

Kentucky provides compassionate release to eligible prisoners with serious medical conditions through **Early Medical Consideration**.<sup>1</sup>

## **EARLY MEDICAL CONSIDERATION**

### **I. ELIGIBILITY**

**Medical Condition** - To be eligible for Early Medical Consideration, a prisoner must have: a “documented terminal medical condition likely to result in death within one year or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease (such as multiple sclerosis)”;<sup>2</sup> severely limited mobility because of a stroke, disease, or trauma;<sup>3</sup> or dependency on external life support systems.<sup>4</sup>

**Exclusions** - There are no prisoners specifically excluded from consideration.

**Other Eligibility Criteria** - The prisoner must not pose a threat to society if paroled.<sup>5</sup>

### **II. APPLICATION/REFERRAL**

The statute says that the Parole Board can review the case of any individual who meets the medical criteria.<sup>6</sup> There is nothing further about applications or referrals in the relevant statute, regulations, or published agency policies.

### **III. DOCUMENTATION AND ASSESSMENT**

**Medical Documentation/Department Medical Staff** - The Department of Corrections (Department) medical staff must provide medical information to the Kentucky Parole Board, the ultimate decision maker in Early Medical Consideration cases.<sup>7</sup> The prisoner’s diagnosis and prognosis must support a conclusion that he or she: (1) has a terminal medical condition likely to result in death within one year<sup>8</sup> or (2) because of a medical condition recognized in the statute, he or she is substantially dependent on others in order to carry out activities of daily living.<sup>9</sup>

The medical staff forwards this information to the Department’s Medical Director.<sup>10</sup>

**Recommendation/Medical Director** - The Department Medical Director reviews the documentation and makes a recommendation to the Department Commissioner (or his or her designee) for or against parole review.<sup>11</sup>

**Approval and Submission/Commissioner** - If the Commissioner approves the recommendation for Early Medical Consideration, he or she submits a request for parole review, the medical director’s recommendation, and the medical documentation to the Parole Board.<sup>12</sup>

## IV. DECISION-MAKING PROCESS

Note that the relevant statute says that the Parole Board will consider a prisoner's medical information along with "other information" relevant to granting parole and it "shall not constitute the only reason for granting parole."<sup>13</sup> In addition, the Kentucky Parole Board policies on parole hearings include only two references to medical conditions:

- A prisoner who cannot appear at a hearing due to medical reasons "may be deferred a short time or if the condition is acute, the Board may conduct the hearing in absentia."<sup>14</sup>
- "Terminal illness" is one of 16 factors the Board must consider before recommending or denying parole.<sup>15</sup>

**Hearing** - The Parole Board must conduct a hearing for prisoners requesting Early Medical Consideration if they are serving a sentence for a Class A or B felony or a Class C felony involving violence or a sexual offense.<sup>16</sup>

- The assumption is that the Parole Board does *not* have to hold a hearing to release seriously ill prisoners who are *not* serving sentences for one of those crimes.

**Notice** - For those prisoners requiring a hearing (as referenced above), the Parole Board must provide notice of the hearing, not less than 15 days nor more than 30 days before it is held, to (1) the Commonwealth's attorney, who must notify the sheriff of every county and chief of police of every city and county in which the prisoner committed the felony and (2) all identified victims of the crimes or the next of kin of any victim who is deceased.<sup>17</sup>

## V. POST-DECISION

There is no specific information in the statute or regulations related to what happens after a release for medical reasons, nor is there any detail on revocation of parole if an individual's condition improves or is not terminal.

## VI. REPORTING/STATISTICS

There is no information in the Department of Corrections or Parole Board annual reports on the number of prisoners granted Early Medical Consideration release.

- A 2014 newspaper article reported that from 2011 to 2014, 12 prisoners were released on "medical parole."<sup>18</sup>

## NOTES

<sup>1</sup> Ky. Rev. Stat. Ann. § 439.3405. Although some publications and news articles refer to the statute’s provision as “medical parole,” the statute itself does not use that term. The Kentucky Justice and Public Safety Cabinet website refers to the law as “Early Medical Consideration.” See <https://justice.ky.gov/Pages/Victim-Services.aspx>. For more information on the Kentucky Justice Reinvestment Work Group’s recommendations for expanding and improving the law, see <https://justice.ky.gov/Documents/KY%20Work%20Group%20Final%20Report%2012.18.pdf>.

<sup>2</sup> Ky. Rev. Stat. Ann. § 439.3405 (1). Note that the wording of this phrase is somewhat unclear as to whether the condition must actually be terminal or can be serious or chronic to qualify (e.g., “or severe chronic lung disease.”

<sup>3</sup> Id. Note that although the title of this statute is “Parole of prisoners with documented terminal medical conditions,” severely limited mobility is not generally a terminal “condition.”

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id. at (2).

<sup>8</sup> Id.

<sup>9</sup> Id. Note that being “substantially dependent on others” is not generally considered a terminal condition.

<sup>10</sup> Ky. Rev. Stat. Ann. § 439.3405 (3).

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at (4).

<sup>14</sup> Kentucky Parole Board Policies and Procedures, Policy 10-01.E (2), <https://justice.ky.gov/Documents/Parole%20Board/Policies%20and%20Procedures/KYPB%2010-01%20ParoleReleaseHearings%20eff%2012-4-15.pdf>.

<sup>15</sup> Id. at 10-01.H (11).

<sup>16</sup> Ky. Rev. Stat. Ann. § 439.3405 (5).

<sup>17</sup> Id.

<sup>18</sup> Adam Beam, “Kentucky studies private nursing homes for inmates,” CSN News, June 1, 2014, <https://www.csnnews.com/news/article/kentucky-studies-private-nursing-homes-inmates>.