Montana provides compassionate release to eligible prisoners with serious medical conditions or terminal illnesses through Medical Parole.¹

**MEDICAL PAROLE**

**I. ELIGIBILITY**

**Medical Condition** - To be eligible for medical parole, prisoners must have a medical condition that (1) requires extensive medical attention² or (2) is likely to cause death within six months or less.³

**Exclusions** - Prisoners are *not* eligible for Medical Parole if they are under sentence of death or life imprisonment without possibility of release.⁴

- Prisoners whose sentencing judge designated them as ineligible for parole must have the approval of that judge before being eligible for medical parole.⁵

**II. APPLICATION/REFERRAL**

The Medical Parole process can be initiated by the prisoner; the prisoner’s family members (spouses, parents, children, grandparents, or siblings); Montana Department of Corrections staff (Department); or the Montana Board of Pardons and Parole (Board).⁶

The prisoner, or the person applying on his or her behalf, must complete the *Medical Parole Application* form⁷ and submit it to the Institutional Probation and Parole Officer at the facility where the prisoner is incarcerated. The application must include the following information:

- The reasons for the Medical Parole request;
- If someone other than the prisoner is requesting Medical Parole, the relationship to the prisoner;
- A licensed physician’s written diagnosis and examination report;
- A detailed description of the prisoner’s proposed living arrangement while on medical parole, including the name, address, and telephone number of the individual or facility contact who has agreed to provide medical care;
- Details on how the prisoner will acquire and pay for medical care if released on medical parole; and
- An explanation of the proposed arrangements for transporting the prisoner to the
III. DOCUMENTATION AND ASSESSMENT

Medical Examination Report/Physician - A physician’s report must complete the Department’s Medical Examination Report and include all of the following information:

- A determination that the prisoner has a medical condition that requires extensive medical attention;
- A detailed description of the condition, diagnosis, any physical incapacity, and the most recent medical treatment;
- A description of the medical care that will be required to treat the condition;
- A prognosis addressing the likelihood of the prisoner’s recovery from the condition, the extent of any potential recovery, and, if relevant, whether “to a reasonable degree of medical certainty,” the condition is expected to cause death within six months or less.

If needed, the Department can assist a prisoner in obtaining medical documentation by arranging for a Department physician to complete a medical examination.

Placement Location/Department - The Department must identify possible placements for prisoners seeking Medical Parole, which can be a hospital, nursing home, hospice facility, family home, or other appropriate location.

Submission of Documents/IPPO - The Institutional Probation and Parole Officer (IPPO) submits the application, physician’s report, and placement information to the Department’s Medical Director.

Review/Medical Director - The Medical Director (or other Clinical Services Division designee) reviews the application and documentation, and recommends whether to accept or reject the application.

Review and Recommendation/Warden - After the Medical Director’s review, the IPPO forwards the application and documentation to the facility’s Warden/Administrator for review. The Warden reviews the application “for sufficiency and safety or security concerns.”

- If the Warden determines the Medical Parole request does not meet the requirements, he or she must provide the reasons for disapproving the request, in writing, to the prisoner (or, if someone other than the prisoner, the person who requested Medical Parole).
- If the Warden determines the Medical Parole request meets the requirements, he or she will forward the application, and required forms and attachments, to the IPPO
office at the facility where the prisoner is incarcerated.  

**Document Preparation/IPPO** - The IPPO is responsible for preparing, or requesting preparation, of all documents required by the Board and forwarding the application, attachments, and forms to the Board.

**IV. DECISION-MAKING PROCESS**

**Decision Maker** - The Board of Pardons and Parole is responsible for making all Medical Parole decisions.

**Decisions** - Upon receiving a Medical Parole application, the Board sets a hearing date and notifies the prisoner.

- **Hearing** - The Board holds a hearing to determine whether (1) release is unlikely to pose a detriment to the prisoner, victim, or community and (2) the prisoner suffers from a medical condition that requires extensive medical attention or a condition that is likely to result in death within six months or less.

- **Preparation** - The Board staff gathers all relevant information on the prisoner prior to the Medical Parole hearing. This includes the nature of the offense, social history, criminal history, institutional “performance,” and any medical and mental examinations that have been done while in custody.

- **Input** - A victim and/or any “interested person or the interested person’s representative” can submit written or oral statements to the Board to be considered at the hearing. The Board can keep the victim’s statement confidential.

- **Determining “Detriment”** - To decide if someone poses a “detriment” to the victim or community, the hearing panel can consider the following factors:
  
  - Whether the prisoner’s medical condition renders him or her unable to engage in criminal activity;
  
  - Any statement submitted by the victim of the offense for which the prisoner is currently incarcerated;
  
  - The progression of the prisoner’s medical condition, as documented by a licensed physician;
  
  - The prisoner’s conduct, employment, and attitude in prison;
  
  - Reports of any physical and mental examinations that have been made;
  
  - The prisoner’s previous social and criminal record; and
  
  - The circumstances of the offense for which the prisoner is incarcerated.
• **Additional Information** - In deciding whether to grant or deny an application for medical parole, the hearing panel can also consider whether -

  o There is support or opposition from the community, including the victim or victim’s family, the court, or law enforcement;

  o The prisoner suffered from the medical condition at the time he or she committed the offense or was sentenced and, if so, whether the condition has progressed to such a degree that it is unlikely that he or she is able to engage in criminal activity;

  o The care and supervision that the prisoner requires can be provided in a more medically appropriate or cost-effective manner than by the Department of Corrections;

  o The prisoner is incapacitated to an extent that incarceration does not impose significant additional restrictions;

  o The prisoner is likely to continue to suffer from the medical condition throughout the entire period of parole or to die while on medical parole and there is no reasonable expectation that the medical condition will improve noticeably; and

  o An appropriate discharge plan has been formulated.  

**Conditions** -

• **Environment** - The Board’s hearing panel requires, as a condition of medical parole, that the prisoner agree to be placed in an environment chosen and approved by the Department. Appropriate settings include, but are not limited to, hospitals, nursing homes, hospice facilities, prerelease centers, appropriate community corrections facilities or programs, and family homes.

• **Examinations** - The hearing panel *may* also require that the person obtain periodic medical examinations and diagnoses (at the prisoner’s expense) and have the examining physician submit reports of the exams to the Board and the Department.

• **Medical Parole Plan** - As stated above, part of what the Board will look at when making its decision is whether there is an appropriate Medical Parole Plan that addresses care coordination, housing, eligibility for public benefits (such as Social Security disability), and health care, including necessary medications.
V. POST-DECISION

Effect of Medical Parole Request on Nonmedical Parole Eligibility - The grant or denial of Medical Parole does not affect the prisoner’s eligibility for general parole.\(^32\) In fact, if a prisoner being considered for Medical Parole has reached parole eligibility, the Board will first consider the non-medical or general parole.\(^33\)

- Note that if a prisoner is granted Medical Parole and later becomes eligible for non-medical parole, a hearing panel may consider non-medical parole according to the relevant rules.\(^34\)

Denials and Appeal Rights - If the hearing panel denies the Medical Parole application, the Department will not accept another application for the same prisoner unless his or her medical condition deteriorates to such a degree that “the factors previously considered by the hearing panel are affected.”\(^35\)

Revocation/Termination - The Board or Department can revoke Medical Parole and return the former prisoner to custody if any of the following happen:

- The medical condition has improved to the extent that the parolee no longer requires “extensive medical attention.”\(^36\)

- The parolee violates any of the statutory provisions for non-medical parole, which also apply to medical parole.\(^37\)

- The parolee’s condition improves such that they become likely to pose a detriment to the person, victim, or community.\(^38\)

VI. REPORTING/STATISTICS

The Board is not required to report on how many Medical Paroles they grant each year and Medical Parole is not included in their publicly available statistical data.\(^39\)
NOTES

2 Mont. Code Ann. §§ 46-23-210 (1) (c) (i) and (ii); DOC Policy 4.6.7, § IV.A.1.d.
3 Mont. Code Ann. §§ 46-23-210 (1) (c) (i) and (ii); DOC Policy 4.6.7, § IV.A.1.d.
5 Mont. Code Ann. §§ 46-23-210 (2); DOC Policy 4.6.7, § IV.A.1.e. See also Mont. Code Ann. § 46-18-202 (2) stating, in relevant part, “[w]henever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing.” If the court is contacted regarding a specific prisoner’s request for medical parole and doesn’t respond within 30 days to a request for approval from the Department of Corrections, the person is considered “approved” by the court for medical parole. See Mont. Code Ann. at § 46-23-210 (2) and Mont. Admin. R. 20.25.307, § 1.c.
10 Mont. Code Ann. § 46-23-210 (3); Mont. Admin. R. 20.25.307, § 2.c; DOC Policy 4.6.7, §§ IV.C.4 (a) - (e). Note that the administrative rules say that by submitting an application for medical parole, the prisoner waives any right to privacy in his or her medical information (Mont. Admin. R. 20.25.307, § 13). The routing form actually includes a signed waiver as part of the documentation needed.
11 DOC Policy 4.6.7, § IV.C.2.
12 Id. at IV.D. DOC Policy does not identify which Department employee is responsible for identifying appropriate placements.
14 DOC Policy 4.6.7, § IV.E.1.
15 Id. at IV.E.2.
16 Id.
17 Id. at IV.E.3. The statute and administrative rules are silent as to whether the prisoner can appeal a Warden’s determination that the Medical Request does not meet the requirements.
18 Id. at IV.E.4.
19 Mont. Code Ann. § 46-23-210 (4); Mont. Admin. R. 20.25.307, § 3; DOC Policy 4.6.7, § IV.E.5. Note that the Department’s Medical Parole Application Routing Form details four steps in the routing process that reflect slightly different levels of review than the statutory and regulatory provisions. See Routing Form at http://cor.mt.gov/Portals/104/Resources/Policy/Forms/4.6.7%20Application%20Routing%2010.09.15.pdf.
22 Id. at (1) (b); Mont. Admin. R. 20.25.307, § 4.a.
24 Id. at § 8.
26 Id.
28 Id. at §§ 6.a - f.
29 Mont. Code Ann. § 46-23-210 (6); Mont. Admin. R. 20.25.307, § 7. Note that appropriate settings are not limited to these examples. Id.
31 Mont. Admin. R. 20.25.307, § 6.f. See also DOC Policy 4.6.7, § IV.F.
34 Id. at § 9. See also DOC Policy 4.6.7, § IV.H.
36 Id. at § 7; DOC Policy 4.6.7, § IV.I.1.
39 See the Board’s Statistical Data webpage at https://bopp.mt.gov/Statistics.