

Illinois can provide compassionate release to eligible prisoners with serious medical conditions through the **Executive Clemency** process. Illinois does not have any medical or geriatric parole laws or programs.

## **EXECUTIVE CLEMENCY**

The Governor of Illinois has the authority to commute the sentence of a prisoner with a serious medical condition.<sup>1</sup> The limited information available, though, says that this rarely happens:

- “Illinois has no law on medical parole or release. The [Prisoner Review] Board spokeswoman says terminally ill prisoners sometimes request commutations based on illness. The Board may ask the Governor to expedite such a decision if death is imminent. However, only a few such requests are considered per year.”<sup>2</sup>
- “The sole choice available to terminally ill inmates who don’t want to die in prison is to seek clemency. It rarely works.”<sup>3</sup>

The online and print materials published by the Prisoner Review Board, which is responsible for making recommendations to the Governor regarding clemency petitions, do not include any specific information about or for prisoners with serious or terminal medical conditions.<sup>4</sup> The Board’s sample clemency application asks for “substance abuse and mental health” information but does not ask for information on other medical conditions or terminal illnesses.<sup>5</sup>

## **COMPASSIONATE RELEASE ADVOCACY AND LEGISLATION**

**2017 Legislation** - On Feb. 8, 2017, House Bill 2726 was introduced in the Illinois General Assembly with both geriatric and medical release provisions:<sup>6</sup>

- *Geriatric Release* - A prisoner who is at least 55 years of age who has served at least 25 consecutive years of imprisonment would be able to petition the Prisoner Review Board for participation in the “Sentence Modification Program.” Five years after successfully completing this program, a prisoner could apply to the Prisoner Review Board for executive clemency by the Governor, requesting that his or her status be changed to parole or mandatory supervised release *or* that participation in the Sentence Modification Program be extended another five years.
- *Terminal Illness* - The bill would allow prisoners with terminal medical conditions who have less than nine months to live to be released on medical parole to a hospital, hospice, licensed inpatient facility, or suitable housing accommodation.

The last legislative activity noted on the bill was on March 31, 2017, when it was referred to the Rules Committee.<sup>7</sup>

**Previous Legislation** - Several bills proposing some type of compassionate release were introduced in the Illinois General Assembly during the last decade. Although the language has been repeatedly modified to address concerns about public safety, none of the bills has passed.

- In 2009, House Bill 0045 was introduced, providing that prisoners age 50 and older who were not serving a death sentence could petition for early release - referred to as an “elderly sentence adjustment” - if they had good prison behavior records and had served at least 25 years of their sentences. The Fraternal Order of Police, victims’ rights organizations, and “tough-on-crime” politicians opposed the legislation and it was voted down in the House.<sup>8</sup>
- In 2014, House Bill 3668 was introduced, proposing that a prisoner who was at least 50 years old and had served at least 25 consecutive years of imprisonment could petition the Prisoner Review Board for participation in an “Elderly Rehabilitated Prisoner Sentence Modification Program.” The Illinois General Assembly adjourned before taking final action on the bill.<sup>9</sup>
- In 2015, House Bill 1310 was introduced, providing that (1) prisoners who were 55 or older who had served at least 25 consecutive years of imprisonment could petition the Prisoner Review Board to participate in a “sentence modification program” and (2) prisoners with terminal conditions who had less than nine months to live could be released on medical parole to a hospital, hospice, inpatient facility, or other suitable housing. The General Assembly adjourned before taking final action on the bill.<sup>10</sup>

**Illinois Commission on Criminal Justice and Sentencing Reform** - In February 2015, Gov. Bruce Rauner signed an executive order establishing the Illinois State Commission on Criminal Justice and Sentencing Reform and charging it with developing comprehensive, evidence-based strategies to reduce Illinois’ prison population 25 percent by the year 2025. The Commission’s final report was issued in December 2016.

- **Advocacy Support** - In the summer of 2016, the Catholic Conference of Illinois submitted comments to the Commission, expressing vigorous support for passing a compassionate release law:

*Enact Compassionate Release* - As the general public ages and encounters health challenges, so does the Illinois prisoner population. As of 2014, more than 700 prisoners were 65 or older and 275 were 70 or older, according to the Illinois Department of Corrections (IDOC). In your [interim] report you recommend that terminally-ill and severely-incapacitated prisoners - except for those sentenced to natural life - be transferred to less secure facilities or home confinement when public safety will not be jeopardized. Our bishops echo this suggestion, noting our faith’s emphasis on the inviolable dignity, value and worth of every human person.<sup>11</sup>

- **Final Report** - The Commission’s final report had 27 recommendations, including one addressing release for medical reasons:

*Recommendation #22* - Develop a protocol to provide for the placement to home confinement or a medical facility for terminally ill or severely incapacitated prisoners, excluding those sentenced to natural life. The determination of illness or severe incapacity is to be made by the Illinois Department of Corrections medical director.<sup>12</sup>

The report asked the Governor to convene a working group that would (1) develop a protocol that would specify the conditions under which terminally ill or seriously incapacitated prisoners could be released to a medical facility or “home confinement,” and (2) consider policies and practices in other states that have comparable programs.<sup>13</sup>

**Report Follow-Up** - Although many of the Commission’s recommendations ultimately made it into the General Assembly’s 2017 criminal justice reform bill, entitled *The Neighborhood Safety Act (Senate Bill 2872)*, no forms of early release for prisoners who are elderly, terminally ill, or severely incapacitated were included.<sup>14</sup>

## NOTES

<sup>1</sup> Ill. Const. article V, § 12.

<sup>2</sup> Illinois General Assembly Legislative Research Unit, First Reading (Apr. 2008), 3, <http://ilga.gov/commission/lru/April2008FirstRdg.pdf>.

<sup>3</sup> Jessica Pupovac, “Guarding Grandpa: Illinois is spending money it doesn’t have to keep convicts who can barely walk behind bars,” Chicago Reader, Jan. 6, 2011, <https://www.chicagoreader.com/chicago/illinois-prisons-budget-elderly-old-inmates/Content?oid=3013140>.

<sup>4</sup> Prisoner Review Board website at <https://www2.illinois.gov/sites/prb/pages/default.aspx>. See also Prisoner Review Board, Guidelines for Executive Clemency, <https://www2.illinois.gov/sites/prb/Documents/exclemguide%204.3.13.pdf>.

<sup>5</sup> Prisoner Review Board, Sample Petition for Executive Clemency, <https://www2.illinois.gov/sites/prb/Documents/sample%20petition%204.1.15.pdf>.

<sup>6</sup> House Bill 2726 was introduced by Rep. Arthur Turner, who has introduced similar legislation in previous years, <http://www.ilga.gov/legislation/fulltext.asp?DocName=10000HB2726lv&SessionID=91&GA=100&DocTypeID=HB&DocNum=2726&print=true>.

<sup>7</sup> Illinois General Assembly, Bill Status of House Bill 2726, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=2726&GAID=14&GA=100&DocTypeID=HB&LegID=104030&SessionID=91>.

<sup>8</sup> House Bill 0045, introduced Jan. 2, 2009, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=45&GAID=10&GA=96&DocTypeID=HB&LegID=39991&SessionID=76>.

<sup>9</sup> House Bill 3668, introduced Sept. 4, 2013, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=3668&GAID=12&DocTypeID=HB&SessionID=85&GA=98>.

<sup>10</sup> House Bill 1310, introduced Feb. 2, 2015, <http://ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=1310&GAID=13&SessionID=88&LegID=85794>.

<sup>11</sup> Catholic Conference of Illinois, Letter to the Illinois Commission on Criminal Justice and Sentencing Reform (Summer 2016), <http://www.ilcatholic.org/wp-content/uploads/Letter-to-IL-Commission-on-Criminal-Justice-Sentencing-Reforms-Summer-2016.pdf>.

<sup>12</sup> Illinois State Commission on Criminal Justice and Sentencing Reform, Final Report (Dec. 2016), 66-67, [http://www.icjia.org/cjreform2015/pdf/CJSR\\_Final\\_Report\\_Dec\\_2016.pdf](http://www.icjia.org/cjreform2015/pdf/CJSR_Final_Report_Dec_2016.pdf).

<sup>13</sup> *Id.* at 67.

<sup>14</sup> See Senate Bill 2872, Public Act 099-0938 (2017), at <http://www.ilga.gov/legislation/fulltext>.