

Massachusetts provides compassionate release to eligible incarcerated individuals who are permanently incapacitated or terminally ill through **Medical Parole**.¹

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition – An incarcerated individual who is permanently incapacitated or terminally ill may be considered for Medical Parole.²

- “Permanent incapacitation” is defined as a physical or cognitive incapacitation that appears irreversible, as determined by a licensed physician, and that is so debilitating the individual does not pose a public safety risk.³
- “Terminal illness” means a condition that appears incurable, as determined by a licensed physician, that will likely cause the individual’s death in 18 months or less and that is so debilitating the person does not pose a public safety risk.⁴

Exclusions – No individuals are excluded from Medical Parole consideration.

II. APPLICATION/REFERRAL

A written petition for Medical Parole may be submitted to the Superintendent of a correctional facility by (1) the incarcerated individual, (2) the individual’s attorney, (3) a relative of the incarcerated person, (4) a correctional facility medical provider, or (5) Department of Correction (Department) staff.⁵ The Medical Parole law does not prescribe a particular form for the petition.

III. DOCUMENTATION AND ASSESSMENT

Review and Recommendation: Superintendent – The Superintendent of the correctional facility reviews the petition for Medical Parole and then, within 21 days, sends the Department Commissioner a recommendation regarding the individual’s release and the following information: (1) the petition,⁶ (2) a Medical Parole Plan,⁷ (3) a licensed physician’s written diagnosis,⁸ and (4) an assessment of the risk for violence that the individual poses to society.⁹

- Note that the Medical Parole Plan is defined as a comprehensive, written medical and psychosocial care plan specific to the incarcerated individual. It must include (1) the proposed course of treatment, (2) the proposed location for treatment and post-treatment care, (3) documentation that qualified medical providers are prepared to provide such services, and (4) the financial resources in place to cover the cost of the plan for the duration of the

individual's Medical Parole (e.g., Medicare, Medicaid, or commercial insurance).¹⁰

IV. DECISION-MAKING PROCESS

Decision-Maker – The Commissioner of the Department of Corrections makes the final decision whether to grant Medical Parole.¹¹

Notice – After receiving the petition and recommendation from the Superintendent, the Commissioner sends a notice that the incarcerated person is being considered for Medical Parole to (1) the incarcerated individual;¹² (2) the person who petitioned for Medical Parole on the incarcerated individual's behalf, if applicable;¹³ (3) the district attorney for the jurisdiction where the offense resulting in the individual being incarcerated occurred;¹⁴ and (4) if applicable, the victim or victim's family.¹⁵ The parties who receive the written notice have an opportunity to provide the Commissioner with written statements.¹⁶

Hearings – If an individual petitioning for Medical Parole is serving a sentence for premeditated murder or other specified crimes, the district attorney or victim's family may request a hearing.¹⁷ Otherwise, a hearing is not held.

Decision – The Commissioner must issue a written decision within 45 days after receiving the petition for Medical Parole, and it must include the reasons for the decision.¹⁸

- The Commissioner will release the individual on Medical Parole if there is a determination that the individual's terminal illness or permanent incapacitation is such that (1) if released the person will "live and remain at liberty" without violating the law and (2) release will not be incompatible with the welfare of society.¹⁹
- At least 24 hours before the date of the individual's release on Medical Parole, the Commissioner must provide written notice of the release, including the terms and conditions of the individual's release, to: (1) the appropriate district attorney; (2) the Massachusetts State Police; (3) the police department in the city or town where the individual is going to reside; and (4) if applicable, the victim or victim's family.²⁰

Conditions – The Parole Board is responsible for setting the Medical Parole terms and conditions, which will apply through the date on which the individual's sentence expires.²¹ Note that the Parole Board can revise or amend the terms and conditions of the person's Medical Parole at any time.²²

V. POST-DECISION

Denials and Appeal Rights – An individual who disagrees with a decision denying Medical Parole may petition for judicial review.²³ There is no internal Department appeals process. Note that a Superintendent who disagrees with a decision granting Medical Parole may also petition the court for relief.²⁴

- A decision by the court affirming or reversing the Commissioner’s decision on Medical Parole does not affect an individual’s eligibility for Medical Parole in the future or any other form of release permitted by Massachusetts law.²⁵

Supervision – Individuals released on Medical Parole are under the Parole Board’s jurisdiction and supervision.²⁶

Termination/Revocation – A parole officer will arrest an individual and require an appearance before the Board for a hearing if (1) there is credible information that the individual has failed to comply with any of the Medical Parole conditions, or (2) the terminal illness or permanent incapacitation has improved to the extent that the individual is no longer eligible for Medical Parole.²⁷

- If the Board determines that the individual violated a condition of Medical Parole or that the medical condition has improved to the point that the medical eligibility criteria are no longer met, the person must resume serving the balance of the original sentence.²⁸ Credit will be given for the portion of the individual’s Medical Parole that was served in compliance with all conditions.²⁹
- Note that the revocation of an individual’s Medical Parole due to a change in the medical condition does not preclude eligibility for Medical Parole in the future or for another form of release permitted by Massachusetts law.³⁰

VI. REPORTING/STATISTICS

The Medical Parole law requires the Department Commissioner and the Secretary of the Executive Office of Public Safety and Security to file an annual report with the clerks of the state Senate and House of Representatives, the Senate and House Committees on Ways and Means, and the Joint Committee on the Judiciary. The report must include the following information:³¹

- The number of individuals who applied for Medical Parole and the race and ethnicity of each applicant;
- The number of individuals granted Medical Parole and the race and ethnicity of each;

- The nature of the illness of each applicant for Medical Parole;
- The counties to which the individuals have been released;
- The number of individuals denied Medical Parole, the reason for the denials, and the race and ethnicity of each;
- The number of people who have petitioned for Medical Parole more than once;
- The number of people released who have been returned to Department custody and the reason for each individual’s return; and
- The number of appeal petitions.

In 2019, the first year after the law was enacted, the Parole Board released only three individuals on Medical Parole.³² In 2020, the number of releases increased significantly, and the Board released 31 individuals on Medical Parole.³³

MASSACHUSETTS COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

MEDICAL PAROLE

Statute

Massachusetts General Laws, Chapter 127, § 119A (2021), available through the General Court of the Commonwealth of Massachusetts,
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVIII/Chapter127/Section119A>.

Additional Information: Court Cases and Regulations

For information on the 2019 Medical Parole regulations, the Massachusetts Supreme Court ruling that invalidated several of those regulations, the 2020 proposed Medical Parole regulations (which, as of December 1, 2021, have not been formally adopted), and subsequent appellate litigation, see the following articles:

- Shira Schoenberg, “SJC to Correction Officials: Act Faster on Medical Parole,” *Commonwealth* (May 19, 2021), <https://commonwealthmagazine.org/criminal-justice/sjc-to-correction-officials-act-faster-on-medical-parole/>; and
- Jessica Conklin, “The Brief but Complicated Life of the Medical Parole Statute,” *Boston Bar Journal* (Nov. 18, 2020), <https://bostonbarjournal.com/2020/11/18/the-brief-but-complicated-life-of-the-medical-parole-statute/>.

NOTES

* *Id.* means see prior note.

¹ Mass. Gen. Laws ch. 127, § 119A. Note that despite the fact the statute directs the Department of Corrections to promulgate regulations, legal challenges have delayed final rulemaking. For more information, see Shira Schoenberg, “SJC to Correction Officials: Act Faster on Medical Parole,” *Commonwealth* (May 19, 2021), <https://commonwealthmagazine.org/criminal-justice/sjc-to-correction-officials-act-faster-on-medical-parole/>, and Jessica Conklin, “The Brief But Complicated Life of the Medical Parole Statute,” *Boston Bar Journal* (Nov. 18, 2020), <https://bostonbarjournal.com/2020/11/18/the-brief-but-complicated-life-of-the-medical-parole-statute/>.

² Mass. Gen. Laws ch. 127, § 119A (b).

³ *Id.* at (a).

⁴ *Id.*

⁵ *Id.* at (c) (1).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*, referencing Mass. Gen. Laws ch. 112, § 2.

⁹ *Id.*

¹⁰ *Id.* at (a).

¹¹ *Id.* at (e).

¹² *Id.* at (c) (2).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*, referencing Mass. Gen. Laws ch. 258B.

¹⁶ *Id.*

¹⁷ *Id.*, referencing Mass. Gen. Laws ch. 265, § 1.

¹⁸ *Id.* at (e).

¹⁹ *Id.* Note that the law does not provide any guidance on evaluating an individual’s ability to live at liberty without violating the law or circumstances that might make the person’s release incompatible with the welfare of society.

²⁰ *Id.*, referencing Mass. Gen. Laws ch. 258B.

²¹ Id.

²² Id. at (f).

²³ Id. at (g), referencing Mass. Gen. Laws ch. 249, § 4.

²⁴ Id.

²⁵ Id.

²⁶ Id. at (f), citing Mass. Gen. Laws ch. 127, § 130.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id. at (i).

³² Massachusetts Parole Board, *2019 Annual Statistical Report*, 22, <https://www.mass.gov/doc/2019-annual-statistical-report-amended-addendum/download>.

³³ Massachusetts Parole Board, *2020 Annual Statistical Report*, 23, <https://www.mass.gov/doc/2020-annual-statistical-report/download>.