

Mississippi provides compassionate release to eligible incarcerated individuals with serious medical conditions through **Conditional Medical Release**¹ and to individuals who are age 60 or older who meet specific eligibility criteria through a **Geriatric Parole** provision in the general parole rules.²

CONDITIONAL MEDICAL RELEASE

I. ELIGIBILITY

Medical Condition – To be eligible for Conditional Medical Release, an incarcerated individual must have a significant and permanent physical medical condition with no possibility of recovery,³ described as a condition that is “incapacitating, totally disabling, and/or terminal in nature.”⁴

- The Conditional Medical Release statute appears to require that an incarcerated individual be “bedridden” to qualify for Conditional Medical Release.⁵ However, the Department of Corrections (Department) website does not list that as a requirement.⁶
- Examples of conditions that meet the medical eligibility criteria include the following: a cancer diagnosis appropriate for hospice care; end-stage lung disease; end-stage heart failure; a severe stroke with disabling neurologic manifestations; end-stage liver disease; end-stage AIDS; advanced Alzheimer’s disease; and a severe, progressive neurological disease, including paraplegia and quadriplegia.⁷
- The Department states that an individual with a medical condition or disease that is chronic but stable and being addressed by ongoing medical intervention or therapy would not be eligible for Conditional Medical Release.⁸

Other Eligibility Criteria – In addition, for an incarcerated individual to be eligible, the Department must determine that (1) further incarceration serves no rehabilitative purposes and (2) the state will incur unreasonable expenses if the person continues to be incarcerated.⁹

Exclusions

- Individuals convicted of “sex crimes” are not eligible for Conditional Medical Release.¹⁰
- Note that incarcerated individuals designated as “violent offenders” must serve at least one year of their sentence before being considered for Conditional Medical Release.¹¹

II. APPLICATION/REFERRAL

The Mississippi Conditional Medical Release statute is silent on how the process starts and how an incarcerated individual (or someone on the person's behalf) can apply.

- The only publicly available information is one sentence on the Department's Medical Division website stating that the individual's treating physician is responsible for determining eligibility for Conditional Medical Release.¹²

III. DOCUMENTATION AND ASSESSMENT

The treating physician communicates the incarcerated individual's medical information to the Department's Chief Medical Officer.¹³

There is no other publicly available information on the documentation and assessment process.

IV. DECISION-MAKING PROCESS

Decision-Maker – The Mississippi Department of Correction's Chief Medical Officer and the Commissioner jointly make the decision to grant a Conditional Medical Release.¹⁴

- The Chief Medical Officer must certify that the incarcerated individual (1) meets the medical eligibility criteria, (2) further incarceration serves no rehabilitative purpose, and (3) the state will incur unreasonable expenses as a result of the person's continued incarceration.¹⁵
- The Chief Medical Officer and the Commissioner decide whether to grant Conditional Medical Release and transfer the individual to the Division of Community Corrections for the remainder of the person's sentence.¹⁶

There is no information in the statute or Department policy on additional procedures, victim input, or time frames related to the release decision.

Discharge Plan – The Department states that when bedridden "nonviolent" individuals are placed on Conditional Medical Release, the state is not responsible for any medical costs incurred.¹⁷

- Note that there is no information regarding who is responsible for medical costs if the individual is a "violent" individual placed on Conditional Medical Release.

The Department provides no other information regarding prerelease planning or assistance in obtaining Medicaid or other financial resources to cover medical costs.

V. POST-DECISION

Denials and Appeal Rights – State law and Department policy are silent on whether an individual can appeal the denial of Conditional Medical Release.

Effect on Parole or Other Release Eligibility – State law and Department policy are silent as to whether consideration for Conditional Medical Release affects parole or other release eligibility.

Supervision – The Department’s Community Corrections Division supervises an individual granted Conditional Medical Release for the remainder of the person’s sentence.¹⁸

- Note that the Department’s webpage says an incarcerated individual granted Conditional Medical Release is “transferred” to Community Corrections, not actually released from custody.¹⁹ That can create issues for an individual with a serious medical condition who needs to apply for Medicaid or find appropriate medical placements but can only do so if not in custody.

Revocation/Termination – A Conditional Medical Release can be revoked and a formerly incarcerated person returned and placed in “actual custody” if the person violates an order or condition of the release.²⁰ The Department does not provide any examples or additional information on conditions of release.

- The statute specifies that formerly incarcerated individuals who are no longer “bedridden” will be returned and placed in custody.²¹ However, there is no policy that says an individual must be bedridden to be granted a Conditional Medical Release.

VI. REPORTING/STATISTICS

The Department is not required to report how many individuals are granted Conditional Medical Release. However, the Department included limited information in its most recent annual report, published in 2019:

- Nine terminally ill inmates were released on Conditional Medical Release from July 1, 2018, to June 30, 2019.²²

GERIATRIC PAROLE

I. ELIGIBILITY

Age/Time Served – To be eligible for parole based on advanced age, an incarcerated individual must be age 60 or older and have served at least 10 years in prison.²³

Other Eligibility Criteria – To be eligible for Geriatric Parole, an individual must have served at least one-fourth of the sentence (even if the person meets the 10-year requirement referenced above).²⁴

Exclusions – An individual is excluded from consideration for Geriatric Parole if sentenced as a “habitual offender”²⁵ or for a crime of violence,²⁶ an offense that specifically prohibits parole release,²⁷ trafficking in controlled substances,²⁸ or a sex crime.²⁹

II. APPLICATION/REFERRAL

Consideration for parole for an incarcerated individual age 60 and older under the Geriatric Parole provision is supposed to be automatic, with a hearing date scheduled when the person is within 30 days of the month of the parole eligibility date.³⁰

III. ADDITIONAL INFORMATION

- The Mississippi Parole Board decides who is eligible for parole and the general parole rules apply to the documentation and assessment, decision-making, and post-decision processes for individuals aged 60 and older who are seeking Geriatric Parole.³¹
- Several years ago the Mississippi Department of Corrections officials stated there have only been “a few” releases under the Geriatric Parole provision since it was passed in 2014.³² In response to FAMM’s request asking for the number of individuals released under the Geriatric Parole provision in 2019 and 2020, the Department responded that “[t]he Geriatric provision is of no consequence in Mississippi” and did not provide any data.³³

MISSISSIPPI COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

CONDITIONAL MEDICAL RELEASE

Statute

Mississippi Code, § 47-7-4 (2021), available through the Mississippi Legislature’s General Information webpage, <http://www.legislature.ms.gov/general-information/>. To retrieve the statute, click on “Mississippi Code of 1972” and then enter the statute number in the search box.

Agency Publications

Mississippi Department of Corrections Medical Division, Medical Concerns FAQ webpage (2021), <http://www.mdoc.ms.gov/Inmate-Info/Pages/Medical-Concerns-FAQ.aspx>.

Mississippi Department of Corrections, Medical Division webpage (2021), <http://www.mdoc.ms.gov/Divisions/Pages/Medical-Division.aspx>.

GERIATRIC PAROLE

Statutes

Mississippi Code, § 47-7-3 (2021), available through the Mississippi Legislature’s General Information webpage, <http://www.legislature.ms.gov/general-information/>. Note: To retrieve the statute, click on “Mississippi Code of 1972” and then enter the statute number in the search box.

Mississippi Code, §§ 47-7-3, 47-7-3.1, and 47-7-27 [general parole rules] (2021), available through the Mississippi Legislature’s General Information webpage, <http://www.legislature.ms.gov/general-information/>. To retrieve the statute, click on “Mississippi Code of 1972” and then enter the statute number in the search box.

NOTES

* *Id.* means see prior note.

¹ Miss. Code Ann. § 47-7-4 (2021), available through the Mississippi Legislature’s General Information webpage at <http://www.legislature.ms.gov/general-information/>. Note that the Mississippi Department of Corrections does not publish its policies and procedures; thus, the information in this report is based solely on the statute.

² Miss. Code Ann. § 47-7-3.

³ Miss. Code Ann. § 47-7-4.

⁴ Mississippi Department of Corrections, Medical Division, Medical Concerns FAQ.

⁵ Miss. Code Ann. § 47-7-4.

⁶ Medical Concerns FAQ.

⁷ Mississippi Department of Corrections, Medical Division webpage.

⁸ *Id.*

⁹ Miss. Code Ann. § 47-7-4.

¹⁰ *Id.*

¹¹ *Id.*

¹² See Medical Concerns FAQ.

¹³ See Medical Division webpage.

¹⁴ Miss. Code Ann. § 47-7-4. There is no information available as to what happens if the Commissioner and the Chief Medical Officer disagree.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Medical Division webpage.

²⁰ Miss. Code Ann. § 47-7-4.

²¹ *Id.*

²² Mississippi Department of Corrections, FY 2019 Annual Report, <https://www.mdoc.ms.gov/Admin-Finance/Documents/2019%20Annual%20Report.pdf>.

²³ Miss. Code Ann. § 47-7-3 (1) (g) (ii).

²⁴ Id. at (1) (g) (ii) (6).

²⁵ Id. at (1) (g) (ii) (1), referencing Miss. Code Ann. §§ 99-19-81 through 99-19-87.

²⁶ Id. at (1) (g) (ii) (2), referencing Miss. Code Ann. § 97-3-2.

²⁷ Id. at (1) (g) (ii) (3).

²⁸ Id. at (1) (g) (ii) (4), referencing Miss. Code Ann. § 41-29-139 (f).

²⁹ Id. at (1) (g) (ii) (5).

³⁰ Id. at (3).

³¹ See general parole rules at Miss. Code Ann. §§ 47-7-3, 47-7-3.1, and 47-7-27. See also the Mississippi Parole Board's website at <http://www.mdoc.ms.gov/About/Pages/Parole-Board.aspx>.

³² Rebecca Silber, Alison Shames, and Kelsey Reid, *Aging Out: Using Compassionate Release to Address the Growth of Aging and Infirm Prison Populations*, (December 2017), 14, New York NY: Vera Institute of Justice, <https://www.vera.org/publications/compassionate-release-aging-infirm-prison-populations>.

³³ Email from Steve Wayne Pickett, Mississippi Department of Corrections, to FAMB (July 23, 2021) (on file with FAMB, Office of the General Counsel).