

Arkansas provides compassionate release to eligible prisoners who are incapacitated or terminally ill through three different laws: (1) **Medical Parole**; ¹ (2) **Early Release to Home Detention**; ² and (3) **Executive Clemency Due to a Life-Threatening Medical Condition**. ³

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition - To be eligible for Medical Parole, a prisoner must be either permanently incapacitated or terminally ill, defined as follows:

- *Permanently incapacitated* means that, in the opinion of two licensed physicians, the prisoner has a medical condition that (1) renders the individual permanently and irreversibly incapacitated and (2) requires “immediate and long-term care.” ⁴
- *Terminally ill* means that, in the opinion of two licensed physicians, a prisoner (1) has an incurable condition caused by illness or disease and (2) is likely to die within two years due to that illness or disease. ⁵

According to the Arkansas Parole Board Policy Manual, a prisoner who is a “suitable candidate for hospice care” can also be approved for Medical Parole. ⁶

Exclusions - Prisoners are not eligible for Medical Parole if they are: (1) under a sentence of death; ⁷ (2) sentenced to life imprisonment without parole eligibility; ⁸ or (3) required to register as a sex offender ⁹ and assessed as a “Level 3 offender or higher,” or where the victim was 14 years of age or younger. ¹⁰

II. APPLICATION/REFERRAL

Referrals - Arkansas law says that when two physicians ¹¹ verify that a prisoner is either terminally ill or permanently incapacitated, or would be a “suitable candidate” for hospice care, ¹² the Director of the Arkansas Department of Correction (ADC) or Department of Community Correction (DCC) must communicate to the Arkansas Parole Board (Board) that the prisoner should be considered for Medical Parole and a transfer to parole/community supervision. ¹³

- Departmental policy states that the “medical service provider, ADC, and DCC must establish a process to identify and bring to the attention of the Parole Board” prisoners who meet the Medical Parole criteria ¹⁴ and that each Director “shall provide procedures to be followed within their agency” to bring prisoners who are incapacitated or terminally ill to the attention of the Parole Board. ¹⁵ [emphasis added] However, other than a very limited discussion of Medical Parole in Administrative Regulation 850, there are no detailed policies or procedures on Medical Parole.

III. DOCUMENTATION AND ASSESSMENT

Medical Information/Parole Board - Upon receiving the above communication, the Board is directed to “assemble or request” all relevant information needed to decide whether a prisoner is eligible for Medical Parole.¹⁶ There is no other information provided on needed documentation.

IV. DECISION-MAKING PROCESS

Decision Maker - The Arkansas Parole Board makes the final decision in Medical Parole cases.

Process - The decision-making process for Medical Parole cases is unclear and the statute and agency rules on Medical Parole provide very little information. The Board rules do not state whether the general parole rules apply to Medical Parole cases.

- *Hearings* - The Board Manual states that it will conduct an “open meeting” for each eligible candidate for parole,¹⁷ but then says that “all hearings will be conducted in privacy” and are closed to the public. Parole cases can also be reviewed by a single member.¹⁸
- *Decision Factors* - There is only one sentence regarding Board decisions in Medical Parole cases: “If the Board is satisfied that the facts show the inmate’s medical condition makes him or her no longer a threat to public safety, it can approve release on Medical Parole and immediately transfer the inmate to parole supervision.”¹⁹
- *Victim Input* - Before the Board decides whether to release a prisoner under the general parole rules, it generally permits victims to present a written statement at a “victim impact hearing.”²⁰ It is not clear if this requirement applies in Medical Parole cases where time is often a critical factor.

Conditions and Pre-Release Planning - With the help of ADC staff, including medical/mental health personnel, the Parole Board is directed to generate a release plan that addresses the medical and/or mental health needs of the prisoner.²¹ The Board Manual includes the following additional details on “discharge planning,” although it is unclear whether they apply to Medical Parole:

- The Board carries out “a coordinated program of discharge planning” to ensure “effective and efficient reentry” of prisoners. At least 120 days before the anticipated release date, the Board will work with the Departments of Correction and Community Correction to complete a pre-release assessment and reentry plan.
- The Board chair designates one or more members or support staff to monitor the process and ensure that all required programs and release conditions are part of the reentry plan.²²

The “120 day” provision will be inappropriate for many Medical Parole cases, so this

guidance may not be applicable. However, it indicates that the Board (rather than ADC or DCC) is generally responsible for discharge planning.

V. POST-DECISION

Supervision - The Department of Community Corrections supervises all parolees.²³

Revocation/Termination - The Board can revoke Medical Parole if a parolee's medical condition improves to the point where he or she would not have initially been eligible.²⁴

VI. REPORTING/STATISTICS

The Board is directed to file a monthly report to the chairs of the Arkansas state legislature's House and Senate Judiciary Committees, the Legislative Council, the Board of Corrections, the Governor's Office, and the Commission on Disparity in Sentencing.²⁵ However, there is no specific guidance on tracking Medical Parole cases and the Board's annual reports do not reference Medical Parole.

- Note that in 2011 the Arkansas General Assembly passed the *Public Safety Improvement Act* (Act 570), which included modest improvements to Medical Parole.²⁶ However, given the lack of meaningful Department policies/procedures, and the absence of publicly available statistics on Medical Parole decisions, it is unclear whether the changes have resulted in prisoners who are incapacitated or terminally ill actually being released more frequently.

EARLY RELEASE TO HOME DETENTION

Under Arkansas law, eligible prisoners can also be considered for Early Release to Home Detention - and a transfer to parole supervision - if they are permanently incapacitated, terminally ill, or "suitable" for hospice care.²⁷ However, the relevant statute and policy guidance include only limited information on this program.

I. ELIGIBILITY

Medical Condition - To be eligible for Early Release to Home Detention, a prisoner must meet at least one of the following definitions:

- *Permanently incapacitated*, meaning that a prisoner has a medical condition causing permanent and irreversible incapacitation and requiring "immediate and long-term care;"²⁸
- *Terminally ill*, meaning that a prisoner has an incurable condition caused by illness or disease that is likely to cause death within two years;²⁹ or
- *Suitable for hospice care*,³⁰ meaning that a prisoner has a condition that would benefit from hospice care, with hospice defined as follows:

- [A]n autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and homelike inpatient care for the terminally ill patient and the patient's family and which employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses that are experienced during the final stages of illness and during dying and bereavement.³¹

Exclusions - Prisoners serving life sentences without parole are not eligible for Early Release to Home Detention.³²

II. REFERRAL/APPLICATION

Referrals - As with Medical Parole, a prisoner may be considered for Home Detention when the appropriate medical personnel communicates to the Board that that he or she is terminally ill, permanently incapacitated, or suitable for hospice care.³³

III. DOCUMENTATION/ASSESSMENT

The prisoner's medical condition must be documented by both an Arkansas Department of Correction (ADC) or Department of Community Correction (DCC) physician and a consultant physician and then communicated to the Arkansas Parole Board (Board).³⁴ There is no other information provided on the medical information needed or the assessment process.

IV. DECISION-MAKING PROCESS

Decision Maker - The Arkansas Board of Parole makes the final decision granting Early Release to Home Detention.³⁵

Hearing/Decision Factors - There is no publicly available information on how the Board makes decisions to grant Early Release to Home Detention due to a prisoner's physical incapacitation, terminal illness, or suitability for hospice care. Note that the Arkansas statutes say that the "Board of Corrections" will establish policy and procedures for the home detention program, including program criteria, terms, and conditions of release; however, the Board's web page and publicly available documents do not reflect the existence of any such policy or procedures.³⁶

Conditions - A prisoner granted Early Release to Home Detention may be released to the care of family members or friends, or to a facility, "subject to [parole] board approval."³⁷ The statute also says the Board can impose "other conditions."³⁸

V. POST-DECISION

Supervision - The statute provides a definition of electronic monitoring devices but then does not actually use the term in the remainder of the statute.³⁹ However, given the inclusion of the definition, it is assumed that prisoners who are granted Early Release to

Home Detention must wear such a device.

- An approved electronic monitoring or supervising device is defined as “an electronic device approved by the Arkansas Board of Correction that meets the minimum Federal Communications Commission regulations and requirements and that utilizes available technology that is able to track and monitor a person’s location.”⁴⁰

Term - The term of Home Detention does not exceed the maximum number of years of imprisonment or supervision to which the prisoner is sentenced.⁴¹ Note that the length of time a former prisoner participates in Home Detention is credited against his or her sentence.⁴²

Revocation/Termination - If the condition of a prisoner released to Home Detention improves to the point where he or she is no longer terminally ill, incapacitated, or suitable for hospice care, he or she will be returned to custody and reconsidered for parole.⁴³

VI. REPORTING/STATISTICS

The Arkansas Department of Correction, Department of Community Correction, and Parole Board annual reports do not include statistics on the numbers of prisoners granted Early Release to Home Detention on the basis of an incapacitating medical condition, terminal illness, or suitability for hospice care.

EXECUTIVE CLEMENCY DUE TO A LIFE-THREATENING MEDICAL CONDITION

A prisoner’s sentence can be commuted by the Governor under Arkansas’ Executive Clemency process.⁴⁴ A “life-threatening medical condition” is listed as an appropriate reason to apply for Executive Clemency.⁴⁵

I. ELIGIBILITY

Medical Condition - Although a “life-threatening medical condition” can be the basis of a clemency application, no definition of “life-threatening” is provided.

Exclusions - The Executive Clemency statute and regulations do not list any prisoners as being ineligible for consideration.⁴⁶

II. APPLICATION/REFERRAL

Applications - Prisoners applying for clemency must submit a “Commutation (Time Cut) Application” through their Institutional Release Officers (IROs).⁴⁷ An applicant must sign the application “under oath”⁴⁸ and include a certified copy of his or her judgment and commitment order.⁴⁹

- The form requires that the prisoner attach a statement explaining the “life-threatening” condition.⁵⁰
- The prisoner must provide a medical information release so that the Arkansas Parole Board (Board) can view his or her medical records.⁵¹

All Executive Clemency applications are referred to the Board for investigation.⁵²

III. DOCUMENTATION AND ASSESSMENT

Investigation/Parole Board - The Board is responsible for investigating each Executive Clemency request.⁵³

- *Subpoenas* - The Board chair, or a designee, has the power to subpoena witnesses to appear, testify, and bring before the Board any relevant records and documents.⁵⁴
- *Recommendations* - The Board must solicit the written or oral recommendations of the committing court, prosecuting attorney, and sheriff of the county where the prisoner was sentenced.⁵⁵ In addition, before considering clemency applications from prisoners who have committed certain felonies,⁵⁶ the Board must notify victims of the crime, or their next of kin, if a notice request has been filed with the prosecuting attorney. When the Board provides such notice, it must solicit the written or oral recommendations of the victim, or next of kin, regarding the granting of Executive Clemency.⁵⁷ Note that the recommendations from the above parties are not binding upon the Board in advising the Governor whether to grant Executive Clemency.⁵⁸

Review and Recommendation/Parole Board -

- *Screening and Vote* - At least five Board members individually screen each clemency application.⁵⁹ Each member then votes to (1) recommend whether the application is with or without merit or (2) schedule a hearing before the Board.⁶⁰ Five affirmative votes are required to issue a recommendation or schedule a hearing.
- *Hearing* - If the Board decides to hold a hearing, it must notify the victim, or next of kin, of the hearing date, time, and place at least 30 days before it is held.⁶¹
 - The prisoner-applicant for Executive Clemency who appears before the Board may be accompanied by “supporters,” including his or her attorney.⁶²
 - The Board considers the statements of the prisoner and “a spokesperson,” the prisoner’s file, reports from law enforcement, a pre-sentence report, and any documents presented by the prisoner or other “interested persons,” including the victims or victims’ relatives.⁶³
 - On the basis of all the information presented, the Board votes to recommend that (1) the prisoner’s application for Executive Clemency is “with merit” or (2) the prisoner’s application is “without merit.”⁶⁴ If the Board recommends

that the application is with merit, it can specify the nature and terms of the commutation being recommended.⁶⁵

Submission to Governor/Parole Board - All Executive Clemency applications the Board considers are submitted to the Governor, along with the Board's investigation report, non-binding recommendation, and any other information it has about the prisoner.⁶⁶

- *Notice* - At least 30 days before submitting its recommendation to the Governor, the Board must issue a public notice of its intention to make such a recommendation and send a notice to the circuit judge who presided over the prisoner-applicant's trial, the prosecuting attorney, and the sheriff of the county in which the individual was convicted and, if applicable, to the victim or the victim's relatives.⁶⁷

IV. DECISION-MAKING PROCESS

Decision Maker - The Governor makes the final decisions to grant Executive Clemency. As noted above, the Board makes clemency recommendations but they are "non-binding," meaning they do not have to be followed.⁶⁸

Written Order - If the Governor grants the prisoner's application for Executive Clemency, he or she puts the reasons for granting the application in a written order and files copies with the Arkansas Senate and House of Representatives.⁶⁹

- If the Governor does *not* grant the application for clemency within 240 days of receiving the Board's recommendation, it is "deemed denied."⁷⁰ If the Governor grants the application after the 240-day period, it is considered "null and void."⁷¹

Notice of the Decision - At least 30 days before granting Executive Clemency, the Governor must file a notice of his or her intention to grant the application with the Secretary of State.⁷² The Governor also directs the Department of Correction to send a notice of his or her intention to the judge, prosecuting attorney, and sheriff of the county in which the applicant was convicted and, if applicable, to the victim or victim's relatives.⁷³

V. POST-DECISION

Appeals and Denials - There is no appeal of the Board's recommendation on an application for Executive Clemency.⁷⁴ There is also no appeal of the Governor's decision.⁷⁵

- *Submitting New Applications* - If a prisoner's application is denied in writing by the Governor, he or she is generally not eligible to submit a new application for four to eight years, depending on the sentence being served.⁷⁶ If an application is deemed denied because the Governor did not grant the application within 240 days of receiving the Board's recommendation,⁷⁷ the prisoner may immediately file a new application for Executive Clemency.⁷⁸

- *Exception:* If it has been at least 12 months after the filing date of the denied application *and* the individual’s physical or mental health has “substantially deteriorated,” the Board can waive the waiting period for filing a new application.⁷⁹

VI. REPORTING/STATISTICS

The Governor’s office publishes a monthly press release on who was granted Executive Clemency.⁸⁰ However, there is no cumulative information stating how many individuals have been granted clemency based on life-threatening medical conditions.

NOTES

¹ Ark. Code Ann. § 12-29-404.

² Ark. Code Ann. § 16-93-708.

³ Ark. Code Ann. §§ 16-93-204 and 16-93-207; Arkansas Board of Corrections Administrative Regulation 1305 (AR 1305).

⁴ Ark. Code Ann. § 12-29-404 (a) (1); Arkansas Board of Corrections Administrative Regulation 850 (AR 850), §§ IV and V; Arkansas Parole Board Policy Manual (Board Manual) § 2.18.

⁵ Ark. Code Ann. at § 12-29-404 (a) (2); AR 850 §§ IV and V; Board Manual § 2.18.

⁶ Board Manual § 2.18.

⁷ AR 850 § V-A. Note that this exclusion is listed only in Administrative Regulation 850 and is not in the statute.

⁸ Id. at § V-B. Prisoners are also excluded from consideration if they are sentenced “to life imprisonment (sentence not commuted to a term of years by executive clemency pursuant to Ark. Code Ann. § 16-93-601 et seq.).” Id. Again, these exclusions are listed only in AR 850.

⁹ See Sex Offender Registration Act of 1997, Ark. Code Ann. §§ 12-12-901 through 12-12-920.

¹⁰ Ark. Code Ann. § 12-29-404 (d); AR 850 § V-D; Board Manual at 2.18. Note that the provision regarding the ineligibility of sex offenders is worded differently in each of these three sources.

¹¹ One physician must be an Arkansas Department of Correction (ADC) physician or Department of Community Correction (DCC) physician, and the second must be a “consultant physician.” Ark. Code Ann. § 12-29-404 (b).

¹² Board Manual § 2.18. Note that the reference to hospice care is in the Board Manual but not the statute.

¹³ Ark. Code Ann. § 12-29-404 (b); Board Manual § 2.18.

¹⁴ AR 850 § III.

¹⁵ Id. at § VI-A.

¹⁶ Ark. Code Ann. at § 12-29-404 (c) (1); Board Manual § 2.18.

¹⁷ Board Manual § 1.

¹⁸ Id. at § 1.1. General “release hearing” guidelines are also provided in §§ 2.11 and 2.14, but there is no reference as to whether these procedures apply to Medical Parole.

¹⁹ Ark. Code Ann. § 12-29-404 (c) (2); Board Manual § 2.18.

²⁰ Board Manual § 2.10.

²¹ AR 850 § VI-B.

²² Board Manual § 2.23.

²³ Id. at § 2.1.

²⁴ Ark. Code Ann. § 12-29-404 (e); Board Manual § 2.18. Note that the Board Manual says Medical Parole revocation proceedings follow all the requirements applicable to “regular” parole. Board Manual § 2.18.

²⁵ Board Manual § 5.14.

²⁶ See Consensus Report of the Arkansas Working Group on Sentencing and Corrections (Jan. 2011), 7, <http://www.whatcomcounty.us/DocumentCenter/Home/View/646> and Pew Center on the States, Public Safety Performance Project Issue Brief, Arkansas’s 2011 Public Safety Reform: Legislation to Reduce Recidivism and Curtail Prison Growth (July 2011), 11, <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2011/07/01/arkansas-2011-public-safety-reform>.

²⁷ Ark. Code Ann. § 16-93-708. Note that the statute says the individual “may be incarcerated in a home detention program.” [Emphasis added] Id. at (b) (1) (A). A later section in the same statute, though, calls it parole and not incarceration: “An inmate...who is released on parole under this section...” Id. at § (d)

(2). Whether or not the prisoner is considered incarcerated is important for purposes of obtaining Medicaid coverage.

²⁸ Ark. Code Ann. §§ 16-93-708 (a) (3) and (b) (1) (A).

²⁹ Ark. Code Ann. §§ 16-93-708 (a) (4) and (b) (1) (A); Board Manual § 2.18.

³⁰ Ark. Code Ann. § 16-93-708 (b) (1) (A).

³¹ Id. at (a) (2).

³² Id. at (d) (2).

³³ Id. at (b) (1).

³⁴ Id. at (b) (1) (B).

³⁵ Ark. Code Ann. § 16-93-708.

³⁶ Id. at (b) (2) and (d) (1).

³⁷ Id. at (d) (2).

³⁸ Id. at (c) (1).

³⁹ There is no additional information on this in either AR 850 or the Board Manual.

⁴⁰ Ark. Code Ann. § 16-93-708 (a) (1).

⁴¹ Id. at (c) (2) (a).

⁴² Id. at (c).

⁴³ Id. at (e).

⁴⁴ See Ark. Code Ann. §§ 16-93-204 and 16-93-207; Arkansas Board of Corrections Administrative Regulation 1305 (AR 1305).

⁴⁵ Board Manual § 4.3.

⁴⁶ Prisoners serving sentences for capital murder and other serious felonies who file for Executive Clemency are subject to different notice requirements. See Board Manual § 4.5.

⁴⁷ AR 1305 § IV; Board Manual § 4.3.

⁴⁸ Ark. Code Ann. § 16-93-204 (a) (1) (A).

⁴⁹ Id. at (a) (2). The Arkansas Parole Board has a “Commutation (Time Cut) Application” available online at <http://www.paroleboard.arkansas.gov/Websites/parole/images/CommutationApplication021909.pdf>. Note that the form is dated 2008 and the Parole Board Policy Manual is dated 2015, making some of the references on the form out of date.

⁵⁰ Arkansas Parole Board, “Commutation (Time Cut) Application,” 2.

⁵¹ Id.

⁵² Ark. Code Ann. § 16-93-204 (a) (3); AR 1305 § IV.

⁵³ Ark. Code Ann. § 16-93-204 (b).

⁵⁴ Id. at (c).

⁵⁵ Id. at (d); Board Manual § 4.5.

⁵⁶ This is done for clemency applications submitted by prisoners convicted of capital murder or a Class Y, A, or felony. See Ark. Code Ann. § 16-93-204 (d) (2) (A).

⁵⁷ Ark. Code Ann. §§ 16-93-204 (d) (2) (A) and (B); Board Manual § 4.5.

⁵⁸ Ark. Code Ann. § 16-93-204 (d) (4). Copies of the recommendations will be kept in the Board’s file and the prisoner’s file. Id. at (d) (3) and (d) (4).

⁵⁹ Board Manual § 4.6.

⁶⁰ Id. Note that a hearing is required for prisoners serving a death sentence.

⁶¹ Board Manual § 4.7. See also Ark. Code Ann. §§ 16-93-204 (d) (5) (A) and (B). Note that the statutory language seems to say that victims are only notified if the Board wants to solicit their recommendations; the wording in the Board Manual is slightly different.

⁶² Board Manual § 4.7.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id. Note there are some process differences for prisoners sentenced to death. See Board Manual §§ 4.7 and 4.8.

⁶⁶ Ark. Code Ann. § 16-93-204 (b); Board Manual § 4.9.

⁶⁷ Ark. Code Ann. § 16-93-204 (e). Note that although § 16-93-204 states the Board recommends whether an application should be “granted” or “denied,” the Board Manual states that the Board recommends only that an application is with or without merit.

⁶⁸ Board Manual § 4.9.

⁶⁹ Ark. Code Ann. § 16-93-207 (e). Note that the order must contain the prisoner’s name, the offense of which

he or she was convicted, the sentence imposed and the date it was imposed, and the effective date of the pardon or commutation of sentence.

⁷⁰ Id. at (b).

⁷¹ Id.

⁷² Id. at (a) (1) (A). Note that the statute says that the filing of the notice does not preclude the Governor from later denying the application but that any “pardon, commutation of sentence, or remission of fine or forfeiture” that is granted without filing a notice is null and void. Id. at (a) (2).

⁷³ Ark. Code Ann. § 16-93-207 (a) (1) (B).

⁷⁴ Board Manual § 4.10.

⁷⁵ Id.

⁷⁶ Ark. Code Ann. §§ 16-93-207 (c) and (d).

⁷⁷ Id. at (b).

⁷⁸ Id. at (d) (2).

⁷⁹ Id. at (3) (A).

⁸⁰ See the official Arkansas Governor’s Clemency and Extraditions webpage at <http://governor.arkansas.gov/clemency-extraditions>.