As of January 1, 2022, Illinois will provide compassionate release to eligible incarcerated individuals with terminal illnesses and certain medical conditions through Medical Release.¹

- The Medical Release law applies to any individual currently incarcerated in Illinois.²

- Prior to 2022, compassionate release was provided to eligible individuals with serious medical conditions only through Executive Clemency.³ However, the Governor’s office does not publish data on how many individuals, if any, were granted Executive Clemency in 2019 and 2020 due to a terminal or serious medical condition.

MEDICAL RELEASE

I. ELIGIBILITY

**Medical Condition** – An incarcerated individual may be considered for Medical Release if the person (1) has a terminal illness, (2) has been diagnosed with a condition that will result in medical incapacity within the next six months, or (3) becomes medically incapacitated after sentencing due to illness or injury.⁴

- “Terminal illness” is defined as a condition that is irreversible and incurable and, “in accordance with medical standards and a reasonable degree of medical certainty,” likely to cause the death of the individual within 18 months.⁵

- “Medically incapacitated” means having any diagnosable medical condition – including dementia and a severe, permanent medical or cognitive disability – that is unlikely to improve noticeably in the future and (1) prevents the individual from completing more than one activity of daily living without assistance or (2) causes incapacitation to the extent that institutional confinement does not offer additional restrictions.⁶

**Exclusions** – No incarcerated individuals are excluded from consideration if they meet the medical eligibility criteria.

II. APPLICATION/REFERRAL

A Medical Release application may be filed with the Prisoner Review Board (Board)⁷ by (1) the incarcerated individual; (2) the individual’s spouse, parent, guardian, grandparent, aunt or uncle, sibling, or child over age 18; (3) the individual’s attorney; (4) a medical professional who has treated or diagnosed the person; or (5) a prison official.⁸
• If someone other than the incarcerated individual submits the initial application, the individual (or, if medically unable to consent, a guardian or designated family member) must consent to the application.9

• Note that Medical Release information and application materials will be available on the Department of Corrections (Department) and Board websites and must be maintained in “a clearly visible place” within each Department facility’s law library and infirmary.10

The application for Medical Release must include (1) the individual’s name and Department number, (2) the diagnosis, and (3) a statement that says the individual is suffering from a terminal illness or has been diagnosed with a condition that will result in medical incapacity within the next six months or has become medically incapacitated due to illness or injury subsequent to sentencing.11 Applications are submitted to the Board by email or fax.12

III. DOCUMENTATION AND ASSESSMENT

Once the Board receives an initial application for Medical Release, it orders the Department to have a physician or nurse practitioner evaluate the incarcerated individual and, within 10 days, complete a written assessment of the person.13 The evaluation must include a (1) concise statement of the individual’s medical diagnosis, including prognosis, likelihood of recovery, and primary symptoms; and (2) a statement confirming or denying that the individual meets the terminal illness or medical incapacitation criteria.14

IV. DECISION-MAKING PROCESS

Decision-Maker – The Illinois Prisoner Review Board makes the final decision to grant Medical Release.15

Hearings – The Board does not require public hearings on Medical Release applications. However, an individual may request a hearing and may also be represented by an attorney and present witnesses.16

• Note that if the individual requests a hearing, the Board must hold one within 90 days of receiving the initial application.17

Decisions – Three-member panels of the Board consider all Medical Release applications, and a simple majority makes the decisions.18

Release Criteria – When considering a request for Medical Release, the Board will consider the following factors:19

• The individual’s diagnosis and likelihood of recovery;
• The approximate cost of health care if the person remains in custody;

• The impact that the person’s continued incarceration may have on the provision of medical care within the Department;

• The individual’s likelihood of and ability to pose a substantial danger to “the physical safety of a specifically identifiable person or persons”;

• Any statements by the victim regarding release; and

• Whether the individual’s condition was explicitly disclosed to the original sentencing judge and taken into account at the time of sentencing.

V. POST-DECISION

Supervision – Individuals granted Medical Release by the Board will be on mandatory supervised release for five years, as long as the supervised release is not greater than the time remaining on the sentence and any supervised release included in the original sentence.20

Effect on Parole and Other Release Eligibility – An individual who applies for Medical Release may also seek alternative forms of release, including Executive Clemency, relief from the sentencing court, post-conviction relief, and any other legal remedy.21

VI. REPORTING/STATISTICS

The Medical Release law does not go into effect until 2022; thus, as of this memo’s publication, no individuals have been granted Medical Release.
ILLINOIS COMPASSIONATE RELEASE
PRIMARY LEGAL SOURCES

MEDICAL RELEASE

Statute


NOTES

* Id. means see prior note.

1 HB 3665 (Public Act 102-0494), signed into law on August 20, 2021, effective January 1, 2022; codified at 730 ILCS 5/3-3-14.

2 730 ILCS 5/3-3-14 (j).


4 730 ILCS 5/3-3-14 (b).

5 Id. at (a) (2).

6 Id. at (a) (1).

7 730 ILCS 5/3-3-1.

8 730 ILCS 5/3-3-14 (c) (1).

9 Id.

10 Id. at (c) (2).

11 Id. at (c) (3).

12 Id.

13 Id. at (c) (4).

14 Id.

15 730 ILCS 5/3-3-1 (a) (7) and 730 ILCS 5/3-3-14 (b).
16 730 ILCS 5/3-3-14 (d). Note that hearings are governed by the Illinois Open Parole Hearings Act, 730 ILCS 5/3-3-1 (d), referencing 730 ILCS 105/1 through 730 ILCS 105/30.

17 730 ILCS 5/3-3-14 (d) (h).

18 Id. at (e).

19 Id. at (f).

20 Id. at (g), referencing Section 3-3-8. Note that after the five years, any remaining term of years is discharged. Id.

21 Id. at (i).