Policy), Policy 13.2, § II (O). Note that the Kentucky compassionate release law goes by several names, with none of them being used frequently or consistently. In addition to Early Medical Consideration, it is also referred to in various policy documents and press reports as Early Parole, Parole of Prisoners with Documented Terminal Medical Conditions, Early Parole Consideration for Medical Reasons, Emergency Medical Parole, Medical Parole, and Compassionate Release – all referring to the same policy.

<sup>2</sup> Ky. Rev. Stat. Ann. § 439.3405 (1).

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

<sup>4</sup> Id.

<sup>5</sup> Id. at (2).

<sup>6</sup> Id. at (3).

<sup>7</sup> Id.

<sup>8</sup> Ky. Rev. Stat. Ann. § 439.3405 (1); Board Policy 10-01 (A); DOC Policy 13.2, § II (O).

<sup>9</sup> Ky. Rev. Stat. Ann. § 439.3405 (1). The Parole Board has nine members, listed at the Kentucky State Government website,

<http://www.state.ky.us/agencies/justice/html/Parole%20Board%20Staff%20Listing.htm>.

<sup>10</sup> Ky. Rev. Stat. Ann. § 439.3405 (5). See also the general Parole Board rules at 501 Ky. Admin. Regs., Chapter 1, §§ .030 through .080, <https://apps.legislature.ky.gov/law/kar/TITLE501.HTM>.

<sup>11</sup> Id. at (5) (a).

<sup>12</sup> Id. at (5) (b).

<sup>13</sup> Board Policy 10-01, § (E) (2).

<sup>14</sup> Ky. Rev. Stat. Ann. § 439.3405 (4).

<sup>15</sup> Board Policy 10-01, § (L).

<sup>16</sup> Email from Cyndi Heddleston, Kentucky Department of Corrections, to FMM (May 24, 2021) (on file with FMM, Office of the General Counsel).

<sup>17</sup> See “Gov. Beshear Recommends Schools Stay Closed Until May 1 in COVID-19 Fight,” Office of the Governor (April 2, 2020),

<https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=113>, and Scott Brown, “Kentucky to Release 646 More Prisoners Due to COVID-19 Concerns,” WKDZ Radio (Aug. 25, 2020), <https://www.wkdzradio.com/2020/08/25/kentucky-to-release-646-more-prisoners-due-to-covid-19-concerns/news-edge/>.