

New York provides compassionate release to eligible incarcerated individuals with terminal illnesses¹ and debilitating medical conditions² through its **Medical Parole** program.

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition – To be eligible for Medical Parole, an incarcerated individual must have one of the following conditions:

- A terminal illness, defined as a terminal condition, disease, or syndrome that results in the person being so debilitated or incapacitated as to create a reasonable probability that the person is physically or cognitively unable to present any danger to society.³
- A significant debilitating illness, defined as a significant and permanent nonterminal condition, disease, or syndrome that has resulted in the individual being so physically or cognitively debilitated or incapacitated as to create a reasonable probability that there is no danger to society.⁴

Exclusions and Qualifiers

- Individuals are not eligible for Medical Parole if they are serving sentences for (1) murder in the first degree or (2) an attempt or conspiracy to commit murder in the first degree.⁵
- Individuals serving an indeterminate sentence for (1) murder in the second degree, (2) manslaughter in the first degree, (3) any offense defined in Article 130 of New York's Penal Law (e.g., sex offenses), or (4) an attempt to commit any of those offenses must serve at least one-half of the minimum period of the sentence before being eligible for Medical Parole; individuals serving a determinate sentence for any of those crimes must serve at least one-half of the sentence before being eligible for Medical Parole.⁶

II. APPLICATION/REFERRAL

The incarcerated individual, the individual's spouse or other relative, or the individual's attorney may submit requests for Medical Parole consideration to the Commissioner of the New York State Department of Corrections and Community Supervision (Department) or the Department's Division of Health Services.⁷ In addition, Department rules say that anyone acting on behalf of the incarcerated individual and Department employees may submit requests.⁸

- The Commissioner, on the Commissioner’s own initiative, may also direct that there be an investigation to determine whether a diagnosis should be made to determine if an individual who has a terminal illness or a significant, permanent, and incapacitating nonterminal condition, disease, or syndrome.⁹

III. DOCUMENTATION AND ASSESSMENT

The Division of Health Services keeps a record of all Medical Parole requests and, for cases that are “medically appropriate,” notifies the Department’s Office of Classification and Movement to determine the individual’s eligibility based on the crime and sentence. If not disqualified because of the crime or sentence, the Commissioner may order a medical evaluation and discharge plan for the individual.¹⁰

Medical Evaluation and Report: Department Physician – A Department physician¹¹ must complete a medical evaluation of the incarcerated individual and provide the following information:¹²

- A description of the individual’s condition, disease, or syndrome;
- A prognosis concerning the likelihood that the individual will not recover from the condition, disease, or syndrome;
- A description of the person’s physical or cognitive incapacity, including a prediction of the likely duration of the incapacity;
- A statement as to whether the person is so debilitated or incapacitated as to be severely restricted in the ability to self-ambulate or to perform “significant normal” activities of daily living;
- A list of current medications, dosages, and information on the individual’s ability to self-administer the medications;¹³
- Recommendations on the type and level of services and treatment the person will require if granted Medical Parole; and
- Recommendations for the types of settings that can provide the needed services and treatment.

Note that the individual’s condition, disease, or syndrome must have been diagnosed **after** admission to a New York correctional facility.¹⁴

The physician must “promptly” forward the medical evaluation to the Deputy Commissioner/Chief Medical Officer or a designee.¹⁵

Notification: Health Services Medical Parole Coordinator – The Medical Parole Coordinator for Health Services must notify the Office of Victim Assistance regarding all cases the physician forwards to the Deputy Commissioner/Chief Medical Officer and the Commissioner for review and approval.¹⁶ The Office of Victim Assistance will contact the Medical Parole Coordinator if there is a registered victim associated with the case, and that information is sent with the medical information to the Deputy Commissioner/Chief Medical Officer.¹⁷

Review by the Deputy Commissioner: Chief Medical Officer – The Deputy Commissioner/Chief Medical Officer has seven working days after receiving the medical report to advise the Commissioner as to whether the individual’s medical condition fits the criteria for Medical Parole.¹⁸

Certification and Referral – The Commissioner, or the Commissioner’s designee, reviews the individual’s diagnosis and decides whether to certify that the incarcerated individual is (1) suffering from a terminal or significant debilitating condition, disease, or syndrome and (2) so incapacitated as to create a “reasonable probability” that the person is physically or cognitively incapable of presenting any danger to society.¹⁹

- If the Commissioner does **not** certify the individual, the case is not referred to the New York Board of Parole (Board) for consideration.²⁰ Note New York law considers the Commissioner’s certification decision to be a judicial function, and it is not reviewable “if done in accordance with law.”²¹
- If the Commissioner certifies an individual as eligible for Medical Parole, the case is referred to the Board for release consideration.²²

The Medical Parole cases that the Commissioner sends to the Board must include (1) the Chief Medical Officer’s *Medical Parole Request Summary* and approval; (2) the *Comprehensive Medical Summary*; (3) the *New York Patient Review Instrument* (PRI); (4) the *NYS Screen*; and (5) information on registered victims from the Office of Victim Assistance.²³

- Note that although the statute says the Commissioner must provide a Medical Discharge Plan in the referral to the Board,²⁴ Department rules state that preparation of that plan does not actually begin until an eligible individual is referred to the Board.²⁵
- Facility Health Services, Central Office Health Services, and Community Supervision staff begin working on the discharge plan as soon as the Commissioner refers the individual to the Board. They are authorized to request assistance from the Department of Health and the county where the person previously resided and are directed to forward the plan “as soon as possible” to Community Supervision for review and final approval.²⁶

- Staff working on the Medical Discharge Plan are generally responsible for selecting specific care providers, although the Chief Medical Officer can also provide guidance on a case-by-case basis.²⁷ The plan takes into account the individual’s preferences for a placement “to the extent possible” and includes the following information:²⁸
 - A level of care determination;
 - Any special equipment or transportation needs and who will provide them;
 - The individual’s participation in the discharge plan and selection of care;²⁹
 - For home-care plans, an assessment by Community Supervision staff regarding the adequacy of the physical environment for the individual’s condition and health care needs and an evaluation of the person’s personal support system;
 - “Ancillary supports” the individual and the caregiver need and arrangements for meeting those needs;
 - The status of applications for Medicaid, public assistance, private insurance, and Supplemental Security Income (SSI);³⁰ and
 - A report on the status of applications, if any, for institutional placement.
- Note that the Medical Discharge Plan must include confirmation of the availability of the individual’s placement (e.g., hospital, hospice, or other appropriate care setting) and identification of the person providing the confirmation.³¹

IV. DECISION-MAKING PROCESS

Decision-Maker – The New York Board of Parole (Board) is generally the decision-maker on Medical Parole requests.³² However, for certain incarcerated individuals with terminal conditions, the Commissioner of the Department of Corrections and Community Supervision may grant Medical Parole without sending the cases to the Board.³³

Commissioner’s Discretionary Review

The Department Commissioner may grant Medical Parole in the case of an eligible individual with a terminal condition, disease, or syndrome if the person is not serving a sentence for (or has not previously been convicted of) the following crimes:³⁴ a class

A-I felony, a violent felony,³⁵ manslaughter in the second degree, vehicular manslaughter in the first or second degree, criminally negligent homicide, and other sex offenses.³⁶

The Commissioner must notify the Board chair (or a designated Board member) of the decision to grant Medical Parole and provide all relevant information and documentation, including criminal history and the medical diagnosis and treatment.³⁷

The Board chair either (1) accepts the Commissioner's grant of Medical Parole and the Commissioner releases the person or (2) conducts further review. The decision, or the review, must be made within five days of receiving all the documentation from the Commissioner. The further review may include an appearance before the Board chair or designee by the terminally ill individual.³⁸ After the review, the chair either (1) accepts the Commissioner's grant of medical parole, in which case the Commissioner may release the individual, or (2) the chair schedules an appearance for the terminally ill individual before a Board panel.³⁹

Board of Parole Decisions

Release Criteria – The Board grants Medical Parole only after it considers whether, in light of the individual's medical condition, (1) there is a reasonable probability that, if released, the person will not violate the law; (2) the release is compatible with the welfare of society; and (3) the individual's release will not “deprecate” the seriousness of the crime in a way that undermines respect for the law.⁴⁰

In making that determination for individuals with significant debilitating illnesses – **but not for those who are terminally ill** – the Board considers the following list of factors:⁴¹

- The nature and seriousness of the individual's crime;
- Prior criminal record;
- Disciplinary, behavioral, and rehabilitative record;
- The amount of time the individual must serve before becoming eligible for release;
- The individual's current age and age at the time of the crime;
- The recommendations of the sentencing court, the district attorney, and the victim or victim's representative;
- The nature of the medical condition and required medical treatment or care; and
- Any other relevant factor.

Notice – The Board rules regarding notification vary slightly depending on the individual’s medical condition:

- For incarcerated individuals who are terminally ill, the Board must notify the following people and entities that it is considering the individual for Medical Parole, giving them 15 days to comment on the proposed release: the sentencing court, the district attorney, and the attorney for the incarcerated individual. The Board will not grant release until expiration of the comment period.⁴²
- For incarcerated individuals with significant debilitating illnesses, the Board must also notify the sentencing court, the district attorney, the incarcerated person’s attorney, **and** – when applicable – the crime victim that it is considering the individual for release under the Medical Parole law. Those notified have 30 days to comment on the proposed release, which the Board cannot grant until the expiration of the comment period.⁴³

Discharge Plan – The Board can postpone a Medical Parole decision pending completion of an adequate discharge plan or deny Medical Parole based on an inadequate discharge plan.⁴⁴

Conditions

- **Environment** – Terminally ill individuals granted Medical Parole must agree to reside in a hospital, a hospice, “or any other placement that can provide appropriate medical care as specified in the medical discharge plan ...”⁴⁵ Those with a significant debilitating condition must agree to reside in a hospital, hospice, or any other placement – including a “residence with family or others” – that can provide appropriate care.⁴⁶
- **Medical Follow-Up** – As a condition of release on Medical Parole, individuals must agree to remain under a physician’s care.⁴⁷ The Board requires that those released on Medical Parole undergo periodic medical examinations, including an examination at least one month prior to the expiration of the six-month Medical Parole period.⁴⁸

V. POST-DECISION

Release Arrangements – Once the Board notifies the Department that it has granted a Medical Parole, Facility Health Services, Central Office Health Services, and the Offender Rehabilitation Coordinator must make release and transportation arrangements. In addition, Facility Health Services copies all appropriate medical records and sends them to the physician or facility that will be caring for the individual.⁴⁹

Effect of Medical Parole Request on Other Parole Eligibility – A denial (or expiration) of Medical Parole does not affect an individual’s eligibility for other forms of release.⁵⁰ A person released on Medical Parole who becomes eligible for “regular” parole is eligible for parole consideration.⁵¹

Denials and Appeal Rights

- Commissioner Decision – As noted above, the Commissioner’s “certification” as to the individual’s diagnosis and condition is “deemed a judicial function” and is not reviewable “if done in accordance with law.”⁵²
- Board Decision – Individuals can appeal Board Medical Parole decisions.⁵³
- Reapplication – An individual can reapply for Medical Parole if denied or if the current Medical Parole period expires.⁵⁴

Supervision – Where appropriate, the Board can require that the Department’s Community Supervision unit supervise an individual under the “intensive caseloads at reduced supervision” guidance.⁵⁵

Termination/Revocation – It is important to note that the Board grants Medical Parole for a period of just **six months**.⁵⁶

- As mentioned above, one month prior to the expiration of the six months, the individual’s treating physician prepares an updated report stating whether the person continues (1) to have either a terminal condition or a significant and permanent nonterminal and debilitating condition and (2) to be so incapacitated as to be severely restricted in the ability to self-ambulate or perform the normal activities of daily living.⁵⁷ Based on the report, the Board can make a new grant of Medical Parole for six months.⁵⁸
- If the individual fails to submit an updated medical report or the updated report shows that the person may now present a danger to society, the Board must “promptly” hold a hearing to determine the current level of debilitation or incapacitation.⁵⁹
 - Hearings must be concluded **within** the six-month period of Medical Parole.⁶⁰
 - The individual has the right to representation at the hearing, including the right to have assigned counsel when unable to afford a representative.⁶¹
- If the Board finds the individual still meets the medical criteria, the Board may make a new grant of Medical Parole for six months.⁶² If the Board does not

renew the Medical Parole, it orders the individual returned immediately to Department custody.⁶³

Medical Parole can also be revoked at any time for general parole or conditional release violations, such as committing another crime.⁶⁴

VI. REPORTING/STATISTICS

The Board must submit annual Medical Parole reports to the Governor, Senate Temporary President, Speaker of the Assembly, Chairs of the Assembly and Senate Codes Committees, Chair of the Senate Crime and Corrections Committee, and Chair of the Assembly Corrections Committee. The reports are to include the following: the number of individuals who have applied for and been granted Medical Parole; the nature of the applicants' illnesses; the counties to which the applicants have been released; the nature of the placements; reasons for denials; the number of individuals who were granted an additional period of Medical Parole; and the number of individuals returned to prison and the reasons for their returns.⁶⁵

- The Board of Parole granted Medical Parole to 21 people in 2019 and to 14 people in 2020.⁶⁶

NOTE: PAROLE BOARD CASE REVIEW FOR EXTRAORDINARY MEDICAL CIRCUMSTANCES

The Board of Parole has a separate policy and procedures for processing parole requests for parole reconsideration based on changes in an individual's medical condition.⁶⁷

- The only individuals eligible for a Review for Extraordinary Medical Circumstances are those who have (1) served the court-imposed minimum portion of their sentences and (2) been denied release.⁶⁸ In addition, individuals must (1) be certified as eligible for Medical Parole, (2) be past their parole eligibility dates, and (3) demonstrate deterioration of their medical condition(s).⁶⁹
- For individuals who meet all of the above guidelines, the Deputy Commissioner/Chief Medical Officer may refer the person for a Parole Board Case Review for Extraordinary Medical Circumstances.⁷⁰

The facility or Central Office staff, the individual's family, or any other "concerned parties" may initiate a request for Review by writing to the Deputy Commissioner/Chief Medical Officer.⁷¹ The request must demonstrate how the individual's medical condition has deteriorated since the last interview with the Board and include a comprehensive medical summary and other documentation.⁷²

- The Facility Health Services Director will evaluate the individual’s medical condition and forward all medical documentation to the Deputy Commissioner/Chief Medical Officer.⁷³
- The Deputy Commissioner/Chief Medical Officer reviews all the documentation, makes a decision as to whether the request is appropriate for Board of Parole review, and – if so – forwards it to the Board.⁷⁴ As with Medical Parole, the Office of Victim Assistance must be notified when a case is proceeding.⁷⁵

If the Board approves the individual for release due to Extraordinary Medical Circumstances, the Department’s Medical Parole Coordinator is notified, and Health Services and Community Supervision staff will provide a medical discharge plan and identify an appropriate discharge placement.⁷⁶

NEW YORK COMPASSIONATE RELEASE **PRIMARY LEGAL SOURCES**

MEDICAL PAROLE

Statute

New York Consolidated Laws, Executive Law § 259-r, Release on Medical Parole for Terminally Ill Inmates (2021), available through the New York State Assembly, <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>. Select EXC (Executive), then Article 12-B, and then Section 259-r.

New York Consolidated Laws, Executive Law § 259-s, Release on Medical Parole for Inmates Suffering Significant Debilitating Illnesses (2021), available through the New York State Assembly, <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>. Select EXC (Executive), then Article 12-B, and then Section 259-s.

Agency Policy

New York Department of Corrections and Community Supervision, Directive 4304, Medical Parole (April 8, 2014), <https://doccs.ny.gov/system/files/documents/2021/09/4304.pdf>.

New York Department of Corrections and Community Supervision, Directive 4404, Parole Board Case Review for Extraordinary Medical Circumstances (Dec. 12, 2017), <https://doccs.ny.gov/system/files/documents/2021/09/4044.pdf>.

NOTES

* *Id.* means see prior note.

¹ N.Y. Exec. Law § 259-r; New York Department of Corrections and Community Supervision, Directive 4304, Medical Parole.

² N.Y. Exec. Law § 259-s, Directive 4304, Medical Parole.

³ N.Y. Exec. Law § 259-r (1) (a); Directive 4304, §§ II (1) (a) and (2).

⁴ N.Y. Exec. Law § 259-s (1) (a); Directive 4304, §§ II (1) (b) and (2).

⁵ N.Y. Exec. Law §§ 259-r (1) (a) and 259-s (1) (a); Directive 4304, § II (3).

⁶ N.Y. Exec. Law §§ 259-r (1) (a) and 259-s (1) (a), referencing N.Y. Penal Law § 130; Directive 4304, § II (4).

⁷ N.Y. Exec. Law §§ 259-r (2) (a) and 259-s (2) (a); Directive 4304, § III (A).

⁸ Directive 4304, § III (A).

⁹ N.Y. Exec. Law §§ 259-r (2) (a) and 259-s (2) (a).

¹⁰ Directive 4304, § III (A).

¹¹ The physician must be licensed in New York and employed by the Department, providing professional services at the Department's request, or employed by a hospital or facility the Department uses for incarcerated individuals' medical treatment. N.Y. Exec. Law §§ 259-r (2) (a) and 259-s (2) (a); Directive 4304, § III (B).

¹² N.Y. Exec. Law §§ 259-r (2) (a) and 259-s (2) (a); Directive 4304, § III (B).

¹³ Directive 4304, § III (B) (4).

¹⁴ N.Y. Exec. Law §§ 259-r (2) (b) and 259-s (2) (b).

¹⁵ Directive 4304, § III (C).

¹⁶ *Id.* at § III (D).

¹⁷ *Id.*

¹⁸ *Id.* at § III (C).

¹⁹ N.Y. Exec. Law §§ 259-r (2) (b) and 259-s (2) (b).

²⁰ *Id.*

²¹ N.Y. Exec. Law §§ 259-r (3) and 259-s (3).

²² Directive 4304, § III (E).

²³ *Id.*

²⁴ N.Y. Exec. Law §§ 259-r (2) (c) and 259-s (2) (c).

²⁵ Directive 4304, § III (F).

²⁶ N.Y. Exec. Law §§ 259-r (2) (c) and 259-s (2) (c); Directive 4304, § III (F).

²⁷ Directive 4304, § III (F).

²⁸ Id. at § III (F) (1).

²⁹ If the individual is not competent to provide input, a description of the “surrogate” decision-maker’s involvement must be provided. Directive 4304, § III (F) (1) (c). If the person is cognitively incapable of signing the discharge plan and there is no one who can be appointed as guardian, the facility’s Health Services director may act as the incarcerated individual’s guardian for the purpose of medical discharge. N.Y. Exec. Law §§ 259-r (4) (b) and 259-s (4) (b); Directive 4304, § III (F) (3).

³⁰ In cases where the physician’s report indicates a qualifying medical condition and the potential need for public assistance, Medicaid, Social Security, or other benefits, the facility staff are responsible for notifying the Offender Rehabilitation Coordinator, who makes sure the appropriate applications are submitted. Directive 4304, § III (F) (2).

³¹ N.Y. Exec. Law §§ 259-r (4) (b) and 259-s (4) (b).

³² N.Y. Exec. Law §§ 259-r (1) (a) and 259-s (1) (a).

³³ N.Y. Exec. Law § 259-r (10).

³⁴ Id., referencing N.Y. Corr. Law § 806.1 (i).

³⁵ For the definition of a violent felony, see N.Y. Pen. Law § 70.02.

³⁶ For the definition and examples of sex offenses, see N.Y. Pen. Law §§ 130 and 263.

³⁷ N.Y. Exec. Law § 259-r (11) (a).

³⁸ Id. at (11) (b).

³⁹ Id. at 11 (c). Note that the panel cannot include the Board chair or any Board member involved in the review of the Commissioner’s decision. Id.

⁴⁰ N.Y. Exec. Law §§ 259-r (1) (b) and 259-s (1) (b).

⁴¹ N.Y. Exec. Law § 259-s (1) (b).

⁴² N.Y. Exec. Law § 259-r (1) (c).

⁴³ N.Y. Exec. Law § 259-s (1) (c), referencing N.Y. Exec. Law § 259-i (2).

⁴⁴ N.Y. Exec. Law §§ 259-r (2) (c) and 259-s (2) (c).

⁴⁵ N.Y. Exec. Law § 259-r (4) (b).

⁴⁶ N.Y. Exec. Law § 259-s (4) (b).

⁴⁷ N.Y. Exec. Law §§ 259-r (4) (b) and 259-s (4) (b).

⁴⁸ N.Y. Exec. Law §§ 259-r (4) (d) and 259-s (4) (d).

⁴⁹ Directive 4304, § I (G).

⁵⁰ N.Y. Exec. Law §§ 259-r (5) and 259-s (5).

⁵¹ N.Y. Exec. Law §§ 259-r (4) (i) and 259-s (4) (i), citing N.Y. Exec. Law § 259-i (2).

⁵² N.Y. Exec. Law §§ 259-r (3) and 259-s (3).

⁵³ N.Y. Exec. Law §§ 259-r (8) and 259-s (8), referencing N.Y. Exec. Law § 259-i (4).

⁵⁴ N.Y. Exec. Law §§ 259-r (5) and 259-s (5).

⁵⁵ N.Y. Exec. Law §§ 259-r (4) (c) and 259-s (4) (c). For additional information, see the Department's Community Supervision webpage, <https://doccs.ny.gov/community-supervision-0>.

⁵⁶ N.Y. Exec. Law §§ 259-r (4) (a) and 259-s (4) (a).

⁵⁷ N.Y. Exec. Law §§ 259-r (4) (d) and 259-s (4) (d).

⁵⁸ N.Y. Exec. Law §§ 259-r (4) (e) and 259-s (4) (e). Note that subsequent Medical Parole decisions do not require notice or a new medical discharge plan. *Id.*

⁵⁹ N.Y. Exec. Law §§ 259-r (4) (f) and 259-s (4) (f). A Board member or a Board-designated hearing officer conducts the Medical Parole hearings. *Id.*

⁶⁰ N.Y. Exec. Law §§ 259-r (4) (g) and 259-s (4) (g).

⁶¹ N.Y. Exec. Law §§ 259-r (4) (f) and 259-s (4) (f).

⁶² *Id.*

⁶³ N.Y. Exec. Law §§ 259-r (4) (g) and 259-s (4) (g).

⁶⁴ N.Y. Exec. Law §§ 259-r (4) (h) and 259-s (4) (h), citing revocation guidance in N.Y. Exec. Law § 259-i (3) (a).

⁶⁵ N.Y. Exec. Law §§ 259-r (9) and 259-s (9).

⁶⁶ New York Corrections and Community Supervision, Board of Parole, *Legislative Report 2020*, 14, tbl. 7, <https://doccs.ny.gov/system/files/documents/2022/08/2020-parole-board-leg-report-final.pdf>.

⁶⁷ New York Corrections and Community Supervision, Directive 4044, Parole Board Case Review for Extraordinary Medical Circumstances (Directive 4044). Note that some sources refer to this as an additional form of compassionate release. See Rebecca Silber, Léon Digard, Tina Maschi, Brie Williams, and Jessi LaChance, *A Question of Compassion: Medical Parole in New York State*, Vera Institute (April 2018), 12, <https://www.vera.org/publications/medical-parole-new-york-state>.

⁶⁸ Directive 4044, § II.

⁶⁹ *Id.*

⁷⁰ Id.

⁷¹ Id. at § III (1).

⁷² Id. at §§ III (A) (2) through (A) (4).

⁷³ Id. at § III (B) (1).

⁷⁴ Id. at §§ III (B) (2) and (B) (3).

⁷⁵ Id. at § III (B) (4).

⁷⁶ Id. at §§ III (D) and (E).