

West Virginia provides compassionate release to eligible incarcerated individuals with terminal illnesses and serious medical conditions through **Executive Clemency**¹ and **Medical Respite**.²

EXECUTIVE CLEMENCY DUE TO A LIFE-THREATENING MEDICAL CONDITION

I. ELIGIBILITY

Medical Condition – An incarcerated individual with an “extreme life-threatening” medical condition may be eligible for Executive Clemency.³

Exclusions – No one is specifically excluded from applying for Executive Clemency; however, some incarcerated individuals must wait before they can apply:

- People with determinate and indeterminate “life with mercy” or habitual life sentences cannot apply until the date on which they first become eligible for parole;⁴ and
- People with “life without mercy” sentences must serve at least 15 years before they can apply.⁵

II. APPLICATION/REFERRALS

An incarcerated individual or any other person (as long as the incarcerated individual has given written consent) may initiate an application for Executive Clemency.⁶

- The Governor’s office does not make the Executive Clemency application materials available online. Individuals must call the Governor’s office at (304) 558-2000 and ask for an application.⁷ Once the completed forms are returned to the Governor’s office, they are forwarded to the West Virginia Parole Board.⁸

III. DOCUMENTATION AND ASSESSMENT

The Parole Board reviews all Executive Clemency applications and makes recommendations to the Governor.⁹

- Prison medical staff must certify that an individual has an “extreme life-threatening” medical condition.¹⁰

- The Board compiles a written report that includes the circumstances of the individual’s criminal history, employment and education history, drug and alcohol use, institutional conduct, program participation, and public and official “sentiment.”¹¹
- Once it has completed the written report, the Board makes a recommendation to the Governor regarding the individual’s Executive Clemency request.¹²

There is no additional publicly available information on the Parole Board’s review process.

IV. DECISION-MAKING PROCESS

Decision-Maker – The Governor has sole authority to grant Executive Clemency and makes that decision based on the Parole Board’s recommendation.¹³

- There is no publicly available information on the Governor’s decision process.

V. POST-DECISION

Denials and Appeal Rights – There is no published information from the Governor’s office or the Parole Board on appealing denials of Executive Clemency requests.

VI. REPORTING/STATISTICS

The Governor is required to submit an annual report to the West Virginia Legislature stating how many individuals have been granted Executive Clemency and the reasons for doing so.¹⁴

- According to the Restoration of Rights Project, only one Executive Clemency request has been granted in West Virginia since 2010.¹⁵ It is not known whether that request was granted due to a life-threatening medical condition.

MEDICAL RESPITE

I. ELIGIBILITY

Medical Condition – An incarcerated individual with a terminal illness or “extremely serious” medical condition may be eligible for Medical Respite.¹⁶

- The West Virginia Division of Corrections and Rehabilitation (Division) states that a terminal illness is a medical condition or disease from which the individual is not expected to recover and which is expected to cause death “in the immediate future.”¹⁷
 - The Division’s Medical Respite policy defines “immediate future” as “generally” meaning 120 days “in the best judgement” of the individual’s physician.¹⁸
- The Division Medical Respite policy does not define “extremely serious medical condition,” saying only that Medical Respite recommendations are reserved for “the end stages of life and other extreme and rare circumstances.”¹⁹

Other Eligibility Criteria – To be eligible for Medical Respite, an incarcerated individual must also not pose a substantial risk to society if released.²⁰

Exclusions – Medical Respite is available to all incarcerated individuals except for “young adults” incarcerated at the Anthony Correctional Center.²¹

II. APPLICATION/REFERRALS

An incarcerated individual seeking Medical Respite may obtain an application from any member of the individual’s Unit Team or from Health Services staff.²²

III. DOCUMENTATION AND ASSESSMENT

After completing the Medical Respite application, the incarcerated individual must submit it to the appropriate Warden (or Warden’s designee).²³ After receiving an application, the Warden has five days to ask the facility’s Healthcare Provider for a completed Medical Report.²⁴

The Healthcare Provider must complete the Medical Report within 10 days,²⁵ providing information on the incarcerated individual’s diagnosis, treatment, physical capabilities, prognosis, and needed treatment after release.²⁶

Process: Documentation Does Not Support Medical Respite

- If the application and Medical Report do not indicate that the incarcerated individual has a terminal condition or a medical condition that otherwise justifies Medical Respite, the Warden “immediately” communicates that in writing to the Corrections Commissioner.²⁷
- The Commissioner reviews the letter, the Medical Respite application, and the Medical Report and (1) transmits the information to the Governor with a recommendation for denial²⁸ or (2) returns the information to the individual’s facility for further consideration.²⁹

Process: Application and Medical Report Support Medical Respite

- If the Warden or the Corrections Commissioner believes that the application and Medical Report support granting Medical Respite, the following review is conducted:
 - The Warden sends letters soliciting “the sentiment” of the sentencing court, prosecuting attorney, and victim³⁰ and allows 7-10 days for responses.³¹
 - The Warden determines the incarcerated individual’s “suitability” for Medical Respite, which requires considering the person’s age, offense, physical and psychological condition, length of remaining sentence, institutional behavior, release plan, and whether parole has been denied or revoked or a parole hearing is forthcoming, in addition to any responses regarding the “sentiments” of the sentencing court, prosecuting attorney, and/or victim.³²
- After this review, the Warden prepares a recommendation for the Corrections Commissioner detailing the medical information and relevant factors relied upon in reaching the decision recommending or denying Medical Respite.³³ If the individual’s medical condition justifies a Medical Respite release, the Warden then considers whether the nature of the person’s offense or other factors would create an undue risk to public safety if release were granted.³⁴
- If Medical Respite is recommended, the Warden must also indicate whether there should be any release conditions, such as community supervision or electronic monitoring.³⁵

IV. DECISION-MAKING PROCESS

Decision-Maker – The Governor has the final authority to grant a Medical Respite.³⁶

Decision

- If the Governor **denies** the Medical Respite, the Warden is responsible for notifying the incarcerated individual.³⁷
- If the Governor **approves** the Medical Respite, the Warden notifies the individual and coordinates implementation of the release.³⁸

V. POST-DECISION

Denials and Appeal Rights – Incarcerated individuals are not prohibited from filing new Medical Respite applications after a denial. However, if there has not been a material change in the person's condition, the Warden (in consultation with the Healthcare Provider) may recommend denial to the Commissioner.³⁹ The Commissioner will then transmit a recommendation for denial to the Governor.⁴⁰

VI. REPORTING/STATISTICS

The Division reported that no individuals were granted Medical Respite in 2019 and 2020.⁴¹

WEST VIRGINIA COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

EXECUTIVE CLEMENCY DUE TO A LIFE-THREATENING MEDICAL CONDITION

State Constitution

West Virginia Constitution, Article 7, § 11, available through the West Virginia Legislature, https://www.wvlegislature.gov/WVCODE/WV_CON.cfm#articleVII.

Statute

West Virginia Code, § 5-1-16 (2021), available through the West Virginia Legislature, <https://code.wvlegislature.gov/5-1-16/>.

Agency Policy/Publications

West Virginia Parole Board, Executive Clemency Information Page (2021), <https://paroleboard.wv.gov/executiveclemency/Pages/default.aspx>.

West Virginia Parole Board, Guidelines for Executive Clemency (2021), <https://paroleboard.wv.gov/executiveclemency/pages/guidelines.aspx>.

MEDICAL RESPITE

Agency Policy

West Virginia Division of Corrections and Rehabilitation Policy Directive 410.12, Medical Respite Application Procedures (Nov. 1, 2009), available only by contacting the Division at 1409 Greenbrier Street, Charleston, WV 25311, (304) 558-2036.

NOTES

* *Id.* means see prior note.

¹ W.Va. Const. art. 7, § 11; W.Va. Code § 5-1-16. See also West Virginia Parole Board, Guidelines for Executive Clemency.

² West Virginia Division of Corrections and Rehabilitation, Policy Directive 410.12.

³ West Virginia Parole Board, Guidelines for Executive Clemency.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ West Virginia Parole Board, Executive Clemency Information Page.

⁸ Id.

⁹ Id. Note that the Parole Board’s rules state only that it makes “informed recommendations” to the Governor in Executive Clemency cases; the rules do not provide any additional information on the Board’s recommendation process. See Rules of the West Virginia Parole Board (2006), Mission Statement, <https://paroleboard.wv.gov/SiteCollectionDocuments/West%20Virginia%20Parole%20Board%20Procedural%20Rules.pdf>.

¹⁰ West Virginia Parole Board, Guidelines for Executive Clemency.

¹¹ West Virginia Parole Board, Executive Clemency Information Page.

¹² Id.

¹³ W.Va. Const., art. 7, § 11. See also West Virginia Parole Board, Executive Clemency Information Page.

¹⁴ W. Va. Code § 5-1-16.

¹⁵ Collateral Consequences Resource Center/Restoration of Rights Project, West Virginia Restoration of Rights and Record Relief (Feb. 24, 2021), <https://ccresourcecenter.org/state-restoration-profiles/west-virginia-restoration-of-rights-pardon-expungement-sealing/>.

¹⁶ West Virginia Division of Corrections Policy Directive (Policy) 410.12, § I.

¹⁷ Id. at § III.

¹⁸ Id.

¹⁹ Id. at § V (A) (3).

²⁰ Id. at § I.

²¹ Id. at §§ IV and V (E) (1).

²² Id. at § V (A) (1); see also Attachment #1, Medical Respite Application.

²³ Id. at § V (B) (1).

²⁴ Id. at § V (B) (2); see also Attachment 2, Medical Report for Medical Respite Application.

²⁵ Id. at § V (B) (3).

²⁶ Id. at Attachment 2, Medical Report for Medical Respite Application.

²⁷ Id. at § V (B) (4).

²⁸ Id. at § V (B) (5) (a).

²⁹ Id. at § V (B) (5) (b).

³⁰ Id. at § V (C) (1).

³¹ Id. at § V (C) (2). See also Attachment #6, a sample letter seeking this information, and Attachment #7, the Medical Respite Sentiment Form.

³² Id. at §§ V (C) (3) (a) through (C) (3) (j).

³³ Id. at §§ V (D) (1) and (D) (2).

³⁴ Id. at § V (D) (4).

³⁵ Id. at §§ V (D) (5) and (D) (6).

³⁶ Id. at § I.

³⁷ Id. at § V (F) (1).

³⁸ Id. at §§ V (F) (2) and (F) (3).

³⁹ Id. at § V (E) (2).

⁴⁰ Id. at § V (E) (3).

⁴¹ West Virginia Division of Corrections and Rehabilitation, *FY 2020 Annual Report*, 31, and *FY 2019 Annual Report*, 34, both available at <https://dcr.wv.gov/resources/Pages/publications.aspx>.