

Delaware provides compassionate release to eligible incarcerated individuals with serious mental or physical conditions under two separate laws:

- Eligible individuals serving sentences for crimes committed on or after June 30, 1999, may be considered for **Sentence Modification Due to Illness or Infirmity**.<sup>1</sup>
- Eligible individuals serving sentences for crimes committed before June 30, 1999, (sometimes referred to as “old law prisoners”) may be considered for **Medical Parole**.<sup>2</sup>

## **SENTENCE MODIFICATION DUE TO ILLNESS OR INFIRMITY**

For incarcerated people with sentences of more than one year for crimes committed on or after June 30, 1999, sentencing courts retain jurisdiction to modify the sentences and reduce the time the individuals serve if there is “good cause.” Delaware law states that good cause includes “serious medical illness or infirmity.”<sup>3</sup>

### **I. ELIGIBILITY**

**Medical Condition** – An individual with a “serious” medical illness or infirmity may be eligible for a Sentence Modification Due to Illness or Infirmity.<sup>4</sup> However, Delaware law does not define “serious” or provide examples of conditions that might qualify.

**Exclusions** – Delaware law makes no mention of any individual who is ineligible to apply. In addition, there is no “minimum time served” requirement if a Sentence Modification request is based solely upon an incarcerated person’s serious medical illness or infirmity.<sup>5</sup>

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

Before a Sentencing Court will consider Sentence Modification Due to Illness or Infirmity, the Department of Correction (Department) must file an application “for good cause” on behalf of the incarcerated person with the Board of Parole (Board) and certify that release would not constitute a substantial risk to the community or to the individual.<sup>6</sup>

### **III. DOCUMENTATION AND ASSESSMENT**

**Documentation/Department** – The Board reviews all applications for Sentence Modification before sending those it approves to the appropriate Sentencing Court for

a decision.<sup>7</sup> It can ask the Department to provide any information that is “reasonably necessary” for a thorough assessment of the requests.<sup>8</sup>

### **Review and Recommendation/Board of Parole**

- Hearing – After receiving an application from the Department, the Board will hold a hearing to decide the appropriate recommendation to the Sentencing Court judge.<sup>9</sup> The Board follows its general hearing procedures when considering Sentence Modification applications.<sup>10</sup>
- Notice – The Board must provide the Attorney General’s office with a written notice of the hearing and a copy of the incarcerated individual’s application at least 30 days before the scheduled hearing date.<sup>11</sup>
- Recommendation – The Board will do one of the following:
  - Reject the application, based on a finding that the incarcerated person is a substantial risk to the community or the application is not based on good cause;<sup>12</sup> or
  - By a majority vote, recommend a modification of the sentence and forward the application to the Superior Court/Trial Court for consideration.<sup>13</sup>

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

**Decision-Maker** – Upon receiving the Board’s recommendation, the individual’s Sentencing Court may grant or deny the application for a Sentence Modification.<sup>14</sup>

- The Court must provide the Attorney General’s office with a “reasonable period of time” to be heard on the application.<sup>15</sup>
- The Court may request additional information but does not need to hold further hearings on the application.<sup>16</sup>

## **V. POST-DECISION**

**Denials and Appeals** – The general rule is that incarcerated individuals whose applications for Sentence Modification are rejected must wait one year to file again. However, individuals with serious medical illnesses or infirmities are exempt from that requirement and can refile at any time.<sup>17</sup>

## **VI. REPORTING/STATISTICS**

The courts are not required to report on how many individuals have had their sentences modified due to a medical illness or infirmity, and there are no publicly available statistics.

## **MEDICAL PAROLE**

Incarcerated individuals may apply for Medical Parole if they are serving sentences for crimes committed prior to June 30, 1999.

### **I. ELIGIBILITY**

**Medical Condition** – To be eligible for Medical Parole, an incarcerated individual must have a physical or mental condition requiring medical treatment that the Department of Correction (Department) cannot furnish.<sup>18</sup>

**Exclusions** – Delaware law makes no mention of individuals who are ineligible to apply because of the type of crime for which they are incarcerated.

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

The law simply says that if it “seems necessary” for an incarcerated person’s well-being, the Department can recommend the Board of Parole (Board) consider the individual for Medical Parole.<sup>19</sup> There is no reference to an application or referral process.

### **III. DOCUMENTATION AND ASSESSMENT**

The Department must provide the Board with documentation verifying that (1) the incarcerated individual has a physical or mental condition that the Department or one of its medical contractors cannot treat<sup>20</sup> and (2) a medical or care facility has accepted the individual for “appropriate treatment.”<sup>21</sup>

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

**Decision-Maker** – The Delaware Board of Parole makes all final Medical Parole decisions.

**Decision** – If the Board is satisfied that removal from prison is necessary for the incarcerated person’s well-being, the Board can order the individual’s release on Medical Parole.<sup>22</sup> The Board’s rules do not specify which, if any, of its general procedures and guidelines apply to Medical Parole cases it considers.<sup>23</sup>

## Conditions

- Environment – The Board will only parole an individual for medical reasons when arrangements have been made for treatment in an “institution.”<sup>24</sup>
  - Note that the Medical Parole law and the Board rules do not define the word “institution” or provide examples of appropriate institutions.<sup>25</sup>
- Other Conditions – The Board can impose any other conditions it decides are appropriate.<sup>26</sup>

## V. POST-DECISION

**Denials and Appeals** – When the Board denies parole, it must provide the incarcerated individual with the reasons for the denial in writing.<sup>27</sup>

- If the incarcerated person is eligible for a rehearing, the Board will (1) provide information on the earliest rehearing application date or (2) order that no further consideration be given.<sup>28</sup>
- The Board can consider an early hearing or rehearing date if there are medical treatment considerations.<sup>29</sup>
- The Board may review any of its decisions if it receives “information of substantial significance” that was unavailable on the date of the hearing and that could have influenced its decision.<sup>30</sup>

**Revocation/Termination** – The Board can revoke Medical Parole without a hearing “at any time and for any cause” and order the individual returned to Department custody.<sup>31</sup>

## VI. REPORTING/STATISTICS

The Board of Parole denied FAMM’s request for information on the number of individuals granted Medical Parole in 2019 and 2020.<sup>32</sup>

## **DELAWARE COMPASSIONATE RELEASE**

### **PRIMARY LEGAL SOURCES**

#### **SENTENCE MODIFICATION DUE TO ILLNESS OR INFIRMITY**

##### **Statute**

Delaware Code, Title 11, §§ 4217 (a) through (c) (2020), available through the Delaware General Assembly, <https://delcode.delaware.gov/>.

##### **Agency Policy**

Delaware Board of Parole Rules (2007), §§ 2, 11, and 22, <https://boardofparole.delaware.gov/rules/>.

#### **MEDICAL PAROLE (“OLD LAW” PRISONERS ONLY)**

##### **Statute**

Delaware Code, Title 11, § 4346 (e) (2020), available through the Delaware General Assembly at <https://delcode.delaware.gov/>.

##### **Agency Policy**

Delaware Board of Parole Rules (2007), § 7, <https://boardofparole.delaware.gov/rules/>.

## **NOTES**

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\* *Id.* means see prior note.

<sup>1</sup> Del. Code Ann. tit. 11, §§ 4217 (a) through (c); Delaware Board of Parole Rules (Board Rules), §§ 2, 11, and 22.

<sup>2</sup> Del. Code Ann. tit. 11, § 4346 (e); Board Rules, §§ 2 and 7. Delaware abolished parole under the Truth-in-Sentencing Act of 1989, effective for crimes committed on or after June 30, 1990. Thus, the Medical Parole provisions only apply to incarcerated individuals serving sentences for crimes committed prior to June 30, 1990.

<sup>3</sup> Del. Code Ann. tit. 11, § 4217 (c).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at (f). Note that generally individuals serving sentences for violent felonies are not eligible for sentence modification until they have served at least half of their sentence, and those serving mandatory terms are not eligible for a sentence modification during the mandatory portion of their sentence. *Id.* See also Board Rules, § 22. The statute states that this general rule does not apply if the sentence modification is “based solely upon serious medical illness or infirmity of the offender,” but the Board rules do not make this distinction.

<sup>6</sup> Id. at (b) and (d) (1).

<sup>7</sup> Id. at (d) (4).

<sup>8</sup> Id. at (d) (1).

<sup>9</sup> Id. at (d) (2); Board Rules, § 22.

<sup>10</sup> Del. Code Ann. tit. 11, § 4217 (d) (2), referencing Del. Code Ann. tit. 11, § 4350 (a). See also Board Rules, § 11.

<sup>11</sup> Id.

<sup>12</sup> Id. at (d) (3); Board Rules, § 22.

<sup>13</sup> Del. Code Ann. tit. 11, § 4217 (d) (4); Board Rules, § 22.

<sup>14</sup> Del. Code Ann. tit. 11, § 4217 (e).

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. at (d) (3) and (e).

<sup>18</sup> Del. Code Ann. tit. 11, § 4346 (e); Board Rules, § 7.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Del. Code Ann. tit. 11, § 4346 (e).

<sup>23</sup> See general parole rules at Del. Code Ann. tit. 11, §§ 4341 through 4352; see also Board Rules, §§ 1 through 21, 24.

<sup>24</sup> Del. Code Ann. tit. 11, § 4346 (e); Board Rules, § 7.

<sup>25</sup> Id.

<sup>26</sup> Del. Code Ann. tit. 11, § 4346 (e); Board Rules, §§ 7 and 20. See also Del. Code Ann. tit. 11, § 4321.

<sup>27</sup> Del. Code Ann. tit. 11, § 4347 (a); Board Rules, § 15.

<sup>28</sup> Id.

<sup>29</sup> Board Rules, § 15a.

<sup>30</sup> Board Rules, § 16.

<sup>31</sup> Del. Code Ann. tit. 11, §§ 4346 (e) and 4352; Board Rules, § 7.

<sup>32</sup> Email from Tim Martin, Delaware Department of Corrections, to Monique Teagle on behalf of FMM (September 17, 2021) (on file with FMM, Office of the General Counsel).