

New York provides compassionate release to eligible prisoners with debilitating medical conditions¹ and terminal illnesses² through its **Medical Parole** program.

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition - To be eligible for Medical Parole, a prisoner must have one of the following conditions:

- A *terminal illness*, defined as a terminal condition, disease, or syndrome that results in the prisoner being so debilitated or incapacitated as to create a reasonable probability that he or she is physically or cognitively incapable of presenting any danger to society.³
- A *significant debilitating illness*, defined as a significant and permanent non-terminal condition, disease, or syndrome that has resulted in the prisoner being so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society.⁴

Exclusions - Prisoners are not eligible for Medical Parole if they are serving sentences for (1) murder in the first degree or (2) an attempt or conspiracy to commit murder in the first degree.⁵

- Prisoners serving sentences for the following crimes must serve a portion of their sentences before they will be eligible for Medical Parole: (1) murder in the second degree; (2) manslaughter in the first degree; (3) any offense defined in Article 130 of New York's Penal Law (i.e., sex offenses); or (4) an attempt to commit any of these offenses. Prisoners serving indeterminate sentences must serve at least one-half of the minimum periods of their sentences, and those serving determinate sentences for these crimes must serve at least one-half of their sentences.⁶

II. APPLICATION/REFERRAL

At any time during a prisoner's sentence, any of the following individuals may submit a request for Medical Parole consideration to the Commissioner of the New York State Department of Corrections and Community Supervision (Department) or the Department's Division of Health Services: (1) the prisoner; (2) the prisoner's spouse, relative, attorney, or someone else acting on behalf of the prisoner; or (3) a Department employee.⁷

- The Commissioner, on his or her own initiative, may also direct that an investigation be undertaken to determine whether a diagnosis should be made of a prisoner who appears to have a terminal illness, or a significant, permanent, and incapacitating non-terminal condition, disease, or syndrome.⁸

The Health Services Division must keep a record of each request for Medical Parole and notify the Department's Office of Classification and Movement, which determines a prisoner's eligibility based on his or crime and sentence. If the prisoner is not disqualified because of the crime or sentence, the Commissioner may order a medical evaluation and discharge plan.⁹

III. DOCUMENTATION/ASSESSMENT

Medical Evaluation and Report - A Department physician¹⁰ must complete a medical evaluation of the prisoner, providing the following information:¹¹

- A description of the prisoner's condition, disease, or syndrome;
- A prognosis concerning the likelihood that the prisoner will not recover from the condition, disease, or syndrome;
- A description of the prisoner's physical or cognitive capacity, including a prediction of the likely duration of the incapacity;
- A statement as to whether the prisoner is so debilitated or incapacitated as to be severely restricted in his or her ability to self-ambulate or to perform significant normal activities of daily living;
- A list of current medications and their dosages, and information on the prisoner's ability self-administer such medications;
- Recommendations on the type and level of services and treatment the prisoner will require if granted Medical Parole; and
- Recommendations for the types of settings in which the needed services and treatment can be given.¹²

Note that the prisoner's condition, disease, or syndrome must have been diagnosed after his or her imprisonment.¹³ The physician is directed to "promptly" forward the medical evaluation to the Deputy Commissioner/Chief Medical Officer or his or her designee.¹⁴

- The Health Services Medical Parole Coordinator must notify the Office of Victim Assistance of all cases sent to the Deputy Commissioner/Chief Medical Officer and the Commissioner for review and approval. Victim Assistance will contact the Medical Parole Coordinator if there is a registered victim associated with the case and that information will be sent with the medical information to the Deputy Commissioner/Chief Medical Officer.¹⁵

Review by the Deputy Commissioner/Chief Medical Officer - The Deputy Commissioner/Chief Medical Officer has seven working days after receiving the medical report to advise the Commissioner as to whether the prisoner's medical status fits the criteria for Medical Parole.¹⁶

Certification and Referral - The Commissioner reviews the information and decides whether to certify that the prisoner is (1) suffering from a terminal or significant debilitating condition, disease, or syndrome, and (2) so incapacitated “as to create a reasonable probability that he or she is physically or cognitively incapable of presenting any danger to society.”¹⁷

- If the Commissioner certifies the prisoner as being eligible for Medical Parole, the case is referred to the New York Board of Parole (Board) for consideration.¹⁸
- If the Commissioner does *not* certify the prisoner, then the case is not referred to the Board of Parole for consideration.¹⁹ Note that the Commissioner’s “certification” as to a prisoner’s diagnosis and condition is not reviewable “if done in accordance with law.”²⁰

For those prisoners the Commissioner certifies as eligible for Medical Parole, the Board request must include (1) the Chief Medical Officer’s *Medical Parole Request Summary* and approval; (2) a *Comprehensive Medical Summary*; (3) the *New York Patient Review Instrument* (PRI); (4) the *NYS Screen*; and (5) information on registered victims from the Office of Victim Assistance.²¹

Medical Discharge Plan - Note that although the Commissioner is directed to include a Medical Discharge Plan in the referral to the Board,²² Department rules state that preparation of this plan does not actually begin until an eligible prisoner is referred to the Board.²³

- Facility Health Services, Central Office Health Services, and Community Supervision staff begin working on the discharge plan as soon as the prisoner is referred. They are authorized to request assistance from the Department of Health and the county where the prisoner previously resided, and are directed to forward the plan “as soon as possible” to Community Supervision for review and final approval.²⁴
- Staff working on the Medical Discharge Plan are generally responsible for selecting specific care providers, although the Chief Medical Officer can also provide guidance on a case-by-case basis.²⁵ The plan takes into account the prisoner’s preferences for a placement “to the extent possible” and includes the following information:²⁶
 - A level of care determination;
 - Any special equipment or transportation needs and who will provide them;
 - The prisoner’s participation in the discharge plan and selection of care;²⁷
 - For home-care plans, an assessment by Community Supervision staff regarding the adequacy of the physical environment for the prisoner’s condition and health care needs, and an evaluation of the prisoner’s personal support system;

- “Ancillary supports” needed by the prisoner and his or her caregiver and arrangements for meeting those needs;
 - The status of applications for Medicaid, public assistance, private insurance, and Supplemental Security Income (SSI); and
 - A report on the status of applications, if any, for institutional placement.
- Note that the Medical Discharge Plan must include confirmation of the availability of the prisoner’s placement (e.g., hospital, hospice, or other appropriate care setting) and identification of the individual providing the confirmation.²⁸

IV. DECISION-MAKING PROCESS

Decision Maker - The New York Board of Parole (Board) is generally the decision maker on Medical Parole requests. However, for certain prisoners with terminal conditions, the Commissioner may grant Medical Parole without the cases being sent to the Board.²⁹

Commissioner Decisions

The Commissioner may grant Medical Parole in the case of an eligible prisoner with a terminal condition, disease, or syndrome *if* the prisoner is not serving a sentence for (or previously been convicted of) the following crimes:³⁰ a “class A-I felony, a violent felony,³¹ manslaughter in the second degree, vehicular manslaughter in the first or second degree, criminally negligent homicide, and other sex offenses.”³² The Commission applies and follows the same procedures required of the Board, discussed below.³³

Board of Parole Decisions

Release Criteria - The Board grants Medical Parole *only* after it considers whether, in light of the prisoner’s medical condition, (1) there is a reasonable probability that he or she, if released, will live and remain at liberty without violating the law; (2) the release is not incompatible with the welfare of society; and (3) the prisoner’s release will not “deprecate” the seriousness of the crime in a way that undermines respect for the law.³⁴

- In making this determination for prisoners with significant debilitating illnesses - *but not for prisoners who are terminally ill* - the Board considers the following list of factors:³⁵
 - The nature and seriousness of the prisoner’s crime;
 - The prisoner’s prior criminal record;
 - The prisoner’s disciplinary, behavioral, and rehabilitative record;
 - The amount of time the prisoner must serve before becoming eligible for release;

- The current age of the prisoner and his or her age at the time of the crime;
- The recommendations of the sentencing court, the district attorney, and the victim or victim’s representative;
- The nature of the medical condition and required medical treatment or care; and
- Any other relevant factor.

Process - A Board panel consisting of at least two members is required to review the case records and conduct an interview with the prisoner.³⁶ The Board can postpone a Medical Parole decision pending completion of an adequate discharge plan or actually deny Medical Parole based on an inadequate discharge plan.³⁷

Notice - The Board rules regarding notification vary slightly depending on the prisoner’s medical condition:

- For prisoners who are terminally ill, the Board must notify the following individuals/entities that the prisoner is being considered for Medical Parole, giving them 15 days to comment on the proposed release: the sentencing court, the district attorney, and the attorney for the prisoner.³⁸
- For prisoners with significant debilitating illnesses, the Board must also notify the sentencing court, the district attorney, the attorney for the prisoner, *and*, where necessary, the crime victim that the prisoner is being considered for release under the Medical Parole law. Those notified have 30 days to comment on release of the prisoner, which cannot be granted until the expiration of the comment period.³⁹

Conditions -

- *Environment* - Terminally ill prisoners granted Medical Parole must agree to reside in a hospital, a hospice, “or any other placement that can provide appropriate medical care as specified in the medical discharge plan...”⁴⁰ Prisoners with a significant debilitating condition must agree to reside in a hospital, hospice, or any other placement - including a “residence with family or others” - that can provide appropriate care.⁴¹
- *Medical Follow-Up* - As a condition of release on Medical Parole, prisoners must agree to remain under the care of a physician.⁴² The Board requires that those released on Medical Parole undergo periodic medical examinations, including an examination at least one month prior to the expiration of Medical Parole.⁴³

V. POST-DECISION

Release Arrangements - Once the Board notifies the Department that a prisoner has been granted Medical Parole, Facility Health Services, Central Office Health Services, and the Offender Rehabilitation Coordinator make release and transportation arrangements.

In addition, Facility Health Services copies all appropriate medical records and sends them to the physician or facility that will be caring for the prisoner.⁴⁴

Effect of Medical Parole Request on Non-Medical Parole Eligibility - A denial (or expiration) of Medical Parole does not prevent a prisoner from re-applying for Medical Parole or in any way affect his or her eligibility for other forms of release.⁴⁵ A former prisoner released on Medical Parole who becomes eligible for “regular” parole is eligible for parole consideration.⁴⁶

Denials and Appeal Rights -

- *Commissioner Decision* - As noted above, the Commissioner’s “certification” as to the prisoner’s diagnosis and condition is “deemed a judicial function” and is not reviewable “if done in accordance with law.”⁴⁷
- *Board Decision* - Any decision made by the Board regarding Medical Parole can be appealed.⁴⁸

Supervision - Where appropriate, the Board can require that a medical parolee be supervised under the “intensive caseloads at reduced supervision” guidance.⁴⁹

Termination/Revocation - It is important to note that Medical Parole is granted for a period of six months only.⁵⁰

- Prior to the expiration of the six months, the parolee’s treating physician prepares an updated report stating whether or not he or she continues to suffer from either a terminal condition or a significant and permanent non-terminal and debilitating condition, and is so incapacitated as to be severely restricted in the ability to self-ambulate or perform “significant normal activities of daily living.”⁵¹ Based on the report, the Board can make a new grant of Medical Parole.⁵²
- If the parolee fails to submit an updated medical report, or the updated report shows that he or she is no longer so debilitated or incapacitated “as to create a reasonable probability that he or she is physically or cognitively incapable of presenting any danger to society,” the Board is directed to “promptly” hold a hearing.⁵³
- The Board conducts hearings to determine a parolee’s current level of debilitation or incapacitation.⁵⁴ Hearings must be concluded within the six-month period of Medical Parole.⁵⁵ Note that a parolee has the right to representation at the hearing, including the right to have assigned counsel if he or she cannot afford a representative.⁵⁶
- If the Board finds the parolee still meets the medical criteria, the Board may make a new grant of Medical Parole.⁵⁷ If the Board does not renew the Medical Parole, it orders the parolee returned immediately to Department custody.⁵⁸

Medical Parole can also be revoked at any time for general parole or conditional release violations, such as committing another crime.⁵⁹

VI. REPORTING/STATISTICS

The Board is required to report annually on the following information:

- The number of prisoners who have applied for, and been granted, Medical Parole;
- The nature of the illnesses of the applicants;
- The counties to which they have been released;
- The nature of the placements;
- The categories of reasons for denials;
- The number of prisoners who were granted an additional period of Medical Parole and the number of such grants; and
- The number of parolees returned to imprisonment and the reasons for their return.⁶⁰

The Board is directed to submit the reports to the Governor, the Senate's Temporary President, Speaker of the Assembly, Chairs of the Assembly and Senate Codes Committees, Chair of the Senate Crime and Corrections Committee, and Chair of the Assembly Corrections Committee.

The reports for 2013 and 2014 are publicly available on the Department's website. The reports are cumulative, with the 2014 report covering Medical Parole data for 1992-2014:⁶¹

- Total certified applications for Medical Parole - 525;
- Most recent data - 30 certified applications in 2014; 17 in 2013; 18 in 2012; 10 in 2011; and 10 in 2010;
- Gender - Of those prisoners certified for Medical Parole, 86 percent were male and 14 percent were female;
- Conditions - For those prisoners certified, their diagnoses were HIV/AIDS (53 percent), cancer (30 percent), and other (18 percent).
- Of the 525 prisoners certified for Medical Parole:
 - The report says that 112 “dropped out” of the process prior to a Board interview. However, 108 of those prisoners died. Only one prisoner withdrew his application, and three prisoners were discharged by court order or reached their parole eligibility date prior to the interview.

- 371 prisoners were granted Medical Parole.
 - 35 prisoners were denied due to risk assessment and/or criminal history.
 - The remaining seven prisoners' cases were postponed, and they died prior to their next Board appearance.
- Of the 371 prisoners granted Medical Parole, 29 were not released, having either died before being released or converted to regular parole. Thus, a total of 342 were actually released on Medical Parole.

As of December 2014, only six prisoners released on Medical Parole had been returned to prison since 1992.

NOTES

¹ N.Y. Exec. Law §259-s.

² N.Y. Exec. Law § 259-r.

³ N.Y. Exec. Law § 259-r (1) (a); New York Department of Corrections and Community Supervision Directive (Directive) 4304, § II.

⁴ N.Y. Exec. Law § 259-s (1) (a); Directive 4304, § II.

⁵ N.Y. Exec. Law §§ 259-r (1) (a) and 259-s (1) (a); Directive 4304, § II.

⁶ N.Y. Exec. Law §§ 259-r (1) (a) and 259-s (1) (a), referencing N.Y. Penal Law § 130; Directive 4304, § II.

⁶ N.Y. Exec. Law §§ 259-r (2) (a) and 259-s (2) (a); Directive 4304, § III.A.

⁷ N.Y. Exec. Law §§ 259-r (2) (a) and 259-s (2) (a).

⁹ Directive 4304, § III.A.

¹⁰ A “Department” physician” is one who (1) is employed by the Department, (2) provides professional services at the request of the Department, or (3) is employed by a hospital or facility used by the Department. N.Y. Exec. Law §§ 259-r (2) (a) and 259-s (2) (a).

¹¹ N.Y. Exec. Law §§ 259-r (2) (a) and 259-s (2) (a); Directive 4304, § III.B.

¹² N.Y. Exec. Law §§ 259-r (2) (a) and 259-s (2) (a); Directive 4304, §§ III.B.1-6.

¹³ N.Y. Exec. Law §§ 259-r (2) (b) and 259-s (2) (b).

¹⁴ Directive 4304, § III.C.

¹⁵ Id. at § III.D.

¹⁶ Id. at § III.C.

¹⁷ N.Y. Exec. Law §§ 259-r (2) (b) and 259-s (2) (b).

¹⁸ Directive 4304, § III.E.

¹⁹ N.Y. Exec. Law §§ 259-r-2(b) and 259-s-2 (b).

²⁰ N.Y. Exec. Law §§ 259-r (3) and 259-s (3).

²¹ Directive 4304, § III.E.

²² N.Y. Exec. Law §§ 259-r (2) (c) and 259-s (2) (c).

²³ Directive 4304, § III.F.

²⁴ N.Y. Exec. Law §§ 259-r (2) (c) and 259-s (2) (c); Directive 4304, § III.F.

²⁵ Directive 4304, § III.F.

²⁶ Id.

²⁷ If the prisoner is not competent to provide input, a description of the “surrogate decision-maker’s” involvement should be provided. Directive 4304, § III.F. If the prisoner is cognitively incapable of signing the discharge plan, and there is no one who can be appointed as the prisoner’s guardian, the facility’s Health Services director may act as the prisoner’s guardian for the purpose of medical discharge. Id. at § III.F.3.

²⁸ N.Y. Exec. Law §§ 259-r (4) (b) and 259-s (4) (b).

²⁹ N.Y. Exec. Law § 259-r (10).

³⁰ Id., referencing N.Y. Corr. Law § 806.1 (i).

³¹ See N.Y. Pen. Law § 70.02.

³² See N.Y. Pen. Law §§ 130 and 263.

³³ N.Y. Exec. Law § 259-r (10). See also N.Y. Exec. Law § 259-r (11) for the Commissioner and Board responsibilities and timeframes in this situation.

³⁴ N.Y. Exec. Law §§ 259-r (1) (b) and 259-s (1) (b).

³⁵ N.Y. Exec. Law §§ 259-s (1) (b) (i) - (viii).

³⁶ This is the process for all discretionary release considerations. New York State Corrections and Community Supervision, Medical Parole (2014), http://www.doccs.ny.gov/Research/Reports/2015/Medical_Parole_Report_2014.pdf.

³⁷ N.Y. Exec. Law §§ 259-s (2) (c) and 259-r (2) (c).

³⁸ N.Y. Exec. Law §§ 259-s (1) (c) and 259-r (1) (c).

³⁹ N.Y. Exec. Law § 259-s (1) (c), referencing N.Y. Exec. Law § 259-i (2).

⁴⁰ N.Y. Exec. Law § 259-r (4) (b).

⁴¹ N.Y. Exec. Law § 259-s (4) (b).

⁴² N.Y. Exec. Law §§ 259-r (4) (b) and 259-s (4) (b).

⁴³ N.Y. Exec. Law §§ 259-r (4) (d) and 259-s (4) (d).

⁴⁴ Directive 4304, § II.G.

⁴⁵ N.Y. Exec. Law §§ 259-r (5) and 259-s (5).

⁴⁶ N.Y. Exec. Law §§ 259-r (4) (i) and 259-s (4) (i), citing N.Y. Exec. Law 259-i (2).

⁴⁷ N.Y. Exec. Law §§ 259-r (3) and 259-s (3).

⁴⁸ N.Y. Exec. Law §§ 259-r (8) and 259-s (8), referencing N.Y. Exec. Law § 259-i (4).

⁴⁹ N.Y. Exec. Law §§ 259-r (4) (c) and 259-s (4) (c).

⁵⁰ N.Y. Exec. Law §§ 259-r (4) (a) and 259-s (4) (a).

⁵¹ N.Y. Exec. Law §§ 259-r (4) (d) and (e), and 259-s (4) (d) and (e).

⁵² N.Y. Exec. Law §§ 259-r (4) (e) and 259-s (4) (e). Note that the notice requirements do not apply to this subsequent decision and a new medical discharge plan is not needed. *Id.*

⁵³ N.Y. Exec. Law §§ 259-r (4) (f) and 259-s (4) (f).

⁵⁴ Hearings are conducted by one of the Board members or by a hearing officer designated by the Board. N.Y. Exec. Law §§ 259-r (4) (f) and 259-s (4) (f).

⁵⁵ N.Y. Exec. Law §§ 259-r (4) (g) and 259-r (4) (g).

⁵⁶ N.Y. Exec. Law §§ 259-r (4) (f) and 259-s (4) (f).

⁵⁷ N.Y. Exec. Law §§ 259-r (4) (f) and 259-s (4) (f).

⁵⁸ N.Y. Exec. Law §§ 259-r (4) (g) and 259-s (4) (g).

⁵⁹ N.Y. Exec. Law §§ 259-r (4) (h) and 259-s (4) (h), citing revocation guidance in N.Y. Exec. Law § 259-i (3) (a).

⁶⁰ N.Y. Exec. Law §§ 259-r (9) and 259-s (9).

⁶¹ New York State Corrections and Community Supervision, Medical Parole 2014, http://www.doccs.ny.gov/Research/Reports/2015/Medical_Parole_Report_2014.pdf.