

Michigan provides compassionate release to eligible incarcerated individuals with serious and/or terminal medical conditions through (1) **Medical Parole**¹ and (2) **Executive Clemency/Commutation Due to a Deteriorating or Terminal Medical Condition**.²

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition – An incarcerated individual is eligible for Medical Parole if “medically frail,”³ which is defined as having a condition that meets one or both of the following criteria:

- A permanent or terminal physical disability or serious and complex medical condition resulting in the inability to walk, stand, and/or sit without personal assistance;⁴ or
- A permanent or terminal disabling mental disorder, including dementia, Alzheimer’s disease, or a similar degenerative brain disorder, which results in a significantly impaired ability to perform two or more activities of daily living and the need for nursing home care.⁵

Other Eligibility Criteria – To be eligible for Medical Parole, an incarcerated person must also (1) be a minimal threat to society as a result of the medical condition; (2) have received a risk score of “low” on a validated risk assessment; and (3) have a “recent” prison record that indicates the individual is unlikely to engage in “assaultive conduct.”⁶

Exclusions – An individual is not eligible for Medical Parole if convicted of (1) any crime punishable by life imprisonment without parole or (2) first-degree criminal sexual conduct.⁷

II. APPLICATION/REFERRAL

There is no Medical Parole application that an incarcerated individual can submit to start the process. The Department of Corrections (Department) Bureau of Health Care Services initiates all requests for Medical Parole.⁸

III. DOCUMENTATION AND ASSESSMENT

If the Bureau of Health Care Services believes that an individual meets the definition of “medically frail,” it must then use a non-Department specialist “in the appropriate field of medicine” to evaluate the person’s condition and report the findings.⁹ There

is no additional information in the Medical Parole law regarding needed documentation or the assessment process.

IV. DECISION-MAKING PROCESS

Decision-Maker – The Michigan Parole Board makes all final decisions granting or denying Medical Parole.¹⁰

Decision Factors – The Parole Board, in consultation with the Bureau of Health Care Services, decides whether the incarcerated individual meets the definition of “medically frail.”¹¹ It has not published any additional guidelines or information on its decision process.

Notice

- **Prosecuting Attorney** – When the Parole Board determines that an incarcerated person is medically frail and should be considered for Medical Parole, it must provide the prosecuting attorney in the county in which the individual was convicted with the relevant medical records and notice that it is considering Medical Parole.¹²
- **Victim** – The Parole Board must also notify any known victim (or, if the victim is deceased, the victim’s immediate family) that it is considering the incarcerated individual for Medical Parole.¹³

Within 30 days of receiving notice, the prosecutor and/or the victim (or victim’s family) may object to the Board’s decision to consider Medical Parole by filing a motion in the circuit court in the county in which the individual was convicted.¹⁴

- The prosecuting attorney must inform the Parole Board if such a motion is filed and may request an independent medical examination of the individual.¹⁵
- The individual’s sentencing judge or the judge’s successor in office must hear the motion.¹⁶

Note that incarcerated individuals being considered for Medical Parole must agree to the release of their medical records to the appropriate prosecutor and sentencing (or successor) judge before the Parole Board decides whether to grant Medical Parole.¹⁷

Decision

- If neither the prosecuting attorney nor victim file a motion (as described above) and the individual meets all eligibility criteria, the Parole Board may grant Medical Parole.¹⁸

- Even if such a motion is filed, the Parole Board may grant Medical Parole if the sentencing court finds that the individual is medically frail.¹⁹

Hearing – There is nothing in the Medical Parole statute that indicates the Parole Board must hold hearings or conduct interviews.

Placement – Individuals are not released on Medical Parole unless they agree to placement in an approved medical facility where they can receive appropriate care and treatment.²⁰ The statute defines “medical facility” as a hospital, hospice, nursing home, or other housing accommodation “providing medical treatment suitable to the conditions rendering the parolee medically frail.”²¹ It is unclear whether this can include a private residence.

V. POST-DECISION

Conditions – Individuals released because they are medically frail must adhere to all conditions the Parole Board sets for the length of the Medical Parole term.²² The Medical Parole statute defines that term as “not less than the time necessary to reach the [person’s] earliest release date.”²³

Notifications – Individuals released on Medical Parole (or persons authorized to act on their behalf) must immediately inform the Parole Board if they (1) are no longer eligible for care at the facility at which they were placed; (2) must be moved to another location for medical care; (3) are no longer at the Board-approved medical facility; or (4) no longer need the level of care that resulted in their placement at the medical facility.²⁴

In addition, when individuals released on Medical Parole are no longer eligible for care or no longer need the level of care for which they were placed at a medical facility, the Parole Board must immediately notify the appropriate prosecutors and judges.²⁵

Revocation/Violations – Individuals who violate their Medical Parole conditions or are determined to no longer meet the definition of medically frail may be (1) transferred to a “more appropriate” setting to address their medical needs or (2) subject to the Department and Parole Board parole violation and/or revocation processes.²⁶

VI. REPORTING/STATISTICS

Michigan’s Medical Parole law became effective on August 21, 2019, and as of May 2021, there were no publicly available statistics on how many individuals, if any, have been released under the law.

EXECUTIVE CLEMENCY/COMMUTATION DUE TO A DETERIORATING OR TERMINAL MEDICAL CONDITION

The Michigan Constitution gives the Governor Executive Clemency authority, which includes the power to commute an incarcerated individual's sentence.²⁷ Michigan's Executive Clemency guidelines say that circumstances such as a deteriorating and/or terminal medical condition from which the person is unlikely to recover can be grounds for initiating a Commutation review.²⁸

I. ELIGIBILITY

Neither the Governor's office nor the Michigan Parole Board provides definitions or examples of "deteriorating or terminal medical condition."

II. APPLICATION/REFERRAL

Incarcerated individuals or someone on their behalf may file an application for Executive Clemency with the Parole Board.²⁹ The current *Application for Pardon or Commutation of Sentence* is available on the Board's website.³⁰

III. DOCUMENTATION AND ASSESSMENT

There are no specific questions on the application related to health issues or medical conditions; however, the filing directions state that individuals requesting clemency due to "a serious health issue" [emphasis in original] should detail their diagnosis, prognosis, and ways the condition affects daily activity³¹ and provide any relevant documentation that verifies or adds to that information.³²

IV. DECISION-MAKING PROCESS

Decision-Maker – The Governor makes all final decisions regarding Executive Clemency; however, the Parole Board first evaluates and makes recommendations to the Governor regarding each application.

Parole Board Evaluation and Recommendation

- Initial Review – The purpose of the initial review is to determine whether the Board should proceed to a public hearing. The general rule is that within 60 days of receiving an *Application for Pardon or Commutation of Sentence*, the Parole Board must conduct an initial review to determine whether the application has merit. However, the Governor may expedite that and other

time frames when a Commutation is requested based in part on an individual's medical condition.³³

- “If there is not majority interest” in proceeding to a public hearing, the Board forwards the application and any supporting documentation to the Governor with the Board's recommendation that it be denied.³⁴
- If there is an “initial majority interest” in considering a public hearing, the statutory process is triggered, starting with the Notice requirements, as detailed below.³⁵
- Notice – The Parole Board must send out notices of the potential public hearing to the sentencing or successor judge and prosecutor, allowing 30 days for their comments and/or objections. The Board's guidelines, but not the relevant statute, state that when it receives an *Application for Pardon or Commutation of Sentence* from a terminally ill incarcerated individual, it may seek the prosecutor's and judge's consent to a waiver of the 30-day notice requirement.³⁶
 - At the expiration of that 30-day period (or agreement to the waiver), the Parole Board will review any information received and decide whether to remove the case from the public hearing process or proceed to a public hearing.³⁷
 - If there is still interest in proceeding, the Board must then provide a 30-day notice of the scheduled public hearing to the same judge and prosecutor, the Governor, the Attorney General, all registered victims, and the incarcerated individual and/or person who filed the application on the incarcerated individual's behalf. The Board will also publish notice of the public hearing on the Department's website.³⁸
 - The Parole Board may receive and review information and comments that victims submit.³⁹
- Placement Investigation – During that 30-day period, the Board will also commence a “parole placement investigation” and provide the Attorney General with relevant materials for review in preparation for the public hearing.⁴⁰
- Evaluation – For applications based on physical or mental incapacity, the Parole Board will direct the Department of Corrections Bureau of Health Care Services to evaluate the incarcerated person's condition and report on that condition. If the Bureau determines that the individual is physically or mentally incapacitated, the Bureau will appoint a non-Department “specialist in the appropriate field of medicine” to evaluate and report on the individual's condition. The reports are provided to the Governor for review but are not

made public to anyone else.⁴¹

- **Public Hearing** – At the hearing, an Assistant Attorney General, the Parole Board Chair, and any other members of the Board in attendance may question the incarcerated individual on all relevant issues. Members of the public and any victims (or victims’ representatives) may testify in support of or opposition to the individual’s *Application for Pardon or Commutation of Sentence*. The hearing is recorded and a transcript is submitted to the Attorney General.⁴²
- **Executive Meeting** – The case is then referred back to the Parole Board for a final executive meeting where members will vote on a recommendation to the Governor, taking into account all information received during the process and public hearing. After reaching a majority vote, the Board delivers its recommendation and all relevant materials to the Office of the Governor.⁴³

Governor’s Decision – The Governor’s office reviews the application materials and the Parole Board recommendation to determine whether Executive Clemency is warranted. Once the Governor has made a final determination, the Board is responsible for notifying the incarcerated individual of that decision.⁴⁴

V. POST-DECISION

Parole Board Jurisdiction – If the Governor grants the request, commuting the individual’s sentence to a term of years already served, the Board assumes jurisdiction over the case and votes on parole.⁴⁵

- Such a parole release occurs only after a required 28-day notice period, during which the Board will notify the sentencing or successor sentencing judge, prosecutor, and any registered victims. In the case of a terminally ill individual, the Board may seek the consent of the prosecutor, judge, and registered victims to waive this 28-day notice of parole release.⁴⁶
- If the Board grants parole on a Commutation case, the parole term is for four years.⁴⁷

Conditions – A Commutation of Sentence is subject to any conditions and limitations that the Governor directs.⁴⁸

Appeals – If denied, an incarcerated individual may resubmit an *Application for Pardon or Commutation of Sentence* two years after the date on which the Parole Board received the previously denied application. Unless there has been a substantial change in circumstances, the Board will return an application resubmitted before that time without taking any action.⁴⁹

VI. REPORTING/STATISTICS

The Michigan Constitution states that the Governor must inform the Michigan Legislature annually of each Commutation granted and the reasons for granting it.⁵⁰ However, that data is not publicly available.

- Neither the Governor's office nor the Parole Board responded to FAMM's requests for information regarding the number of individuals recommended for and/or granted Executive Clemency/Commutation Due to a Deteriorating or Terminal Medical Condition in 2019 and 2020.

MICHIGAN COMPASSIONATE RELEASE
PRIMARY LEGAL SOURCES

MEDICAL PAROLE

Statute

Michigan Compiled Laws, §§ 791.234 and 791.235 (10) and (11) (2020), available through the Michigan Legislature,
[https://www.legislature.mi.gov/\(S\(pvc22d0akwohyke2tohqafou\)\)/mileg.aspx?page=MCLIndex&objectname=mcl-chap791](https://www.legislature.mi.gov/(S(pvc22d0akwohyke2tohqafou))/mileg.aspx?page=MCLIndex&objectname=mcl-chap791).

**EXECUTIVE CLEMENCY/COMMUTATION
DUE TO A DETERIORATING OR TERMINAL MEDICAL CONDITION**

State Constitution

Michigan Constitution, Article V, § 14, available through the Michigan Legislature,
[https://www.legislature.mi.gov/\(S\(x4nv4skv2n5r1i3trqfwjqnh\)\)/documents/mcl/pdf/mcl-chap1.pdf](https://www.legislature.mi.gov/(S(x4nv4skv2n5r1i3trqfwjqnh))/documents/mcl/pdf/mcl-chap1.pdf).

Statute

Michigan Compiled Laws, § 791.244 (2020), available through the Michigan Legislature,
[https://www.legislature.mi.gov/\(S\(pvc22d0akwohyke2tohqafou\)\)/mileg.aspx?page=MCLIndex&objectname=mcl-chap791](https://www.legislature.mi.gov/(S(pvc22d0akwohyke2tohqafou))/mileg.aspx?page=MCLIndex&objectname=mcl-chap791).

Agency Policy/Publications

Michigan Department of Corrections, Executive Clemency Process Summary (2021),
https://www.michigan.gov/corrections/0,4551,7-119-1435_11601-223452--,00.html.

Michigan Department of Corrections/Office of the Parole Board, *Application for Pardon or Commutation of Sentence* (2011), https://www.michigan.gov/documents/corrections/CFJ-515_Pardon-CommutationApplication_Cov_7-11_601276_7.pdf.

NOTES

* *Id.* means see prior note.

¹ Mich. Comp. Laws §§ 791.235 (10) and (11).

² Mich. Const. art. V, § 14; Mich. Comp. Laws 791.244; Michigan Department of Corrections/Parole Board, Executive Clemency Process Summary.

³ Mich. Comp. Laws § 791.235 (10).

⁴ *Id.* at (22) (c) (i).

⁵ *Id.* at (22) (c) (ii). “Activities of daily living” are defined as basic personal care activities including, but not limited to, eating, toileting, grooming, dressing, bathing, and transferring from one physical position to another. *Id.* at (22) (a), referencing 42 C.F.R. § 441.505.

⁶ *Id.* at (22) (c).

⁷ *Id.* at (10), referencing Mich. Comp. Laws § 791.520b.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at (1).

¹¹ *Id.* at (10).

¹² *Id.*, referencing 791.234 (18).

¹³ Mich. Comp. Laws § 791.234 (18). Note that there is no indication in the statute that the incarcerated person’s medical records are provided to the victim or victim’s family.

¹⁴ Mich. Comp. Laws § 791.235 (10), referencing § 791.234 (19).

¹⁵ *Id.* See also Mich. Comp. Laws § 791.235 (11) (a) (iii). Note that the statute says that “if at all possible” the independent medical exam must be done at a Department of Corrections facility and the Department will pay for the “reasonable costs” of the exam. *Id.*

¹⁶ Mich. Comp. Laws § 791.234 (19).

¹⁷ Mich. Comp. Laws § 791.235 (11) (a) (ii).

¹⁸ *Id.* at (10).

¹⁹ *Id.*

²⁰ *Id.* at (11) (a) (i).

²¹ *Id.* at (22) (b).

²² *Id.* at (11) (b).

²³ Id. at (11) (c).

²⁴ Id. at (12) (a) through (12) (d).

²⁵ Id. at (13).

²⁶ Id. at (11) (d), referencing §§ 791.38, 791.39, 791.39a, and 791.40a.

²⁷ Mich. Const. art. V, § 14.

²⁸ Michigan Department of Corrections, Executive Clemency Process Summary. See also Mich. Comp. Laws § 791.244 for information on expedited processes and time frames when a clemency request is made by a incarcerated person with a serious medical condition.

²⁹ Michigan Department of Corrections, Executive Clemency Process Summary.

³⁰ Michigan Department of Corrections, Office of the Parole Board, *Application for Pardon or Commutation of Sentence*.

³¹ Id. at Directions, par. 6.

³² Id. at par. 7 and par. 8.

³³ Mich. Comp. Laws § 791.244 (2). Note that “expedited” is not defined. See also Michigan Department of Corrections, Executive Clemency Process Summary.

³⁴ Michigan Department of Corrections, Executive Clemency Process Summary.

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Mich. Comp. Laws § 791.244 (2) (d).

⁴² Michigan Department of Corrections, Executive Clemency Process Summary.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id. Note that all decisions by the 10-member Parole Board in a Commutation case must be by majority vote. Id.

⁴⁶ Mich. Comp. Laws § 791.244 (2).

⁴⁷ Michigan Department of Corrections, Executive Clemency Process Summary.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Mich. Const. art. V, § 14.