

Maryland provides compassionate release to eligible prisoners through two different laws: (1) **Medical Parole**, for prisoners with serious medical conditions,¹ and (2) **Geriatric Parole**, for certain prisoners age 60 and older.²

MEDICAL PAROLE

Note that Maryland's Medical Parole statute varies significantly from its Medical Parole regulations, and these differences are noted below. In addition, there are gaps in both the law and regulations, with no guidance filling in important details regarding terminology and the assessment/decision processes.

I. ELIGIBILITY

Medical Condition - Maryland law provides two very different sets of eligibility criteria:

- The eligibility criteria in the Medical Parole *statute* says that a prisoner must be so chronically debilitated or incapacitated by a medical or mental health condition, disease, or syndrome that he or she is physically incapable of presenting a danger to society.³
- The eligibility criteria in the Medical Parole *regulations* say that a prisoner must (1) be “imminently terminal” or (2) have a condition which “would indicate that continued imprisonment would serve no useful purpose” (such as being in an irreversible coma).⁴

Exclusions - No prisoners are excluded from being considered for Medical Parole. However, prisoners serving life sentences must have the approval of the Governor to be released on Medical Parole (discussed below in Decision-Making Process).⁵

II. APPLICATION/REFERRAL

Statute - According to the Medical Parole statute, any of the following individuals can file a request for Medical Parole with the Maryland Parole Commission:

- The prisoner;
- The prisoner's attorney;
- A family member of the prisoner;
- A prison official or employee;
- A medical professional; or

- “Any other person.”⁶

The request must be in writing and include the reasons supporting the prisoner’s release on Medical Parole.⁷

Regulation - According to the Medical Parole regulation, Medical Parole consideration is initiated by the Warden.⁸

III. DOCUMENTATION AND ASSESSMENT

The needed documentation and the process leading up to a Medical Parole decision are described somewhat differently in the statute and in the regulation. Because the differences and inconsistencies are not explained or reconciled, both are included below.

STATUTORY GUIDANCE

Initial Review - The statute says that the Parole Commission first reviews each Medical Parole request to determine the following:

- Whether the request is inconsistent with the best interests of public safety, in which case the Parole Commission will take no further action; or
- If the Parole Commission needs additional information on the prisoner from the Department of Public Safety and Correctional Services (Department) or the correctional facility so it can formally consider Medical Parole.⁹

Documentation/Department or Facility - The Department and/or correctional facility must provide the following information to the Commission for consideration:¹⁰

- *Medical Recommendation/Evaluation* from the prisoner’s treating medical professional. If the Medical Parole request was submitted by the prisoner or someone else on his or her behalf, a medical evaluation by an independent medical professional will be done, at no cost to the prisoner.
- *Medical Documentation*, including (1) a description of the prisoner’s condition, disease, or syndrome; (2) the prisoner’s prognosis, including the likelihood of recovery from the condition, disease, or syndrome; (3) a description of the prisoner’s physical incapacity and score on the *Karnofsky Performance Scale Index*¹¹ or similar evaluation tool; and (4) a mental health evaluation, if relevant.
- *Discharge Information* - The availability of treatment or professional services within the community, family support, and available housing, including hospital or hospice care.
- *Case Management Information*, including (1) the circumstances of the prisoner’s current offense; (2) institutional history; (3) pending charges, sentences and other jurisdictions, and any other detainers; and (4) criminal history.

REGULATORY GUIDANCE

Initial Review - The regulations do not mention an initial review by the Parole Commission.

Documentation/Warden - The Warden submits the following documents to the Commissioner of Correction:

- *Prisoner's Record* - The Medical Parole regulations state that the Warden must submit a detailed summary of the prisoner's record to the "Division Director."¹² The Summary includes (1) a history of program participation in prison; (2) any special housing requirements; and (3) a statement from the prisoner's "attending physician" including the prisoner's diagnosis, prognosis, inpatient/outpatient status, and justification for meeting the Medical Parole criteria.¹³
- *Warden's Statement* - The Warden must provide a recommendation to approve or disapprove the Medical Parole request, with reasons for the recommendation and an "aftercare" treatment plan for the prisoner.¹⁴

Review and Recommendation/Commissioner - The Commissioner of Correction reviews the recommendation and documentation from the Warden.¹⁵ He or she may reject a recommendation for Medical Parole,¹⁶ and the decision to deny a Medical Parole is final.¹⁷ If the Commissioner recommends approval of a Medical Parole request, he or she submits it to the Parole Commission for consideration.¹⁸

IV. DECISION-MAKING PROCESS

Decision Maker - The Maryland Parole Commission makes all decisions to grant or deny Medical Parole.

Decisions - The Medical Parole statute provides very little information about the actual decision-making process of the Parole Commission regarding Medical Parole requests; the Medical Parole regulation does not provide any information on the Parole Commission's decision at all. This may indicate that the process is essentially the same as that for any parole case, but it is unclear.¹⁹

- *Victim Input* - The Medical Parole statute says that the general parole provisions relating to victim notification and the opportunity to be heard apply to all Medical Parole proceedings.²⁰ However, in cases of "imminent death," the Parole Commission can reduce or waive the usual time limits.²¹

Conditions -

- *Environment* - The Parole Commission may require that the prisoner agree to being placed in a hospital, hospice, or other housing that is appropriate for his or her medical condition. This includes the prisoner's family home "as specified by the Commission or supervising agent."²²

- *Medical Updates* - The Parole Commission may require the prisoner to send medical records on an ongoing basis to indicate that his or her specific medical condition continues to exist.²³

Additional Approval Required for Prisoners Serving Life Sentences - If the Parole Commission grants parole to a prisoner serving a life sentence, it then transmits the decision to the Governor.²⁴

- The Governor may disapprove the decision and, if so, he or she must transmit that decision in writing to the Parole Commission.²⁵
- If the Governor takes no action within 180 days of receiving the Commission's decision, the decision to grant Medical Parole becomes effective.²⁶

V. POST-DECISION

Effect of Medical Parole Request on Other Parole Eligibility - A parolee whose Medical Parole is revoked because a medical condition has improved may then be considered for parole under the general parole eligibility requirements.²⁷

Revocation/Termination -

- If the Parole Commission determines that the parolee is no longer so “debilitated or incapacitated” as to be physically incapable of presenting a danger to society, he or she will be returned to Department custody.²⁸
- If the parolee is returned to custody, the Commission will “promptly” hold a hearing to consider whether he or she is still incapacitated - if not, the parolee will stay in custody.²⁹

VI. REPORTING/STATISTICS

The Parole Commission's annual reports list how many Medical Parole cases they considered, processed, and “coordinated” - although no definition of “coordinated” is provided. The reports do not say how many requests for Medical Parole were actually granted:

- In 2015, 18 Medical Paroles were “processed.”³⁰
- In 2014, the annual report did not include any information on Medical Parole requests received, processed, or granted.³¹
- In 2013, 58 Medical Parole cases were coordinated.³²
- In 2012, 40 Medical Parole cases were coordinated.³³
- In 2011, 42 Medical Parole cases were coordinated³⁴

Several other reports have referenced the low numbers of prisoners granted Medical Parole in Maryland.

- A 2009 report by the Justice Policy Institute stated that Maryland seriously underutilized Medical Parole. Prior to 2008, Medical Parole was granted under a non-statutory department directive; in 2008, the Medical Parole statute was enacted and it had been anticipated that this would increase the number of prisoners released.³⁵ That had not happened as of the report's publication date.
- In 2014, the ACLU of Maryland reported that from 2006 to 2014 the Maryland Parole Commission recommended eight prisoners who were serving life sentences for Medical Parole. As noted at the beginning of this memo, prisoners who are serving life sentences must have Medical Parole requests approved by the Governor. All eight individuals were denied by the Governor and, by 2014, six of the eight had died in prison.³⁶

GERIATRIC PAROLE (LIMITED TO SPECIFIC PRISONERS)

I. ELIGIBILITY

Age - A prisoner sentenced under Maryland's "Mandatory Sentences for Crimes of Violence" law³⁷ may petition for parole if he or she (1) is at least 60 years old and (2) has served at least 15 years of his or sentence.³⁸

- The 2016 *Justice Reinvestment Act*, effective Oct. 1, 2017, lowered the qualifying age from 65 to 60.³⁹

Exclusions - Prisoners who are registered (or eligible for registration) under Maryland's sex offender registration law are not eligible for parole consideration under this law.⁴⁰

II. ADDITIONAL INFORMATION

The new law says that the Maryland Parole Commission must adopt regulations to implement the revised provision.⁴¹ As of April 1, 2018, these have not yet been published and the existing regulation includes the outdated criteria, i.e., age 65.⁴² However, until the Parole Commission adopts updated rules, the existing regulatory guidance may be useful:

- Prisoners who meet the age and time served requirements, but were sentenced for a crime of violence, must petition the Chair of the Parole Commission in writing.
- The Chair schedules "a consideration of the petition" by a panel composed of two commissioners. This panel decides whether to grant the petitioner a parole release hearing.

- If the panel does not grant a parole release hearing, the prisoner must wait two years to petition again.
- If the panel grants the petitioner a parole release hearing, it is scheduled and conducted according to the usual parole hearing rules.⁴³

NOTES

¹ Md. Code Ann., Corr. Servs. § 7-309.

² Md. Code Ann., Crim. Law § 14-101.

³ Md. Code Ann., Corr. Servs. § 7-309 (b).

⁴ Md. Code Regs. 12.02.09.04.

⁵ See Md. Code Ann., Corr. Servs. § 7-309 (i)

⁶ Id. at (c) (1).

⁷ Id. at (c) (2).

⁸ Md. Code Regs. 12.02.09.05.

⁹ Md. Code Ann., Corr. Servs. § 7-309 (d).

¹⁰ Id. at (e).

¹¹ The Karnofsky Performance Scale Index classifies patients according to their functional impairment. It can be used “to compare effectiveness of different therapies and to assess the prognosis in individual patients. The lower the Karnofsky score, the worse the survival for most serious illnesses.” See Karnofsky Performance Scale Index, 2014, <https://emedicine.medscape.com/article/2172510-overview>.

¹² It is unclear to whom the regulation is referring to as “Division Director.” Under the current organizational chart for Maryland’s Department of Public Safety and Correctional Services, the Commissioner of Correction falls under the Department’s Deputy Secretary of Operations and no “Division Director” is listed. See <https://www.dpscs.state.md.us/about/Secretary-Executives-Org-Chart-Signed.pdf>.

¹³ Md. Code Regs. 12.02.09.05-B.

¹⁴ Id.

¹⁵ Id. at C.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at A.

¹⁹ See general parole provisions at Md. Code Ann., Corr. Servs. §§ 7-301 through 7-308.

²⁰ Md. Code Ann., Corr. Servs. § 7-309 (h) (1). See Md. Code Ann., Corr. Servs. § 7-801 for details. For a summary of victim’s rights in the parole process, see also the Parole Commission’s “Victim Services” page at https://www.dpscs.state.md.us/victimservs/vs_mpc.shtml.

²¹ Md. Code Ann., Corr. Servs. § 7-309 (h) (2).

²² Id. at (f) (1).

²³ Id. at (f) (2).

²⁴ Id. at (i) (1).

²⁵ Id. at (i) (2).

²⁶ Id. at (i) (3).

²⁷ Id. at (g) (2) (ii), referencing Md. Code Ann., Corr. Servs. § 7-301.

²⁸ Id. at (g) (1).

²⁹ Id. at (g) (2).

³⁰ 2015 Maryland Parole Commission Annual Report, <https://www.dpscs.state.md.us/publicinfo/publications/pdfs/mpc2015AnnualReport.pdf>.

³¹ 2014 Maryland Parole Commission Annual Report, <https://www.dpscs.state.md.us/publicinfo/publications/pdfs/mpc2014AnnualReport.pdf>.

³² 2013 Maryland Parole Commission Annual Report, <https://www.dpscs.state.md.us/publicinfo/publications/pdfs/mpc2013AnnualReport.pdf>.

³³ 2012 Maryland Parole Commission Annual Report, <https://www.dpscs.state.md.us/publicinfo/publications/pdfs/mpc2012AnnualReport.pdf>.

³⁴ 2011 Maryland Parole Commission Annual Report, <https://www.dpscs.state.md.us/publicinfo/publications/pdfs/mpc2012AnnualReport.pdf>.

³⁵ Justice Policy Institute, *The Release Valve: Parole in Maryland* (2009), http://www.justicepolicy.org/uploads/justicepolicy/documents/maryland_parole.pdf.

³⁶ ACLU of Maryland, *Still Blocking the Exit* (2014), 17, http://aclu-md.org/uploaded_files/0000/0767/still-blockingtheexit_final.pdf.

³⁷ “Crimes of violence” include murder, rape, kidnapping, and 21 other serious crimes. For the full list, see Md. Code Ann., Crim. Law § 14-101 (a).

³⁸ Md. Code Ann., Crim. Law § 14-101 (f) (2).

³⁹ Gov. Larry Hogan signed the Justice Reinvestment Act on May 19, 2016. See the enrolled bill at 168, <http://www.ma4jr.org/wp-content/uploads/2014/10/jra-pg168.pdf>.

⁴⁰ Md. Code Ann., Crim. Law § 14-101 (f) (1), referencing Md. Code Ann., Crim. Proc. §§ 11-701 through 11-727.

⁴¹ *Id.* at (f) (3).

⁴² Md. Code Regs. 12.08.01.23.

⁴³ *Id.* at C.