

Indiana provides compassionate release to eligible prisoners with serious medical conditions through **Special Medical Clemency**¹ and prisoners with terminal illnesses through the **Temporary Leave** program.²

SPECIAL MEDICAL CLEMENCY

I. ELIGIBILITY

Medical Condition - Indiana law does not provide a specific definition or examples of medical conditions that would qualify a prisoner for Special Medical Clemency - thus implying that any medical condition, terminal or not, can be considered.

Exclusions - Indiana law does not appear to exclude prisoners who have committed specific crimes: “Any prisoner may be considered for Special Medical Clemency upon recommendation by the commissioner.”³

II. APPLICATION/REFERRAL

To apply for Special Medical Clemency, a prisoner must file a petition with the Indiana Parole Board (Board), using a form furnished by the Board.⁴ The regulations do not specify whether someone else, such as prison staff or a family member, can file on behalf of a prisoner.

III. DOCUMENTATION AND ASSESSMENT

Recommendation/Commissioner - After receiving a petition for Special Medical Clemency, the Board must obtain a recommendation from the Commissioner of the Department of Correction (Department).⁵

- If the Commissioner declines to recommend the prisoner’s petition, the Board can decline consideration of the petition.⁶

Information Gathering/Indiana Parole Board - Once the Department recommends the prisoner’s petition, the Board carries out the following tasks:

- *Notification* - The Board provides notification that the prisoner has submitted a Special Medical Clemency petition to (1) the sentencing court; (2) the prosecuting attorney of the county where the conviction was obtained; and (3) the victim of the crime (or next of kin if appropriate), unless the victim has made a written request not to be notified.⁷
- *Investigation* - The Board is responsible for collecting and considering all relevant information about the prisoner and his or her condition:⁸
 - The Board must consider the seriousness of the prisoner’s medical condition; whether he or she can be adequately treated while incarcerated; and whether the medical condition effectively prevents any future serious criminal activity.⁹

- The Board must also consider the nature and circumstances of the crime for which the prisoner is incarcerated, prior criminal record, conduct and attitude while in prison, and “the best interests of society.”¹⁰
 - In addition, the Board may consider other factors about the prisoner, including his or her age, psychological/psychiatric condition, employment history, victim opinions, and opinions of friends and relatives.¹¹
- *Hearing* - The Board can hold hearings on Special Medical Clemency petitions, where the prisoner and other “interested persons” have the opportunity to appear and present information. The hearings can be informal and do not have to follow formal rules of evidence.¹²
 - The Board’s website posts public *Special Medical Clemency Hearing Notices*, providing the prisoner’s name and stating that any interested parties or individuals can testify or submit written statements. The notices that were available online at the time of this writing all said that the prisoner would not be present at the hearings.¹³

Note that the Board can waive a “full community investigation” if it determines time to be of the essence. However, it must make every reasonable effort to obtain the views of the victim(s) before making a recommendation.¹⁴

Recommendation to the Governor/Board - The Board then submits its recommendation to the Governor,¹⁵ along with all of the prisoner’s relevant information and documentation.¹⁶

IV. DECISION-MAKING PROCESS

Decision Maker - The Governor has sole authority for granting clemency petitions, including those for Special Medical Clemency.¹⁷

V. POST-DECISION

A prisoner whose Special Medical Clemency petition is either denied or declined for consideration cannot reapply “unless a substantial and documented change occurs in the medical condition that is the basis for the clemency request or a new and serious medical condition arises.”¹⁸

VI. REPORTING/STATISTICS

There is no publicly available information as to how many Special Medical Clemency petitions the Governor of Indiana has granted.

TEMPORARY LEAVE: TERMINAL ILLNESS

The Indiana Department of Correction (Department) allows prisoners to be released temporarily from incarceration for specific purposes.¹⁹ This includes returning home or “any other place authorized by the Department during what appears to be the offender’s terminal illness.”²⁰

- Although the Department’s general rule is that temporary leaves are for five days

or less, leaves due to terminal illness are exempt from that requirement and no limitation on the number of days is listed.²¹

I. ELIGIBILITY

Medical Condition - The only information is simply the statement referring to “the offender’s terminal illness.” The policy does not provide a definition or examples of a “terminal illness.”

Exclusions - Prisoners are *not* eligible for Temporary Leave if they: (1) are housed on death row; (2) have more than seven and a half years to their earliest possible release date; (3) are in “disciplinary or administrative restrictive status housing; (4) have a history of assaultive behavior; (5) have an extensive conduct history; or (6) have “special circumstances that raise concerns regarding safety and security.”²²

II. APPLICATION/REFERRAL

To obtain a Temporary Leave, a prisoner - or someone on his or her behalf²³ - must submit a request on the appropriate form to the Supervisor of Classification (or designee) at the facility in which he or she is housed, giving the reason leave is needed and providing any additional information needed by the Superintendent to make a decision.²⁴

III. DOCUMENTATION AND ASSESSMENT

The next step in the process is carried out by different individuals, based on who initiates the Temporary Leave request:

- **Prisoner-Initiated Requests** - The Supervisor of Classification, or a designated staff person, reviews the submitted form for completeness and ensures the Temporary Leave criteria has been met. He or she verifies the request, recommends approval or denial, completes the applicable section of the form, and submits it to the Superintendent of the facility “in a timely fashion.”²⁵
- **Requests Initiated by Non-Prisoners (Staff or Other Person)** - If someone requests Temporary Leave on the prisoner’s behalf, he or she must contact the prisoner’s caseworker or case manager, who then helps complete the form, ensures all the criteria has been met, recommends approval or denial, completes the applicable section of the form, and submits it to the Superintendent.²⁶

IV. DECISION-MAKING PROCESS

Decision Maker - The facility Superintendent makes the decision to grant or deny a Temporary Leave.

Decision - When a facility Superintendent receives a Temporary Leave request, he or she is directed to consider the following when making the decision to grant or deny the request:

- Basis for and appropriateness of the Temporary Leave request;²⁷
- Whether the prisoner is responsible enough to meet the Temporary Leave conditions, as determined by his or her behavior and any additional information indicating

adjustment while at the facility;²⁸ and

- Sufficient facility resources, such as staff and vehicles, to grant the Temporary Leave request and still maintain adequate security.²⁹

In addition, if any of the following exist, the Superintendent will not grant Temporary Leave:

- If the prisoner committed serious crimes and granting Temporary Leave “could create unusual concerns, attract undue public attention, or depreciate the seriousness of the offense.”³⁰
- If the prisoner has any convictions (or findings of guilt in disciplinary actions while incarcerated) that involve use of alcohol or controlled substances within the previous two years.³¹
- If the prisoner has any escape or attempted escape convictions, or findings of guilt in a disciplinary action while incarcerated, within the last five years.³²

The Superintendent reviews the request form and all relevant information, and then approves or denies the request. He or she then forwards a completed copy of the form to the prisoner and takes whatever actions are needed for the prisoner to be released on Temporary Leave.³³

Conditions -

- A *Temporary Leave Agreement for Criminal Offenders*, which includes general conditions that must be followed (e.g., not using alcohol or drugs unless they are prescribed by a physician), is completed for individuals released on “unescorted leave.”³⁴ Individuals must have that agreement with them at all times while on leave.³⁵ There is no information on whether or not prisoners granted Temporary Leave due to terminal illness must follow all of the same conditions.
- A prisoner is accompanied by Department staff or other custodial agents (e.g., a deputy sheriff) during the Temporary Leave unless he or she “is assigned to a Level 1 Facility or assigned to a Work Release Facility...”³⁶ There is no exception stated in the policy for prisoners granted a temporary release due to a terminal illness.
- Prisoners released on Temporary Leave must remain in the state of Indiana.³⁷

V. POST-DECISION

Department policy does not include any provisions for returning terminally ill prisoners to custody after they have been granted Temporary Leave.

VI. REPORTING/STATISTICS

The Department’s annual reports do not include information on how many prisoners have been granted Temporary Leave due to a terminal illness.

NOTES

¹ 220 Ind. Admin. Code § 1.1-4-1.5.

² Indiana Department of Correction Manual of Policies and Procedures (DOC) Policy 02-04-104 (2014), Temporary Leaves for Adult Offenders, https://www.in.gov/idoc/dys/files/02-04-104__2-9-09.pdf.

³ 220 Ind. Admin. Code § 1.1-4-1.5 (a).

⁴ Id. at (d). See also Ind. Code § 11-9-2-1, and the Indiana Parole Board's Clemency Application, available at http://www.in.gov/idoc/files/petition_for_clemency_form.pdf.

⁵ 220 Ind. Admin. Code § 1.1-4-2.

⁶ 220 Ind. Admin. Code § 1.1-4-1.5 (a). Note that with clemency cases, the Board generally allows itself four months to prepare the background information and schedule appearances; however, Special Medical Clemency cases are expedited and the four-month rule does not apply. Id. at (d).

⁷ Ind. Code §§ 11-9-2-2 (b) (1) (A) - (C). Notices to the victim or victim's next of kin must comply with statutory requirements provided in Ind. Code § 11-13-3-3.

⁸ Ind. Code § 11-9-2-2 (b) (2).

⁹ 220 Ind. Admin. Code §§ 1.1-4-1.5 (a) (1) - (3).

¹⁰ 220 Ind. Admin. Code §§ 1.1-4-4 (d) (1) - (4).

¹¹ Id. at (e) (1) - (16).

¹² Ind. Code § 11-9-2-2 (b) (3). See also Parole Board powers and duties in Ind. Code § 11-9-1-2.

¹³ See Indiana Parole Board, "Public Notice-Special Medical Clemency Hearings" (June 6, 2011), http://www.state.in.us/idoc/files/special_medical_clemency-_public_notice.pdf.

¹⁴ 220 Ind. Admin. Code § 1.1-4-1.5 (b).

¹⁵ Ind. Code § 11-9-2-2 (b).

¹⁶ 220 Ind. Admin. Code § 1.1-4-2.

¹⁷ Ind. Const. article 5, § 17.

¹⁸ 220 Ind. Admin. Code § 1.1-4-1.5 (c).

¹⁹ DOC Policy 02-04-104.

²⁰ Id. at § II-G.

²¹ Id. at §§ II and IV-B.

²² Id. at § IV-E.

²³ Id. at § V. See also DOC Policy 02-04-104, § II, stating that Temporary Leave requests may also be submitted by Department staff or "other persons involved in the offender's re-entry into the community."

²⁴ DOC Policy 02-04-104, §§ II and VII-A.1.c. According to the policy, the required form is State Form 7797, Application for Temporary Leave for Committed Offenders. Id. at § VII-A.1.a.

²⁵ DOC Policy 02-04-104, §§ VII-A.1 and A.2.

²⁶ Id. at § VII-B. Note that the process is essentially the same as for prisoner-initiated requests except for the involvement of the caseworker/case manager.

²⁷ Id. at § V-D.

²⁸ Id. at § V-E.

²⁹ Id. at § V-F. Note that since prisoners granted Temporary Leave due to a terminal illness are not limited to five days or less, this may not be a significant consideration.

³⁰ Id. at § V-A.

³¹ Id. at § V-B.

³² Id. at § V-C.

³³ Id. at § VII-A.3.

³⁴ Id. at § IX-A.4, referencing State Form 8522, <https://forms.in.gov/download.aspx?id=10316>.

³⁵ See State Form 8522, Temporary Leave Agreement for Criminal Offenders, Condition 15.

³⁶ DOC Policy 02-04-104, § IV-E.6.

³⁷ Id. at § IX-A.6.