

Georgia provides compassionate release to eligible incarcerated individuals with terminal illnesses through its **Medical Reprieve** program.¹ In addition, the Georgia Board of Pardons and Paroles has the authority to grant **Parole Due to Disability or Advanced Age**,² although there is no publicly available information provided on the process the Board uses for granting paroles under that provision.

MEDICAL REPRIEVE

I. ELIGIBILITY

Medical Condition – To be considered for a Medical Reprieve, an incarcerated individual must be “entirely incapacitated” from a progressively debilitating terminal illness,³ defined as a disease that cannot be cured or adequately treated and that is expected to result in death within 12 months.⁴

- “Entirely incapacitated” means the individual (1) requires assistance to perform two or more daily life functions (such as eating, breathing, dressing, grooming, toileting, walking, or bathing⁵) or is completely immobile; and (2) has such limited physical or mental ability, strength, or capacity that there is an extremely low risk of physical threat to others or to the community.⁶

Note that a Department of Corrections (Department) publication states that a Medical Reprieve may also be granted to individuals “suffering from an illness for which necessary treatment is available only outside the State prison system” and does not say that the illness must be terminal.⁷

Exclusions – There is nothing in the Georgia Constitution or Medical Reprieve statute that says any incarcerated individual is excluded from consideration.

II. APPLICATION/REFERRAL

The Medical Reprieve statute and the Board of Pardons and Paroles (Board) guidance indicate two different ways to start the Medical Reprieve process: (1) Incarcerated individuals may “seek leave” from the Department for a Medical Reprieve,⁸ or (2) the Department’s Medical Reprieve Coordinator may initiate a request.⁹

Written requests for Medical Reprieves, along with supporting evidence, are to be submitted directly to the Board rather than to Department personnel.¹⁰

- Note that the Board rules also state that requests for “emergency” Medical Reprieves can be made by calling a Board representative or Board member, even on weekends and official holidays.¹¹

III. DOCUMENTATION AND ASSESSMENT

A Medical Reprieve request must include information from the Department's Medical Services Director documenting the medical reasons for the request and plans for a residence, medical care, and payment of medical expenses.¹² There is no other information publicly available regarding the process for approving and/or assessing a Medical Reprieve request before it goes to the Board for a decision.

IV. DECISION-MAKING PROCESS

Decision-Maker – The Georgia Board of Pardons and Paroles has the authority to grant a Medical Reprieve for any incarcerated individual it finds to be entirely incapacitated due to a progressively debilitating terminal illness.¹³

Decisions – The Board states that in making Medical Reprieve decisions, it balances the “sufficiency of the punishment imposed on individuals with the cost of treating them in a state prison and the humanity of allowing them to die outside the confines of a prison.”¹⁴

- The Board does not hold hearings and makes all Medical Reprieve decisions based on an individual's written record.¹⁵
- In addition to medical documentation, the Board will consider other relevant information, including conduct reports from the Superintendent or Warden of the relevant correctional institution and information about efforts the individual has made to improve “social attitude.”¹⁶

The Board can only grant a Medical Reprieve with a majority vote¹⁷ and must issue its decision in writing.¹⁸

Notice

- District Attorney – The Board must notify the appropriate District Attorney at least 90 days prior to a final decision if an individual convicted of a “serious violent felony” is being considered for parole or “conditional release.” This notice requirement does not appear to be waived for Medical Reprieve cases.¹⁹
- Victim – The Board must give 20 days' advance notice to victims when it is considering making a final decision to release an individual for “a period exceeding 60 days.”²⁰

V. POST-DECISION

Conditions – Individuals granted Medical Reprieve must comply with all standard conditions of release and any “special conditions” the Board imposes.²¹

Supervision – Parole officers supervise individuals on Medical Reprieve, even though the rules acknowledge they may be extremely limited in their mobility.²² In addition, the Georgia Division of Community Services states that many individuals granted Medical Reprieve are placed on “24/7 house arrest” and are allowed to leave their residences only for medical appointments.²³

Rescission/Termination – Although not in the statute, the Board’s website says that if a formerly incarcerated individual’s medical prognosis was in error and the condition improves, a return to prison will be ordered and the original sentence must be completed.²⁴

- Note that time on Medical Reprieve is credited toward time served as long as the individual complies with the Medical Reprieve conditions. However, if the Medical Reprieve is canceled or rescinded due to noncompliance, the time served on reprieve is not credited.²⁵

VI. REPORTING/STATISTICS

The Board published the following information regarding the number of Medical Reprieves:

- Recent Medical Reprieves –
 - In 2019, the Board granted 25 Medical Reprieves;²⁶ and
 - In 2020, the Board granted 41 Medical Reprieves.²⁷
- Cumulative Total – According to its annual reports, from 2001 through 2020 the Board granted Medical Reprieve for 1,224 individuals.²⁸

PAROLE DUE TO DISABILITY OR ADVANCED AGE

I. ELIGIBILITY

Medical Condition/Age – The Georgia Constitution states that the Board of Pardons and Paroles (Board) has the authority to “parole any person who is age 62 or older.”²⁹ In addition, the Georgia Code says that “in its discretion,” the Board may grant parole “to **any** aged or disabled persons”³⁰ [emphasis added]. However, there is no published definition of “disabled” and no information on whether or how the Board implements this authority.

Exclusions – Neither the Georgia parole law nor the Board rules reference any incarcerated individuals who are excluded from consideration for Parole Due to Disability or Advanced Age.

II. APPLICATION/REFERRAL

There is no information available regarding the Board’s requirements for starting the Parole process based on having a disability or being over age 62.

III. DOCUMENTATION AND ASSESSMENT

There is no information available regarding documentation and/or assessments related to Parole for incarcerated individuals who have a disability or are over age 62.

IV. DECISION-MAKING PROCESS

Decision-Maker – The Board of Pardons and Paroles is responsible for making all Parole decisions.

Decisions – Although there are no published rules that apply specifically to individuals applying for Parole Due to Disability or Advanced Age, the Board’s general rules appear to apply.

- Before releasing any individuals on Parole, the Board may have them appear in person to answer questions.³¹
- If objections are made regarding Parole for a particular individual, the Board may hold a hearing and consider oral testimony.³²
- The Board can consider all relevant information in making its decision, including the results of physical and mental examinations and any reports from a Superintendent or Warden.³³

The Board rules say it will make its decisions after considering all submitted records, papers, documents, and oral testimony.³⁴

- The Board can only grant a Parole Due to Disability or Advanced Age with a majority vote³⁵ and must issue its decision in writing.³⁶

Conditions – The Board can set appropriate terms and conditions for release.³⁷ When Parole Due to Disability or Advanced Age is granted, the appropriate correctional officers are notified, and they inform the incarcerated individual of the terms and conditions before release.³⁸

Notice

- District Attorney – The Board must notify the appropriate District Attorney at least 90 days prior to a final decision if an individual convicted of a “serious violent felony” is being considered for Parole.³⁹

- Victim – The Board must give 20 days’ advance notice to victims when it is considering making a final decision to grant Parole.⁴⁰

V. POST-DECISION

Termination/Revocation – Individuals released on Parole Due to Disability or Advanced Age remain in the Board’s legal custody until expiration of their maximum term, as specified during sentencing.⁴¹ If individuals violate any of the Parole terms, they are subject to rearrest, returned to Board custody, and then “redelivered” to a correctional facility.⁴²

VI. REPORTING/STATISTICS

The Board has not published any statistics on individuals released on Parole Due to Disability or Advanced Age.

- In response to FAMM’s request for information on the numbers of individuals released in 2019 and 2020, the Board responded that it had “no documents responsive to [the] request.”⁴³

GEORGIA COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

MEDICAL REPRIEVE

State Constitution

Georgia Constitution, Article IV, § II, Paragraph II (e), available through the Georgia Secretary of State's office, https://sos.ga.gov/admin/files/Constitution_2013_Final_Printed.pdf.

Statute

Georgia Code, §§ 42-9-43 (b) (1) and (b) (2) (2020), available through the Georgia General Assembly at <https://www.legis.ga.gov/> by clicking on "Legislation and Laws" and then "Georgia Code."

Regulations

Georgia Compilation of Rules and Regulations, Rule 475-3-.10 (1) (a) (2020), available through the Georgia Secretary of State, <http://rules.sos.ga.gov/gac/475-3>.

Agency Policy/Publications

Georgia Board of Pardons and Paroles, Reprieves and Commutations (undated), <https://pap.georgia.gov/documents/reprieves-and-commutations>.

Georgia Department of Community Supervision, Reprieves (undated), <https://dcs.georgia.gov/reprieves-1>.

Georgia Department of Corrections, Orientation Handbook for Offenders (undated), § VIII (H), http://www.dcor.state.ga.us/sites/all/files/pdf/GDC_Inmate_Handbook.pdf.

PAROLE DUE TO DISABILITY OR ADVANCED AGE

State Constitution

Georgia Constitution, Article IV, § II, Paragraph II (e), available through the Georgia Secretary of State's office, https://sos.ga.gov/admin/files/Constitution_2013_Final_Printed.pdf.

Statutes

Georgia Code, § 42-9-42 (2020), available through the Georgia General Assembly at <https://www.legis.ga.gov/> by clicking on "Legislation and Laws" and then "Georgia Code."

Georgia Code, § 42-9-43 (2020), available through the Georgia General Assembly at <https://www.legis.ga.gov/> by clicking on "Legislation and Laws" and then "Georgia Code."

NOTES

* *Id.* means see prior note.

¹ Ga. Const. art. IV, § II, par. II (e); Ga. Code Ann. § 42-9-43 (b).

² Ga. Const. art. IV, § II, par. II (e); Ga. Code Ann. § 42-9-42 (c).

³ Ga. Code Ann. § 42-9-43 (b) (2).

⁴ *Id.* at (b) (1) (A).

⁵ *Id.* at (b) (1) (C).

⁶ *Id.* at (b) (1) (B).

⁷ Georgia Department of Corrections, Orientation Handbook for Offenders, § VIII (H).

⁸ Ga. Comp. R. & Regs. 475-3-.10 (1) (a).

⁹ Georgia Board of Pardons and Paroles, Reprieves and Commutations. See also Georgia Department of Community Supervision, Reprieves.

¹⁰ Ga. Comp. R. & Regs. 475-3-.10 (1) (a) and (1) (c).

¹¹ *Id.* at (1) (b).

¹² DOC Handbook, § VIII (H).

¹³ Georgia Const. art. IV, § II, par. II; Ga. Code Ann. § 42-9-43 (b) (2).

¹⁴ Georgia Board of Pardons and Paroles, Reprieves and Commutations.

¹⁵ Ga. Comp. R. & Regs. 475-3-.10 (1) (e).

¹⁶ Ga. Code Ann. §§ 42-9-43 (a) (1) through (a) (8).

¹⁷ Ga. Code Ann. § 42-9-42 (a).

¹⁸ *Id.* at (b) (2).

¹⁹ Ga. Code Ann. § 42-9-43 (c) (1). “Serious felonies” are murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery. See Ga. Code Ann. § 17-10-6.1.

²⁰ Ga. Code Ann. § 17-17-13. Note that to receive notice a victim must have provided the Board with a current mailing or email address and a telephone number. *Id.*

²¹ Georgia Department of Community Services, Reprieves.

²² Georgia Board of Pardons and Paroles, Reprieves and Commutations.

²³ Georgia Department of Community Services, Reprieves.

²⁴ Id.

²⁵ Ga. Comp. R. & Regs. 475-3-.10 (1) (d).

²⁶ Georgia Board of Pardons and Paroles, Annual Report FY 2019, 25, <https://pap.georgia.gov/publications/annual-reports>.

²⁷ Georgia Board of Pardons and Paroles, Annual Report FY 2020, 25, <https://pap.georgia.gov/publications/annual-reports>.

²⁸ Georgia Board of Pardons and Paroles, Annual Reports: FY 2001 through FY 2020, available at <https://pap.georgia.gov/publications/annual-reports>. Note that no data was reported for FY 2009.

²⁹ Ga. Const. art. IV, § II, par. II (e).

³⁰ Ga. Code Ann. § 42-9-43 (c).

³¹ Id. at (d) (1).

³² Id.

³³ Id. at (a).

³⁴ Id. at (d) (1).

³⁵ Ga. Code Ann. § 42-9-42 (a).

³⁶ Id. at (b) (2).

³⁷ Id. at (d) (1).

³⁸ Ga. Code Ann. § 42-9-43 (e).

³⁹ Id. at (c) (1). “Serious felonies” are murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery. See Ga. Code Ann. § 17-10-6.1.

⁴⁰ Ga. Code Ann. § 17-17-13. Note that to receive notice, a victim must have provided the Board with a current mailing or email address and a telephone number. Id.

⁴¹ Ga. Code Ann. § 42-9-42 (d) (1).

⁴² Id. at (e).

⁴³ Email from the Open Records Office, Georgia Board of Pardons and Paroles, to Famm (August 4, 2021) (on file with Famm, Office of the General Counsel).