Florida provides compassionate release to eligible prisoners who are permanently incapacitated or terminally ill through its Conditional Medical Release program.¹

**CONDITIONAL MEDICAL RELEASE**

**I. ELIGIBILITY**

**Medical Condition** - Prisoners may be considered for Conditional Medical Release if they are:

- *Permanently incapacitated*, meaning the prisoner has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, results in permanent and irreversible physical incapacitation to the extent that he or she is not a danger to self or others;² or

- *Terminally ill*, meaning they have a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders them ill to the extent there can be no recovery, death is imminent, and they are not a danger to themselves or others.³

**Exclusions** - Prisoners sentenced to death are not eligible for Conditional Medical Release.⁴

**II. APPLICATION/REFERRAL**

The Department of Corrections (Department) is responsible for identifying prisoners who might be eligible for release.⁵ The Chief Health Officer of each institution makes the initial recommendations to the Department’s Director of Health Services.⁶

**III. DOCUMENTATION AND ASSESSMENT**

**Review/Director of Health Services** - After reviewing a recommendation from the Chief Health Officer and all relevant medical documentation, the Director of Health Services will make a decision to (1) reject the recommendation because the prisoner does not meet the eligibility criteria; (2) defer a referral to the Commission because more medical information or additional investigation of the case is needed; or (3) agree that the prisoner meets the medical criteria and refer his or her case to the Commission on Offender Review (Commission) for consideration.⁷

**Referral/Director of Health Services** - Upon approval of the recommendation, the Department’s Director of Health Services forwards it to the Commission for a decision,⁸ including the clinical report, medical information documenting the prisoner’s condition,⁹ and a “verifiable” release plan that includes necessary medical care.
IV. DECISION-MAKING PROCESS

Decision-Maker - The decision to approve or deny Conditional Medical Release is made by the Florida Commission on Offender Review.

Process - When the Commission receives a referral for Conditional Medical Release from the Department, the Commission Clerk docket the case for action.¹⁰

• Notice - The Commission must provide victims with advance notice any time a Conditional Medical Release case is placed on the docket for action.¹¹

Hearing - The Commission can take any and all of the following actions to prepare for the hearing: (1) conduct an investigation on any aspect of the case; (2) ask that the Department’s Office of Health Services provide additional medical evidence; (3) ask that additional medical examinations be conducted; and (4) continue the case to obtain additional information or verification of the prisoner’s release plan.¹²

• Input - Victims can give oral or written statements to the Commission regarding the granting, denying, or revoking of a prisoner’s Conditional Medical Release.¹³

Decision - The Commission approves or disapproves a Conditional Medical Release based upon the information the Department submits in support of its recommendation and a review of the prisoner’s “central office file.”¹⁴ Commission decisions are made by a majority of the quorum present and voting.¹⁵

• Notice of Decision - Victims who appear before the Commission or submit written statements are to be notified “within a reasonable period of time” of Commission action.¹⁶ Victims who want to know the Commission’s decision about a specific prisoner, but do not want to make or submit a statement, can also be notified of the Commission’s decision.¹⁷

• Release Postponement/Rescission - Under certain circumstances, a prisoner who has been granted Conditional Medical Release may have his or her release date postponed or rescinded, such as when there is a disciplinary issue before the actual release date.¹⁸

Pre-Release Planning - The Conditional Medical Release rules reference the need for release plans that include necessary medical care.¹⁹ However, they do not provide any detailed guidance or forms for developing those plans. Note that the Commission can postpone a prisoner’s Conditional Medical Release due to an “unsatisfactory” release plan.²⁰

Conditions - The Commission has the sole authority for deciding appropriate conditions for a prisoner’s release.²¹ Periodic medical evaluations at specified intervals are generally required for prisoners granted Conditional Medical Release.²² In addition, the Commission can include “standard conditions” that are not specific to Conditional Medical Release, such as reporting to a release officer at a designated time and promising to obey all laws.²³
V. POST-DECISION

Denials and Appeal Rights - There is no information in the statute or administrative code about appealing Commission denials of Conditional Medical Release.

Effect on Parole and Other Release Eligibility - A prisoner being considered for Conditional Medical Release may still be considered for any other parole/release for which he or she is eligible.24

Termination/Revocation -

- **Term** - A former prisoner’s Conditional Medical Release is for the remainder of his or her sentence, without any reduction of the sentence for good behavior.25

- **Reasons for Revocation** - If a medical condition improves to the extent that a former prisoner no longer meets the Conditional Medical Release criteria, the Commission may order a return to custody and a revocation hearing.26 If release is revoked due to medical improvement, the former prisoner must serve the balance of the sentence with credit for the time served on Conditional Medical Release.27 The Commission may also revoke Conditional Medical Release if any of the conditions of release are violated.28

- **Revocation Hearings** - The Commission will hold a revocation hearing before making a final revocation decision.29 If the former prisoner’s Conditional Medical Release is revoked, the Commission will determine if he or she is eligible for any other form of release.30

VI. REPORTING/STATISTICS

The Commission publishes reports on the number of prisoners referred and approved for Conditional Medical Release.

- According to the 2016 Annual Report, in Fiscal Year 2015-16 the Department referred 51 prisoners for Conditional Medical Release, with 29 being approved.31

- The Commission’s 2015 report, *Conditional Medical Release: An Executive Summary*, states that between 2008 and 2014, 191 prisoners were considered for Conditional Medical Release.32 Of those, 95 (49.7 percent) were granted release, 79 (41.4 percent) were denied, and 17 (8.9 percent) died or “were removed from consideration” prior to the Commission’s docket date.33

  - The report notes that prisoners granted release were “consistently older” than the general population: More than a third of those released (35.7 percent) were age 50-59, although that age group is only 14.9 percent of the general prison population.34

  - The Commission report also included “outcomes” of those released:
NOTES

1 Fla. Stat. § 947.149.
2 Id. at (1) (a); Fla. Admin. Code §§ 22-24.020 (1) and 33-401.201 (1).
3 Fla. Stat. § 947.149 (1) (b).
4 Id. at (2); Fla. Admin. Code §§ 23-24.020 (1) and 33-401.201 (4).
5 Fla. Stat. §§ 947.149 (2) and (3); Fla. Admin. Code § 33-401.201 (1).
7 Id. at (2) (a) - (c).
9 Id.
10 Id. at (2).
11 Fla. Admin. Code § 23-24.025 (1). Note that “victim” includes the victim, relative of a minor who is a victim, relative of a homicide victim, victim representative or victim advocate. Id.
15 Id. at (2).
16 Id. at (2).
18 Id. at (5).
21 Fla. Admin. Code § 23-24.040 (8). The Commission’s investigator can obtain testimony from the prisoner and any witnesses as to whether an alternate release plan exists that the Commission can consider.
22 Fla. Stat. § 947.149 (3).
23 Id. at (4).
26 Id. at (4).
28 Fla. Stat. § 947.149 (5) (a). “Gain-time” accrued prior to a Conditional Medical Release is not forfeited. Id.
29 Id. at (5) (b). See Fla. Stat. § 947.141 for revocation hearing guidelines if release conditions are violated; unlike revocations for medical improvement, “gain-time” may be forfeited.
34 Id. Of those prisoners granted Conditional Medical Release from 2008 through 2014, 65.3 percent were white. The report says that these numbers “somewhat” reflect the prison population but notes that the prison population is only 47.8 percent white. This would appear to indicate that the releases do not reflect the population.
35 Id.
36 Id.