

Montana provides compassionate release to eligible incarcerated individuals with serious medical conditions or terminal illnesses through **Medical Parole**.¹

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition – To be eligible for medical parole, an incarcerated individual must have a medical condition that (1) requires extensive medical attention or (2) is likely to cause death within six months or less.²

Other Conditions – To be eligible, an individual must also be unlikely to pose a detriment to the victim or community.³

Exclusions – An incarcerated individual sentenced to death or life imprisonment without the possibility of release is not eligible for Medical Parole.⁴

- If an individual's sentencing judge designated the person as ineligible for parole, that judge must approve a Medical Parole request before it can move forward.⁵

II. APPLICATION/REFERRAL

The incarcerated individual, a family member, Department of Corrections (Department) staff, or the Board of Pardons and Parole (Board) can initiate the Medical Parole process⁶ by completing a *Medical Parole Application and Plan*⁷ and submitting it to the Institutional Probation and Parole Officer (IPPO) at the facility where the individual is incarcerated.⁸ The *Application* must include the following information:

- The reasons for the Medical Parole request;
- If filing on behalf of an incarcerated individual, the relationship to that individual;
- A licensed physician's written diagnosis and examination report;
- A detailed description of the individual's proposed living arrangements while on Medical Parole, including the name, address, and telephone number of the person or medical facility contact who has agreed to provide medical care;
- Details on how the individual will acquire and pay for medical care if released on Medical Parole; and

- The proposed arrangements for transporting the individual to the caregiver or facility placement.⁹

III. DOCUMENTATION AND ASSESSMENT

The Department must review and approve a Medical Parole application before the Board will consider granting Medical Parole using the following procedures.¹⁰

Medical Examination Report: Physician – A physician must complete the Department’s *Medical Examination Report*¹¹ and include all of the following information:

- A determination that the individual has a medical condition that requires extensive medical attention;
- A detailed description of the condition, diagnosis, any physical incapacity, and the most recent medical treatment;
- A description of the medical care that will be required to treat the condition;
- A prognosis addressing the likelihood of the individual’s recovery from the condition, the extent of any potential recovery, and whether the condition is expected to cause death within six months or less.¹²

If needed, the Department can assist an individual in obtaining medical documentation by arranging for a Department physician to complete a medical examination.¹³

Placement Location: Department – The incarcerated individual, or the person applying on the individual’s behalf, must identify a possible placement, which can include a hospital, nursing home, hospice facility, family home, or other appropriate location.¹⁴

Submission of Documents: Institutional Probation and Parole Officer – The IPPO submits an individual’s application, the physician’s report, and placement information to the Department’s Medical Director or “Responsible Health Authority.”¹⁵

Review: Clinical Services Division – The Clinical Services Division reviews the application and supporting documents and makes a recommendation to accept or reject the application.¹⁶

Review and Recommendation: Warden – After the Clinical Services Division review, the IPPO forwards the application and documentation to the facility’s Warden (sometimes called the “Administrator”).¹⁷ The Warden reviews the application “for sufficiency and safety or security concerns” and consults with the Board regarding any

prior dispositions.¹⁸

- When the Warden, Medical Director, or any Department staff involved in the decision/review process determines the Medical Parole application does not meet the requirements, a *Notice of Deficient Medical Parole Application* must be issued that provides the reasons for disapproving the request. This must be given to the incarcerated individual or whoever applied on the individual's behalf, the IPPO, Medical Director, and other relevant Department personnel.¹⁹
- If the Warden determines the Medical Parole request meets the requirements, the application is forwarded along with the required forms and attachments to the IPPO office at the facility where the individual is incarcerated.²⁰

Document Preparation: IPPO – The IPPO is responsible for preparing, or requesting preparation of, the application, documentation, and all required forms for the Board.²¹

IV. DECISION-MAKING PROCESS

Decision-Maker – The Board of Pardons and Parole is responsible for making all Medical Parole decisions.²²

Hearing – Upon receiving a Medical Parole application, the Board sets a hearing date and notifies the incarcerated individual.²³ The Board holds the hearing²⁴ to make a final determination that (1) release will not pose a detriment to the victim or community and (2) the individual's medical condition requires extensive medical attention or will result in death within six months or less.²⁵

- **Input** – A victim and/or any “interested person or the interested person's representative” can submit written or oral statements to the Board to be considered at the hearing. The Board can keep the victim's statement confidential.²⁶
- **Determining Detriment** – To decide whether someone poses a “detriment” to the victim or community, the hearing panel may consider the following factors:
 - Whether the individual's medical condition results in an inability to engage in criminal activity;
 - Any statement the victim submits;
 - The progression of the individual's medical condition, as documented by a licensed physician;

- The individual's conduct, employment, and attitude in prison;
 - Reports of any physical and mental examinations that have been made;
 - The individual's previous social and criminal record; and
 - The circumstances of the offense for which the individual is incarcerated.²⁷
- Additional Information – In deciding whether to grant or deny a Medical Parole application, the hearing panel can also consider whether:
 - There is support or opposition from the community, including the victim or victim's family, the court, or law enforcement;
 - The incarcerated individual suffered from the medical condition when the offense was committed or when sentenced and, if so, whether the condition has progressed to such a degree that criminal activity is unlikely;
 - The care and supervision that the individual requires can be provided in a more medically appropriate or cost-effective manner than by the Department;
 - The individual is incapacitated to an extent that incarceration does not impose significant additional restrictions;
 - The individual is likely to continue to suffer from the medical condition throughout the entire period of parole or die while on Medical Parole and there is no reasonable expectation that the medical condition will improve noticeably; and
 - An appropriate discharge plan has been formulated.²⁸

Conditions

- Environment – The Board's hearing panel requires, as a condition of Medical Parole, that an individual agree to be placed in an environment that the Department chooses and approves. An appropriate setting includes a hospital, nursing home, hospice facility, prerelease center, appropriate community corrections facility or program, or family home.²⁹
- Examinations – The hearing panel may also require an individual to obtain periodic medical examinations and diagnoses (at the person's own expense) and submit medical reports to the Board and the Department.³⁰

- Medical Parole Plan – As stated above, part of what the Board will look at when making its decision is whether there is an appropriate Medical Parole Plan that addresses care coordination, housing, eligibility for public benefits (such as Social Security disability), and health care, including needed medications.³¹

V. POST-DECISION

Effect of Medical Parole Request on Other Parole Eligibility – The granting or denial of Medical Parole does not affect an incarcerated individual’s eligibility for general parole.³² In fact, if an individual being considered for Medical Parole has reached parole eligibility, the Board will first consider general parole.³³

- Note that if an individual is granted Medical Parole and later becomes eligible for general parole, a hearing panel may consider parole according to the relevant rules.³⁴

Denials and Appeal Rights – If the hearing panel denies the Medical Parole application, the Department will not accept another application for the same individual **unless** the medical condition deteriorates to such a degree that it affects the factors the hearing panel previously considered.³⁵

Revocation/Termination – The Board or Department can revoke Medical Parole and return an individual to custody when any of the following happen:

- The medical condition has improved to the extent that “extensive” medical attention is no longer required.³⁶
- The individual violates the statutory provisions for nonmedical parole, which also apply to Medical Parole.³⁷
- The medical condition improves such that the individual becomes likely to pose a detriment to self, the victim, or the community.³⁸

VI. REPORTING/STATISTICS

The Board is not required to report on how many Medical Paroles it grants each year; however, its monthly parole dispositions are available to the public.³⁹

In response to FAMM’s request for information, the Board reported that in 2019 it granted one Medical Parole request and denied three, and in 2020 it granted four Medical Parole requests and denied six.⁴⁰

MONTANA COMPASSIONATE RELEASE **PRIMARY LEGAL SOURCES**

MEDICAL PAROLE

Statute

Montana Code, § 46-23-210 (2019), available through the Montana State Legislature, https://leg.mt.gov/bills/mca/title_0460/chapter_0230/part_0020/sections_index.html.

Regulations

Montana Administrative Rules, Rule 20.25.307 (2020), available through the Montana Secretary of State, <http://www.mtrules.org/gateway/ruleno.asp?RN=20%2E25%2E307>.

Agency Policy

Montana Department of Corrections Policy Directive (DOC Policy) 4.6.7 (2018), <https://cor.mt.gov/DataStatsContractsPoliciesProcedures/DataDocumentsandLinks/DOCPolicies/Chapter4/4.6.7-Medical-Parole.pdf>.

NOTES

* *Id.* means see prior note.

¹ Mont. Code Ann. § 46-23-210; Mont. Admin. R. 20.25.307; Montana Department of Corrections Policy Directive (DOC Policy) 4.6.7.

² Mont. Code Ann. § 46-23-210 (1) (c); DOC Policy 4.6.7 (IV) (A) (1) (d).

³ Mont. Code Ann. § 46-23-210 (1) (b); DOC Policy 4.6.7 (IV) (A) (1) (c).

⁴ Mont. Code Ann. § 46-23-210 (1) (a); Mont. Admin. R. 20.25.307 (1); DOC Policy 4.6.7 (IV) (A) (1) (b).

⁵ Mont. Code Ann. § 46-23-210 (2); Mont. Admin. R. 20.25.307 (1) (c); DOC Policy 4.6.7 (IV) (A) (1) (e). If the sentencing court is contacted regarding a specific individual's request for Medical Parole and does not respond within 30 days to a Department of Corrections request for approval, the person will be considered "approved" by the court for Medical Parole. See Mont. Code Ann. at § 46-23-210 (2) and Mont. Admin. R. 20.25.307 (1) (c).

⁶ Mont. Code Ann. § 46-23-210 (3); Mont. Admin. R. 20.25.307 (2); DOC Policy 4.6.7 (IV) (B) (1).

⁷ DOC Policy 4.6.7, Attachment-Medical Parole Application and Plan.

⁸ *Id.* at (IV) (B) (2).

⁹ Mont. Code Ann. § 46-23-210 (3); Mont. Admin. R. 20.25.307 (2) (a) through (2) (c); DOC Policy 4.6.7 (IV) (B) (3).

¹⁰ Mont. Code Ann. § 46-23-210 (4); Mont. Admin. R. 20.25.307 (3).

¹¹ DOC Policy 4.6.7, Attachment-Medical Examination Report.

¹² Mont. Code Ann. § 46-23-210 (3); Mont. Admin. R. 20.25.307 (2) (c); DOC Policy 4.6.7 (IV) (C) (4) (a) through (4) (d). Note that the administrative rules say that by submitting an application for Medical Parole, the individual waives any right to privacy regarding medical information. See Mont. Admin. R. 20.25.307, § 13. The routing form includes a signed waiver as part of the documentation needed.

¹³ DOC Policy 4.6.7 (IV) (C) (2).

¹⁴ Id. at IV (D).

¹⁵ Id. at (IV) (E) (1).

¹⁶ Id.

¹⁷ Id. at (IV) (E) (2).

¹⁸ Id.

¹⁹ Id. at (IV) (E) (3) and Attachment-Notice of Deficient Medical Parole Application (2018).

²⁰ Id. at (IV) (E) (4).

²¹ Id. at (IV) (E) (5). Note that the Department's *Medical Parole Application Routing Form* details four steps in the routing process that reflect slightly different levels of review than the statutory and regulatory provisions.

²² Mont. Code Ann. § 46-23-210 (1).

²³ DOC Policy 4.6.7 (IV) (E) (6).

²⁴ Mont. Code Ann. § 46-23-210 (5).

²⁵ Mont. Admin. R. 20.25.307 (4).

²⁶ Mont. Code Ann. § 46-23-210 (5).

²⁷ Mont. Admin. R. 20.25.307 (5) (a) through (5) (g).

²⁸ Id. at (6) (a) through (6) (f).

²⁹ Mont. Code Ann. § 46-23-210 (6); Mont. Admin. R. 20.25.307 (7).

³⁰ Id.

³¹ Mont. Admin. R. 20.25.307 (6) (f). Note that if the Board rejects the Medical Parole Plan, the Department will identify the concerns and determine whether they can be addressed. If so, the plan will be resubmitted to the Board for approval. See DOC Policy 4.6.7, § IV (F) (6).

³² Mont. Code Ann. § 46-23-210 (7); Mont. Admin. R. 20.25.307 (10).

³³ Mont. Admin. R. 20.25.307 (10).

³⁴ Id. at (9). See also DOC Policy 4.6.7 (IV) (G).

³⁵ Mont. Admin. R. 20.25.307 (11).

³⁶ Mont. Code Ann. § 46-23-210 (6); Mont. Admin. R. 20.25.307 (7); DOC Policy 4.6.7 (IV) (H).

³⁷ Mont. Admin. R. 20.25.307 (12); DOC Policy 4.6.7 (IV) (H) (2).

³⁸ Mont. Code Ann. § 46-23-210 (6); Mont. Admin. R. 20.25.307 (7); DOC Policy 4.6.7 (IV) (H) (1).

³⁹ Montana Board of Pardons and Paroles, Final Board Dispositions, <https://bopp.mt.gov/Dispositions>.

⁴⁰ Letter from the Montana Board of Pardons and Parole to FMM (April 15, 2021) (on file with FMM, Office of the General Counsel).