

Washington provides compassionate release to eligible incarcerated individuals with serious medical conditions or terminal illnesses under its **Extraordinary Medical Placement** program.<sup>1</sup> In addition, the Governor has the authority to grant **Extraordinary Release** to incarcerated individuals with serious health problems.<sup>2</sup>

## **EXTRAORDINARY MEDICAL PLACEMENT**

### **I. ELIGIBILITY**

**Medical Condition** – To be eligible for Extraordinary Medical Placement, an incarcerated individual must (1) have a medical condition that is serious enough to require costly care or treatment<sup>3</sup> and (2) currently be physically or mentally incapacitated from the condition or expected to be physically or mentally incapacitated by the time the referral is sent to the Secretary of the Department of Corrections (Department) for consideration.<sup>4</sup>

- The incapacitation must render the individual unable or unlikely to engage in activities of daily living without assistance, perform gainful employment, and participate in criminal behavior.<sup>5</sup>

**Other Eligibility Criteria** – The individual must pose a low risk to the community because of physical incapacitation due to age or medical condition,<sup>6</sup> and it must be expected that granting Extraordinary Medical Placement will result in a cost savings to the state.<sup>7</sup>

- Note that Department policy states that an incarcerated individual will not be considered for Extraordinary Medical Placement if community resources to provide necessary care (including funding, approved placement options, or a community/family sponsor) are absent.<sup>8</sup>

**Exclusions** – An individual is not eligible for Extraordinary Medical Placement if serving a sentence of life imprisonment without the possibility of release or parole<sup>9</sup> or requesting an out-of-state placement.<sup>10</sup>

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

Referrals for Extraordinary Medical Placement are made to the EMP Coordinator, who is designated by the Assistant Secretary for Health Services.<sup>11</sup>

- The Department's referral form, *Extraordinary Medical Placement Referral* (Form DOC 14-148), may be submitted to the EMP Coordinator by (1) the incarcerated individual, (2) health services leadership, or (3) a community member.<sup>12</sup>

### III. DOCUMENTATION AND ASSESSMENT

**Screening: EMP Coordinator** – The EMP Coordinator ensures that the incarcerated individual either meets the medical criteria (or will meet it by the time the referral is sent to the Department Secretary)<sup>13</sup> and that there is adequate community support to meet the person’s clinical and daily living needs, including a funding source.<sup>14</sup> This includes carrying out the following tasks:

- Obtaining the necessary health information release forms from the incarcerated individual;<sup>15</sup>
- Collaborating with the appropriate tribal liaison, if applicable;<sup>16</sup>
- Assigning a facility health services employee or contractor to complete an assessment of the individual’s current medical condition, physical limitations, mental health needs, and prognosis using the Department’s *Physical Incapacitation Screening for Extraordinary Medical Placement* form.<sup>17</sup>

**Review: Chief Medical Officer** – The Chief Medical Officer reviews the relevant medical records and other materials related to the Extraordinary Medical Placement referral to determine whether the incarcerated individual meets the medical criteria.<sup>18</sup>

- If the medical criteria are not met, the EMP Coordinator is responsible for notifying the incarcerated individual and, if applicable, the person who submitted the referral form.<sup>19</sup>
- If the individual meets the medical criteria, the EMP Coordinator forwards the referral to the Headquarters Community Screening Committee for review.<sup>20</sup>

**Screening and Consideration: Headquarters Community Screening Committee (Screening Committee)** – The Screening Committee reviews the information provided by the EMP Coordinator and Clinical Nurse Specialist regarding the individual’s current medical condition, prognosis, proposed placement options, and input from all of the following individuals and entities: (1) Victim Services Program; (2) Chief Medical Officer; (3) End of Sentence Review Committee; (4) Law Enforcement Notification Program; (5) Indeterminate Sentence Review Board, if applicable; and (6) any others the Screening Committee thinks are appropriate.<sup>21</sup>

The incarcerated individual will only be referred for Extraordinary Medical Placement when (1) the Health Services Manager provides medical updates, if needed, to the EMP Coordinator and (2) the individual has an approved release plan.<sup>22</sup> If these conditions have been met and the Screening Committee recommends approval, the referral is forwarded.<sup>23</sup>

**Approvals and Recommendations: Department Personnel** – The Chair of the Screening Committee forwards the referral to the Assistant Secretary for Reentry, Assistant Secretary for Community Corrections, Deputy Director for Prisons, and Deputy Secretary for Health Services.<sup>24</sup> Their recommendations are then forwarded to the Department Secretary.<sup>25</sup>

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

**Decision-Maker** – The Secretary of the Department of Corrections makes the final decision on referrals for Extraordinary Medical Placement.<sup>26</sup>

**Notification of Decision** – If approved, the Case Manager notifies the individual.<sup>27</sup> If Extraordinary Medical Placement is denied, the notification must be in writing.<sup>28</sup>

#### **Conditions and Prerelease Planning**

- All individuals released on Extraordinary Medical Placement must have a community placement plan that includes recommendations for the minimum number, frequency, and types of contacts.<sup>29</sup>
- Electronic monitoring is required, at the Department's expense, unless the monitoring equipment interferes with the functioning of medical equipment or results in a loss of funding for the person's medical care.<sup>30</sup>
- The Case Manager may set any other conditions that are determined to be appropriate for the individual.<sup>31</sup>

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

**Denials and Appeal Rights** – There is no information in Department policy on appealing a denial of Extraordinary Medical Placement. A new referral may be submitted but are only reviewed if the individual's medical condition has significantly changed.<sup>32</sup>

**Supervision/Monitoring** – The EMP Coordinator and the individual's Case Manager, in collaboration with the Nurse Desk and the Classification and Case Management Administrator, monitor the individual's medical condition and behavior in the community.<sup>33</sup>

**Revocation** – The Department Secretary can revoke Extraordinary Medical Placement at any time and return the individual to confinement.<sup>34</sup> Reasons for revocation include an improvement in the person's health condition<sup>35</sup> or a violation of the placement conditions.<sup>36</sup>

- If the individual’s condition improves, the EMP Coordinator will ask that the “Nurse Desk” conduct a clinical review and, based on the results, may recommend revocation.<sup>37</sup>
- If the individual is alleged to have violated the CMP conditions, a hearing will be conducted.<sup>38</sup> If revocation is recommended, the Case Manager notifies the EMP Coordinator and the Classification and Case Management Administrator,<sup>39</sup> and the Administrator submits the revocation to the Secretary for approval or denial.<sup>40</sup>
- If Extraordinary Medical Placement is revoked, the appropriate Department and correctional facility staff are notified and transportation is arranged.<sup>41</sup>

**Termination** – Once the individual reaches the Earned Release Date, the Case Manager verifies the release plan and notifies the EMP Coordinator and Classification and Case Management Administrator that the individual is being released.<sup>42</sup>

## **VI. REPORTING/STATISTICS**

The Department Secretary is directed to report annually to the state legislature on Extraordinary Medical Placements, providing the number of individuals considered for, granted, and denied; the length of time between initial consideration and the placement decision for each individual granted an Extraordinary Medical Placement; and the cost savings realized by the state.<sup>43</sup>

In response to FAMM’s request for information, the Department reported the following:<sup>44</sup>

- In 2019, the Department Secretary approved 0 individuals for Extraordinary Medical Placement.
- In 2020, the Secretary approved four individuals for Extraordinary Medical Placement out of the 97 individuals considered.

# EXTRAORDINARY RELEASE

Upon a recommendation from the Washington Clemency and Pardons Board (Clemency Board), the Governor may grant an “extraordinary release from incarceration” to a person who has serious health problems, senility, advanced age, or other extraordinary circumstances.<sup>45</sup>

## I. ELIGIBILITY

The Clemency Board rules and the Governor’s office do not define the medical conditions that qualify an individual for Extraordinary Release. The only information about potentially qualifying conditions is the language of the statute: “serious health problems, senility, advanced age, or other extraordinary circumstances.”<sup>46</sup>

## II. APPLICATION/REFERRAL

A request for Commutation using the *Petition for Reprieve, Commutation, or Pardon* form must be filed with the Clemency Board to start the process. The Board’s guidelines state that it receives petitions from individuals, the Department of Corrections (Department), and organizations.<sup>47</sup> Other than asking whether the petition/application concerns medical issues, there are no specific references to health problems or advanced age in the form or in the Clemency Board’s policy manual.

## III. DOCUMENTATION AND ASSESSMENT

**Medical Information** – The Board states that an incarcerated person should provide as much detail as possible on the petition form.<sup>48</sup> In addition, if the individual wants the Clemency Board to review the relevant medical records, the person must submit a medical records release with the petition.<sup>49</sup>

**Review** – A two-person Clemency Board “Preliminary Review Committee” reviews each petition and considers whether it demonstrates the existence of “extraordinary circumstances” and warrants a hearing. On the vote of one Committee member, the petition is scheduled for a hearing before the full five-member Clemency Board.<sup>50</sup>

**Notice** – The Clemency Board must provide notice to the following “interested parties”:

- Indeterminate Sentencing Review Board (ISRB) – If the ISRB determines that the petitioner/incarcerated individual is within its jurisdiction, it provides a case analysis to the Board.<sup>51</sup>

- Department of Corrections – The Department provides the Clemency Board with the incarcerated individual’s criminal history, a “Legal Face Sheet,” and, if the case is not under ISRB jurisdiction, a case analysis.<sup>52</sup>
- Prosecuting Attorney – The prosecuting attorney’s office will carry out its responsibilities, which include notifying the victim and/or the victim’s survivors so they may participate in the hearing.<sup>53</sup>
- The U.S. Attorney’s Office – If appropriate to the individual filing the petition, this office will also receive notice of a case set for a hearing.<sup>54</sup>

**Hearing** – The Clemency Board must hold a public hearing prior to recommending clemency.<sup>55</sup> It considers Petitions at regularly scheduled quarterly hearings, which are open to the public and transcribed.<sup>56</sup> In addition to the petitions the Preliminary Review Committee selects, the Governor, Board Chair, or a majority of the Clemency Board may call a Special Hearing on a petition.<sup>57</sup>

At the hearing, the Clemency Board hears oral statements, deliberates, and makes a final decision on whether to recommend to the Governor that a petition be granted.<sup>58</sup>

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

**Decision-Maker** – The Governor makes the final decision in all Extraordinary Release cases that the Clemency Board hears.<sup>59</sup>

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

There is a very general “Frequently Asked Questions” webpage regarding the Clemency and Pardons Board on the Governor’s website. However, it does not include any information on issues specific to individuals granted Extraordinary Release due to medical reasons.<sup>60</sup>

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

In response to a request for information from FMM, the Governor’s office stated it does not track “the circumstances” of releases and therefore is unable to identify how many Extraordinary Releases have been granted due to medical reasons.<sup>61</sup>

## **WASHINGTON COMPASSIONATE RELEASE** **PRIMARY LEGAL SOURCES**

### **EXTRAORDINARY MEDICAL PLACEMENT**

#### **Statute**

Revised Code of Washington, § 9.94A.728 (1) (c) (2020), available through the Washington State Legislature, <https://app.leg.wa.gov/RCW/default.aspx?cite=9.94A.728>.

#### **Agency Policy**

State of Washington Department of Corrections, Policy 350.270, Extraordinary Medical Placement (2021), <https://www.doc.wa.gov/information/policies/files/350270.pdf>.

State of Washington Department of Corrections, *Extraordinary Medical Placement Referral* (Form DOC 14-148) (April 14, 2021), <https://www.doc.wa.gov/docs/forms/14-148.pdf>.

### **EXTRAORDINARY RELEASE**

#### **Statute**

Revised Code of Washington, § 9.94A.728 (1) (d) (2020), available through the Washington State Legislature, <https://app.leg.wa.gov/RCW/default.aspx?cite=9.94A.728>.

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

Office of the Governor, Washington State Clemency and Pardons Board, Policy Manual (2018), §§ I and II.A,  
<https://www.governor.wa.gov/sites/default/files/Clemency%20and%20Pardons%20Board%20Policy%20Adopted%2003092018.pdf>.

Office of the Governor, Washington State Clemency and Pardons Board, *Petition for Reprieve, Commutation, or Pardon* (2018), <https://www.governor.wa.gov/sites/default/files/2018%20Form-PetitionForClemency.pdf>.

## NOTES

---

\* *Id.* means see prior note.

<sup>1</sup> Wash. Rev. Code § 9.94A.728 (1) (c); State of Washington Department of Corrections Policy (DOC Policy) 350.270, Extraordinary Medical Placement.

<sup>2</sup> Wash. Rev. Code § 9.94A.728 (1) (d).

<sup>3</sup> Wash. Rev. Code § 9.94A.728 (1) (c) (i) (A); DOC Policy 350.270, Directive, §§ I (C) (1) and II (A) (3).

<sup>4</sup> DOC Policy 350.270, Directive, §§ I (C) (4) and II (A) (1).

<sup>5</sup> *Id.* at § II (A) (2).

<sup>6</sup> Wash. Rev. Code § 9.94A.728 (1) (c) (i) (B); DOC Policy 350.270, Directive, §§ I (C) (3) and (D) (3).

<sup>7</sup> Wash. Rev. Code § 9.94A.728 (c) (i) (C); DOC Policy 350.270, Directive, § I (C) (2).

<sup>8</sup> DOC Policy 350.270, Directive, § I (D) (4).

<sup>9</sup> Wash. Rev. Code § 9.94A.728 (c) (ii); DOC Policy 350.270, Directive, § I (D) (1).

<sup>10</sup> DOC Policy 350.270, Directive, § I (D) (2).

<sup>11</sup> *Id.* at § I (A).

<sup>12</sup> *Id.* at § I (B).

<sup>13</sup> *Id.* at § II (A).

<sup>14</sup> *Id.* at § II (A) (4).

<sup>15</sup> *Id.* at § II (B) (1).

<sup>16</sup> *Id.* at § II (B) (2).

<sup>17</sup> *Id.* at § II (B) (3). Note that this form is not publicly available.

<sup>18</sup> *Id.* at § II (C).

<sup>19</sup> *Id.* at § II (C) (1).

<sup>20</sup> *Id.* at § II (C) (2).

<sup>21</sup> *Id.* at § III (A).

<sup>22</sup> *Id.* at § III (B).

<sup>23</sup> *Id.* at § III (C).

<sup>24</sup> *Id.*



<sup>25</sup> Id. at § III (D).

<sup>26</sup> Id.

<sup>27</sup> Id. at § III (E).

<sup>28</sup> Id.

<sup>29</sup> Id. at § IV (A) (1).

<sup>30</sup> DOC Policy 350.270, Directive, § IV (A) (2). See also Wash. Rev. Code § 9.94A.728 (c) (iii). Note that “loss of funding” is not defined or explained. However, in some states, Medicaid has denied eligibility to individuals who are still considered to be in custody, and someone being electronically monitored could still be considered in custody.

<sup>31</sup> DOC Policy 350.270, Directive, § IV (A) (3).

<sup>32</sup> DOC Policy 350.270, Directive, § III (E).

<sup>33</sup> Id. at § IV (D).

<sup>34</sup> Wash. Rev. Code § 9.94A.728 (c) (iv); DOC Policy 350.270, Policy, § II.

<sup>35</sup> DOC Policy 350.270, Directive, § V (B).

<sup>36</sup> Id. at § V (A).

<sup>37</sup> Id. at § V (B).

<sup>38</sup> Id. at § V (A). See also DOC Policy 460.130, Response to Violations and New Criminal Activity (2020), for additional information on revocation hearings, <https://www.doc.wa.gov/information/policies/default.aspx?show=400>.

<sup>39</sup> Id.

<sup>40</sup> Id. at § V (C).

<sup>41</sup> Id.

<sup>42</sup> Id. at § VI (B).

<sup>43</sup> Wash. Rev. Code § 72.09.620.

<sup>44</sup> Email from Angela Volk, Washington Department of Corrections, to FAMM (Sept. 1, 2021) (on file with FAMM, Office of the General Counsel).

<sup>45</sup> Wash. Rev. Code § 9.94A.728 (1) (d). Note that this section of the Washington Revised Code was previously numbered 9.94A.728 (4), and some of the Governor and Board materials still use the old section number. See also Office of the Governor, Washington State Clemency and Pardons Board, Policy Manual (2018) (Clemency Board Manual), §§ I and II (A).

<sup>46</sup> Wash. Rev. Code § 9.94A.728 (1) (d).

<sup>47</sup> Wash. Rev. Code § 9.94A.885 (1).

<sup>48</sup> Clemency Board Manual, § II (A).

<sup>49</sup> Id.

<sup>50</sup> Id. at § III (A).

<sup>51</sup> Id. at § III (B).

<sup>52</sup> Id.

<sup>53</sup> Id., referencing Wash. Rev. Code § 9.94A.885 (3). The law requires that the prosecuting attorney of the county where the incarcerated individual’s conviction was obtained be notified that a petition has been filed at least 30 days before a scheduled hearing. The Board may waive the 30-day requirement if needed to permit “timely action” on the petition. Id.

<sup>54</sup> Id.

<sup>55</sup> Wash. Rev. Code § 9.94A.885 (3).

<sup>56</sup> Clemency Board Manual at § III (C).

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Wash. Rev. Code § 9.94A.728 (1) (d).

<sup>60</sup> See Washington Governor Jay Inslee, Frequently Asked Questions (2021), <https://www.governor.wa.gov/boards-commissions/clemency-pardon-board/frequently-asked-questions>.

<sup>61</sup> Email from Tricia A. Smith, Public Information and Records Officer, Office of Governor Jay Inslee, to FARM (June 8, 2021) (on file with FARM, Office of the General Counsel).