

Nevada provides compassionate release to eligible incarcerated individuals through two programs: (1) **Residential Confinement** for those who are ill or physically incapacitated¹ and (2) **Geriatric Parole** for those who are age 65 or older.²

- Note that some state agency materials also refer to Residential Confinement for individuals who are incapacitated or in ill health as the “Compassionate Release” or “298” program.

RESIDENTIAL CONFINEMENT

I. ELIGIBILITY

Medical Condition – To be eligible for Residential Confinement, an incarcerated individual must be:

- Physically incapacitated or in ill health to such a degree that the person does not pose a threat to public safety;³ or
- In ill health, expected to die within 18 months, and not a threat to public safety.⁴ [Note that a law revising the Residential Confinement statute became effective July 1, 2020, changing the time frame from 12 months to 18 months. As of this memo’s publication date, the corresponding Department of Corrections regulation has not been updated and still says 12 months.]

Exclusions – An incarcerated individual cannot be released to Residential Confinement if sentenced to death or life imprisonment without the possibility of parole.⁵

II. APPLICATION/REFERRAL

An incarcerated individual who is physically incapacitated or in ill health may submit a request for Residential Confinement to the Director of the Department of Corrections (Department).

- Other people who may submit a Residential Confinement request on behalf of an incarcerated individual include (1) a family member, (2) an attorney or representative, (3) a prison official or employee, and (4) a medical or mental health professional.⁶
- Requests must be in writing and state the reasons supporting the appropriateness of Residential Confinement.⁷

III. DOCUMENTATION AND ASSESSMENT

At least two licensed physicians, one of whom the Department does not employ, must verify in writing that the incarcerated person is (1) physically incapacitated or in ill health or (2) in ill health and expected to die within 18 months.⁸

The Department's Offender Management Administrator reviews the physicians' recommendations and the medical documentation and makes a recommendation to the Director of the Department.⁹

IV. DECISION-MAKING PROCESS

Decision-Maker – The Director of the Nevada Department of Corrections makes the decision whether to assign an incarcerated person to Residential Confinement.

Decision – Other than the notice requirements, as discussed below, there is no information about the Director's decision-making process.

Notice – If the Director approves Residential Confinement, specific individuals must be notified:

- The Department's Offender Management Administrator (OMA) must notify, at least 45 days before the individual's expected release, the Public Safety's Division of Parole and Probation (Parole Division) and the Board of County Commissioners of the county where the individual will live.¹⁰
- If the victim has requested notification of release, the Parole Division will send notification that the Director intends to assign the individual to Residential Confinement and give the victim the opportunity to submit comments.¹¹

Prerelease Planning – The Department states it is not responsible for the medical care or costs for an individual placed in Residential Confinement.¹² There is no additional information about whether the Department helps with prerelease planning or provides assistance in arranging placements.

Release – The OMA and the Parole Division coordinate the release of an individual approved for Residential Confinement. The release is not finalized until the Parole Division completes its residential reviews and approvals.¹³

- For purposes of Residential Confinement, the residence must be within the state of Nevada.¹⁴
- Assignment of an incarcerated individual to Residential Confinement, even though the person is under Parole Division supervision, is a "continuation" of imprisonment and not a release on parole.¹⁵

V. POST-DECISION

Supervision – The Parole Division supervises individuals assigned to Residential Confinement and may use electronic monitoring devices.¹⁶

- The Parole Division can require that individuals on Residential Confinement stay in their residences whenever they are not receiving medical treatment.¹⁷

Term of Confinement – The Residential Confinement term is for the remainder of the individuals' sentences.¹⁸

Revocation/Termination – If individuals assigned to Residential Confinement escape or violate any conditions set by the Department or Parole Division, they may be returned to prison.¹⁹

VI. REPORTING/STATISTICS

There are no publicly available statistics from either the Department or Parole Division on how many individuals have been granted a Residential Confinement due to physical incapacitation or ill health.

- In response to FAMM's request for information on how many individuals had been granted Residential Confinement due to physical incapacitation or ill health, the Department stated that it could not respond at this time due to the current volume of public records requests.²⁰
- A news report in early 2021 stated the Department said no incarcerated individuals were released to Residential Confinement in 2019 or 2020 due to a medical condition.²¹

GERIATRIC PAROLE

I. ELIGIBILITY

Age – Incarcerated individuals may be eligible for Geriatric Parole if they are 65 years of age or older.²²

Other Eligibility Criteria – In addition to meeting the age requirement, individuals will only be eligible for Geriatric Parole if they have served at least a majority of the maximum term or maximum aggregate term of their prison sentence.²³

Exclusions – Even if they meet the age and time-served criteria, incarcerated individuals are not eligible for Geriatric Parole if they pose a “significant and

articulable” risk to public safety or if they were (1) convicted of specific crimes, including crimes of violence, crimes against children, sexual offenses, and vehicular homicides; (2) determined to be “habitual criminals”; or (3) sentenced to life imprisonment without the possibility of parole or to death.²⁴

II. APPLICATION/REFERRAL

Any of the following individuals may submit an *Application for Consideration of Geriatric Parole* to the Nevada Board of Parole Commissioners (Board):

- The incarcerated person;
- A family member of the incarcerated person;
- The incarcerated individual’s attorney or representative;
- Prison officials or employees; and
- Medical and mental health professionals.²⁵

III. DOCUMENTATION AND ASSESSMENT

Documentation: Applicant – The documentation that must be submitted with the application to the Board includes medical records, institutional and program participation records, parole plans, documents concerning eligibility for Medicaid or Medicare, and any other relevant documents.²⁶

Verification: Department of Corrections – Within 15 days of receiving an application for Geriatric Parole, the Board must notify the Department of Corrections (Department) of the application and ask for verification of the incarcerated person’s age and length of time in custody.²⁷

- If the Department finds that the incarcerated person meets the criteria, it notifies the Board of potential eligibility, places the individual on the next available list of those eligible for parole, and provides any data that will help the Board in deciding whether it should grant Geriatric Parole.²⁸
- If the Department finds that the individual does **not** meet the eligibility criteria, it will notify the Board and explain the reasons for its decision.²⁹

IV. DECISION-MAKING PROCESS

Decision-Maker – The Nevada Board of Parole Commissioners makes all final decisions regarding whether to grant or deny Geriatric Parole.³⁰

Notice – After receiving the Department’s list of individuals to consider for parole, including Geriatric Parole, the Board sends the list to all law enforcement agencies in Nevada and any other “appropriate persons” at least 30 days before any scheduled action.³¹

Hearing – The Board schedules and conducts Geriatric Parole hearings following the same procedures it uses when considering incarcerated individuals for general parole.³²

Decision – In deciding whether to grant Geriatric Parole, the Board considers the following factors:³³

- Age;
- Behavior while in custody;
- Potential for violence;
- Reported severity of any illness, disease, or infirmity; and
- Any available and suitable housing/residential alternatives.

As with its general parole decisions, the Board must provide written notice of decisions on Geriatric Parole requests to incarcerated individuals within 10 working days after the hearing.³⁴

V. POST-DECISION

Denials/Appeals – An individual who has been denied Geriatric Parole must wait at least 24 months to reapply unless (1) the Board has prescribed a shorter period or (2) the Department of Corrections Director requests reconsideration because of the individual’s “adverse” health.³⁵

Conditions – The Board prescribes any terms and conditions of Geriatric Parole at the time of the individual’s release.³⁶

Supervision – The Department of Public Safety’s Division of Parole and Probation supervises all individuals released on parole, including those released on Geriatric Parole.³⁷

VI. REPORTING/STATISTICS

The Geriatric Parole law does not include any reporting requirements, and the Board has not provided any public information indicating it has released any incarcerated individuals on Geriatric Parole.³⁸

- In response to FAMI’s request for information, the Board confirmed that, as of April 2021, no individuals have been released on Geriatric Parole and that the Department of Corrections has not referred any eligible individuals to them since the law went into effect in July 2020.³⁹

NEVADA COMPASSIONATE RELEASE PRIMARY LEGAL SOURCES

RESIDENTIAL CONFINEMENT

Statute

Nevada Revised Statutes, § 209.3925 (2020), available through the Nevada Legislature, <https://www.leg.state.nv.us/NRS/NRS-209.html#NRS209Sec3925>.

Agency Policy

Nevada Department of Public Safety/Division of Parole and Probation, Residential Confinement (undated), http://npp.dps.nv.gov/Home/Offender_Supervision/Residential_Confinement/.

Nevada Department of Corrections Administrative Regulation 523.04 (2012), https://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Administrative_Regulations/AR%20523%20-%20121712.pdf.

GERIATRIC PAROLE

Statute

Nevada Revised Statutes, § 213.12155 (2020), available through the Nevada Legislature, <https://www.leg.state.nv.us/NRS/NRS-213.html#NRS213Sec12155>.

Agency Policy

Nevada Board of Parole Commissioners, *Application for Consideration of Geriatric Parole* (2020), http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Forms_Pages/Geriatric%20Parole%20Applications%20final.pdf.

NOTES

* *Id.* means see prior note.

¹ Nev. Rev. Stat. § 209.3925; Nevada Department of Public Safety’s Division of Parole and Probation (Parole Division), Residential Confinement (undated); Nevada Department of Corrections Administrative Regulation (DOC Regulation) 523.04 (2012). Nev. Rev. Stat. § 209.3925 was modified, effective July 1, 2020; but as of December 1, 2021, there has not been a corresponding revision to Administrative Regulation 523.04. Note that Residential Confinement is also referred to in Department and Parole Division materials as “compassionate release” and the “298 Program.” Note that although the Department uses the term “compassionate release,” the statute says Residential Confinement is a **continuation** of imprisonment and not a release. Nev. Rev. Stat. § 209.3925.6 (a).

² Nev. Rev. Stat. § 213.12155. This law went into effect on July 1, 2020.

³ Nev. Rev. Stat. § 209.3925.1 (a) (1); DOC Regulation 523.04, § 2 (A).

⁴ Nev. Rev. Stat. § 209.3925.1 (a) (2); DOC Regulation 523.04, § 2 (B).

⁵ Nev. Rev. Stat. § 209.3925.7; DOC Regulation 523.04, §§ 2 (C) and (D).

⁶ Nev. Rev. Stat. § 209.3925.2 (a) (1) through (a) (5); see also DOC Regulation 523.04, § 2.

⁷ Nev. Rev. Stat. § 209.3925.2 (b).

⁸ Nev. Rev. Stat. § 209.3925.1 (b).

⁹ DOC Regulation 523.04, § 3.

¹⁰ Nev. Rev. Stat. § 209.3925.3; DOC Regulation 523.04, §§ 4 (C) and 4 (D). Note the regulation says the Parole Division will also be given a copy of the release plan; however, no other details on release planning are provided in the Residential Confinement statute or regulations.

¹¹ Nev. Rev. Stat. § 209.3925.4; DOC Regulation 523.04, § 4 (B). Note that incarcerated individuals must authorize the release of medical information to their victims if the Director approves Residential Confinement. *Id.* at § 4 (A). Although not clearly stated in the regulation, it is assumed that this is only applicable when a victim has requested notification pursuant to Nev. Rev. Stat. § 213.131.4.

¹² DOC Regulation 523.04, § 6.

¹³ *Id.* at § 5.

¹⁴ DOC Regulation 523.05, § 6.

¹⁵ Nev. Rev. Stat. § 209.3925.6 (a).

¹⁶ Nev. Rev. Stat. § 213.380; DOC Regulation 523.05, § 4. Although electronic monitoring is required for most individuals released on Residential Confinement, the Parole Division may choose not to require it for those who are eligible due to a serious or terminal medical condition. DOC Regulation 523.05, § 4. See also Parole Division, Residential Confinement.

¹⁷ Nev. Rev. Stat. § 213.380.2 (b) (2).

¹⁸ Nev. Rev. Stat. § 209.3925.1.

¹⁹ Nev. Rev. Stat. § 209.3925.5 (a); DOC Regulation 523.05. Individuals violate Residential Confinement terms or escape may also forfeit previously earned credits for good behavior. *Id.* at § 209.3925.5 (b).

²⁰ Correspondence from W.C. Quenga, Nevada Department of Corrections, to FMM (May 25, 2021) (on file with FMM, Office of the General Counsel).

²¹ Michael Lyle, “Sitting Back Waiting to Die,” *Nevada Current* (Jan. 22, 2021), <https://www.nevadacurrent.com/2021/01/22/sitting-back-waiting-to-die/>.

²² Nev. Rev. Stat. § 213.12155 (1) (e).

²³ *Id.*

²⁴ *Id.* at (1) (a) through (1) (d).

²⁵ *Id.* at (2) (a) through (2) (e). The *Application for Consideration of Geriatric Parole* is available at http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Forms_Pages/Geriatric%20Parole%20Applications%20final.pdf.

²⁶ *Id.* at (2).

²⁷ *Id.* at (3).

²⁸ *Id.* at (4) (a), referencing Nev. Rev. Stat. § 213.131 (1) (c).

²⁹ *Id.* at (4) (b).

³⁰ *Id.* at (1).

³¹ *Id.* at (5), referencing Nev. Rev. Stat. § 213.1085.

³² Nev. Rev. Stat. § 213.12155 (6); Nev. Rev. Stat. § 213.131. See also Nevada Board of Parole Commissioners, About Parole Hearings (undated), http://parole.nv.gov/Hearings/About_Parole_Hearings/, and Operation of the Board (2011), <http://parole.nv.gov/uploadedFiles/parolenvgov/content/Hearings/OperationOfTheBoard.PDF>. Note, however, that neither of these publications has been updated since the Geriatric Parole law went into effect.

³³ Nev. Rev. Stat. § 213.12155 (7).

³⁴ Nev. Rev. Stat. § 213.12155 (8); see also Nev. Rev. Stat. § 213.131 (11).

³⁵ Nev. Rev. Stat. § 213.12155 (11).

³⁶ *Id.* at (9).

³⁷ *Id.* at (10).

³⁸ As of December 1, 2021, the Board’s quarterly reports do not show any individuals released on Geriatric Parole. See Nevada Board of Parole Commissioners, Parole Board Reports, <http://parole.nv.gov/Information/Reports/>.

³⁹ Email from Darla Foley, Nevada Board of Parole Commissioners, to FMM (April 27, 2021) (on file with FMM, Office of the General Counsel).