

North Carolina provides compassionate release to eligible prisoners who are permanently and totally disabled, terminally ill, or elderly through **Medical Release**.¹ It also releases prisoners to obtain medical services not available in prison through **Extensions of the Limits of Confinement**.²

MEDICAL RELEASE

I. ELIGIBILITY

Medical Condition/Age - To meet the medical or age criteria for Medical Release, a prisoner must be -

- *Permanently and totally disabled*, defined as being irreversibly physically incapacitated, as determined by a licensed physician, by a physical or medical condition that was unknown at the time of sentencing (or that has progressed since sentencing) that renders the prisoner permanently disabled and so debilitated that it is “highly unlikely” he or she poses a public safety risk;³ or
- *Terminally ill*, defined as having an incurable condition, as determined by a licensed physician, caused by an illness or disease that was unknown at the time of sentencing (or that has progressed since sentencing) that is likely to produce death within six months, and that is so debilitating the prisoner does not pose a public safety risk;⁴ or
- *Geriatric*, defined as age 65 or older and suffering from a chronic infirmity, illness, or disease related to aging that has progressed such that the prisoner is incapacitated to the extent he or she no longer poses a public safety risk.⁵

Exclusions - Individuals convicted of any of the following crimes⁶ are not eligible for Medical Release:

- Capital felonies, which are punishable by death;
- Class A, B1, or B2 felonies, including first-degree murder, the injuring of another by the unlawful use of weapons of mass destruction, second-degree murder, first-degree rape, and first-degree sexual offense; offenses related to the manufacture, possession, or acquisition of weapons of mass destruction; and
- Offenses that require registration under North Carolina law, including categories of statutory rape, incest, and other sexual offenses.⁷

II. APPLICATION/REFERRAL

The Department of Public Safety (Department) and its Division of Adult Correction and

Juvenile Justice (Division) can make Medical Release referrals on their own initiative or as the result of a request/petition.⁸

Requests - A written request or petition for Medical Release can be submitted to the Division Director by a prisoner, the prisoner's attorney, or the prisoner's family member.⁹

Referrals -

- State prisons that house acute and long-term care prisoners must submit, *on a quarterly basis*, a list of prisoners matching the medical and age eligibility criteria to the Chief of Health Services/Health Services Release Coordinator.¹⁰ Referrals may be made more often, if needed, for prisoners who are terminally ill.¹¹
- Department and Division medical staff can refer prisoners by completing a *Medical Information Form* and submitting it to the Chief of Health Services.¹²

III. DOCUMENTATION AND ASSESSMENT

Within 45 days after receiving a request, petition, or recommendation for Medical Release, Division personnel must complete the following assessments and release plan:¹³

- *Conviction Review* - The Health Services Release Coordinator refers identified cases to Auxiliary Services, which determines the prisoner's eligibility for Medical Release based on his or her criminal convictions and sends the list of eligible prisoners to the Chief of Health Services.¹⁴
- *Medical Assessment* - The prisoner's attending physician completes a medical summary using the *Medical Information Form*,¹⁵ including a description of the prisoner's terminal conditions, physical incapacities, and chronic conditions, and a prognosis concerning the likelihood of recovery from these conditions.¹⁶ The physician sends the medical summary to the Chief of Health Services and, if the prisoner meets the medical criteria, it is forwarded to Auxiliary Services and the Health Services Social Worker.¹⁷
- *Psychosocial Review* - The Assistant Director of Auxiliary Services completes a "psychosocial review," which is primarily an assessment of the prisoner's risk for violence and recidivism.¹⁸ Auxiliary Services submits the medical information and the risk assessment to "a three (3) member committee for review," which evaluates whether the prisoner is a public safety risk.¹⁹
- *Release Plan* - A Health Services Social Worker meets with the prisoner and develops a "comprehensive, viable and appropriate" Medical Release care plan.²⁰ At a minimum, the release plan must include the following information:
 - The proposed course of treatment;
 - The proposed site for treatment and follow-up;

- Documentation that medical providers qualified to provide the medical services identified in the Medical Release plan are prepared to provide services; and
 - The financial resources in place to cover medical costs for the duration of Medical Release, which includes “eligibility for enrollment in commercial insurance plan, Medicare, Medicaid, or access to other adequate financial resources.”²¹
- *Facility/Residence Investigation* - A “facility/residence investigation” report must also be sent to the Parole Commission.²² The investigation is assigned to a probation/parole officer, who has three days to complete it. Prior to approving the plan, the officers are directed to consider the level of care needed and ensure that the proposed residence and caretakers are appropriate.²³ It is unclear if this investigation is coordinated with the Social Worker’s Medical Release planning efforts.

After reviewing all the relevant information, the Chief of Health Services and the Assistant Director of Auxiliary Services or their designees (1) make a final recommendation to the North Carolina Post-Release Supervision and Parole Commission (Commission) regarding suitability for Medical Release and (2) forward all the relevant documentation.²⁴

IV. DECISION-MAKING PROCESS

Decision Maker - The North Carolina Post-Release Supervision and Parole Commission has sole authority to grant Medical Release to prisoners who are terminally ill, permanently and totally disabled, and “geriatric.”²⁵

- The Commission has 15 days to make a Medical Release decision regarding a terminally ill prisoner²⁶ and 20 days to make a decision related to a permanently and totally disabled or geriatric prisoner.²⁷

During this time period, the Commission (1) makes an independent assessment of the risk for violence and recidivism that the prisoner poses to society and (2) provides the victim(s) or their family members with “an opportunity to be heard.”²⁸ There is no additional information provided on the details of the Commission’s process for making decisions.

Conditions - If Medical Release is approved, the Commission sets “reasonable conditions” that apply until the prisoner’s original sentence would have expired, including the following:²⁹

- The prisoner’s care will be consistent with the care specified in the Commission-approved Medical Release plan;

- The prisoner will comply with the prescribed Medical Release plan and with requirements of the medical providers with whom he or she is continuing treatment; and
- The Commission will receive periodic assessments from the prisoner’s treating physician.

Note that Department policy, in its discussion of supervision after Medical Release, states that Medical Release conditions “restrict offenders from leaving their residence and/or medical facility except for medical appointments.”³⁰

V. POST-DECISION

Denials and Appeal Rights - If the Department/Division determines that a prisoner does not meet the eligibility criteria, or the Commission denies Medical Release, a prisoner may not reapply unless there is a “demonstrated change” in his or her medical condition.³¹

Effect of Medical Release on Nonmedical Release or Parole Eligibility -

- A denial of Medical Release does not affect a prisoner’s eligibility for any other form of parole or release under North Carolina law.³²
- Note that a previous revocation of Medical Release may be used as a factor in determining eligibility for other forms of parole or release³³ but does not prevent eligibility for Medical Release in the future or any other form of parole or release.³⁴

Release - Department policy details the “release/pick up” of prisoners approved for Medical Release.³⁵ Prisoners who are permanently and totally disabled or terminally ill can be “a direct release” to a family member or transported by ambulance.³⁶

Supervision - The Department’s Community Corrections Division supervise prisoners granted Medical Release.³⁷

- Because state law specifically indicates that prisoners approved for Medical Release must be low- to no-risk to the community, supervision is “at a minimum standard.”³⁸
- Officers are directed to contact those on Medical Release at their residence or medical facility at “reasonable times,” at least every 90 days.³⁹
- Department policy also directs the officers to submit progress reports, including medical updates, to the former prisoner’s Medical Release “parole case analyst” within the first 30 days of supervision and every six months after that.⁴⁰

Revocation/Termination - The Parole Commission can order the former prisoner’s return to custody for a revocation hearing if either of the following occur:

- *Change in Medical Status* - Medical Release can be revoked if the health of a former

prisoner improves such that he or she would not be eligible for release if still in custody.⁴¹ In making a revocation decision, the Commission must consider the most recent medical assessment and risk assessment.⁴² If Medical Release is revoked, the former prisoner must return to prison to serve the balance of his or her sentence, with credit given for the duration of the Medical Release.⁴³

- *Failure to Comply With Medical Release Conditions* - The Medical Release can also be revoked if the Commission receives “credible information” that a former prisoner has failed to comply with any of the conditions.⁴⁴

Revocation of Medical Release does not prevent a prisoner from being considered for Medical Release or any other type of parole in the future.⁴⁵

VI. REPORTING/STATISTICS

By March 1 of each year, both the Department and Commission are directed to report the number of permanently and totally disabled, terminally ill, and geriatric prisoners proposed for release, considered for release, and granted release.⁴⁶ This report must be submitted to the Chairs of the House Appropriations Subcommittee on Justice and Public Safety, Senate Appropriations Committee on Justice and Public Safety, and Joint Legislative Oversight Committee on Justice and Public Safety.

- Despite the statutory requirement, the most recent report available online is from more than five years ago. It provides data for Jan. 1, 2010, through Dec. 31, 2011: 16 prisoners petitioned or were referred for Medical Release; the Commission considered all 16; 10 prisoners were granted release; 3 were denied; and 3 were categorized as “other” (two individuals died prior to release and one prisoner’s release plan did not work out).⁴⁷

EXTENSION OF THE LIMITS OF CONFINEMENT

The Secretary of the Department of Public Safety (Department) may “extend the limits of confinement” for a prisoner who is permanently and totally disabled or terminally ill so that he or she may receive palliative care.⁴⁸ Extensions of the Limits of Confinement are for a prescribed period of time, generally 90 days, but can be extended multiple times with the Secretary’s approval.⁴⁹

I. ELIGIBILITY

Medical Condition - To be eligible for an Extension of the Limits of Confinement (Extension), a prisoner must be:

- Permanently and totally disabled, defined as being permanently and irreversibly physically incapacitated as a result of an existing physical or medical condition;⁵⁰ or

- Terminally ill, defined as having a condition caused by an illness or disease that (1) causes physical incapacitation, (2) is likely to produce death within six months, and (3) is so debilitating that it is highly unlikely the prisoner poses a significant public safety risk.⁵¹

The conditions must have been unknown at the time of sentencing and not diagnosed upon the prisoner's entry to prison.⁵²

Exclusions - To be eligible, prisoners must be in minimum custody.⁵³

II. APPLICATION/REFERRAL

Requests - A request to consider a prisoner for an Extension may come from "any source." All requests are referred to the Facility Head at the prison where he or she is housed.⁵⁴

Referrals - The Department's Medical Director, also referred to as the Chief of Health Services, is directed to (1) notify the Secretary immediately when a prisoner is classified as terminally ill; and (2) provide regular reports on prisoners classified as permanently and totally disabled.⁵⁵

III. DOCUMENTATION AND ASSESSMENT

Initial Reviews - The Facility Head reviews Extension requests and, if determined appropriate, refers them to a Department physician who conducts an initial evaluation to see if the prisoner meets the medical criteria.⁵⁶ If he or she does, the physician sends the case to the Assistant Director of Health Services, who also reviews it.⁵⁷ If the Assistant Director agrees that the prisoner meets the medical criteria, the case is referred to the Director of Prisons.⁵⁸

Investigations -

- *Risk*: The Director of Prisons reviews the case and decides whether to refer it for investigation. If the decision is to continue, he or she makes a determination as to whether the prisoner poses a threat to the community.⁵⁹
- *Community Resources*: While the risk investigation is being done, Health Services investigates the possibility of the prisoner's pre-certification for hospice care and looks into available community resources, as the Department does not cover the cost of medical care after release.⁶⁰ Health Services notifies the Director of Prisons regarding its investigation and, if it has not been able to obtain pre-certification, the prisoner's case is denied.⁶¹ If the prisoner is pre-certified for hospice/palliative care, the Director of Prisons refers the case to the Office of Victim Services.⁶²

Victim Input - The Office of Victim Services makes "reasonable" efforts to contact registered victims.⁶³ Once contacted, the office explains that the prisoner is being considered for an Extension and will ask for the victim's input, which is communicated to the Director of Prisons and ultimately considered by the Secretary.⁶⁴ Note that the

confidentiality of the prisoner's medical condition must be maintained, and no specifics about his or her health will be released. In addition, the confidentiality of a victim's input is to also be maintained.⁶⁵

Recommendation - Once these steps are completed, the Director of Prisons makes a recommendation to the Department Secretary.⁶⁶

IV. DECISION-MAKING PROCESS

Decision Maker - The Department Secretary makes the final decision regarding a prisoner's Extension request, including a final determination that the prisoner no longer poses a significant public safety risk.⁶⁷

Notifications - The Secretary must notify the Director of Prisons, the Director of Community Corrections, and Victim Services of his or her decision. The Director of Prisons will then notify Health Services and the Facility Head, and Victim Services will notify those victims who were contacted for input.⁶⁸

Conditions - If the prisoner is approved for an Extension of the Limits of Confinement, he or she signs an agreement at the facility where he or she is currently housed.⁶⁹

- *90-Day Intervals*: Extensions are granted for 90 days at a time. Every 90 days the Extension is re-evaluated and the Secretary makes a decision as to whether an additional Extension should be granted or the prisoner needs to be returned to custody.⁷⁰ The evaluation will consider changes, if any, in the prisoner's medical condition and any violations to the Extension terms.⁷¹
- *Electronic Monitoring*: Prisoners granted an Extension may be electronically monitored by Community Corrections.⁷²

V. POST-DECISION

Termination/Revocation - Former prisoners who do not comply with the terms of the Extension, fail to remain within the extended limits, or tamper with electronic monitoring equipment, are returned to custody.⁷³

VI. REPORTING/STATISTICS

The Department does not publish statistics on how many prisoners it has granted an Extension of the Limits of Confinement due to a medical condition or terminal illness.

NOTES

¹ N.C. Gen. Stat. §§ 15A-1369 and 15A-1369.1-.5 (2015); North Carolina Department of Public Safety/Prisons, Policy and Procedure (Prisons Policy), Chapter C, § .2100-Medical Release of Ill and Disabled Offenders (2018); North Carolina Department of Public Safety/Community Corrections, Policy and Procedures (Community Corrections Policy), Chapter E, § .0900-Early Medical Release (2016).

² N.C. Gen. Stat. § 148-4; Prisons Policy, Chapter C, § .2200-Extension of Limits of Confinement (February 2018).

³ N.C. Gen. Stat. §§ 15A-1369 (7) and 15A-1369.2 (a) (1) and (2); Prisons Policy, Chapter C, § .2102 (b); Corrections Policy, Chapter E, §§ .0902 and .0904.

⁴ N.C. Gen. Stat. §§ 15A-1369 (8) and 1369.2 (a) (1) and (2); Prisons Policy, Chapter C, § .2102 (a); Corrections Policy, Chapter E, §§ .0902 and .0904.

⁵ N.C. Gen. Stat. §§ 15A-1369 (3) and 15A-1369.2 (a) (1) and (2); Prisons Policy, Chapter C, § .2102 (c); Corrections Policy, Chapter E, §§ .0902 and .0904.

⁶ N.C. Gen. Stat. § 15A-1369.2(b).

⁷ *Id.*; see also Prisons Policy, Chapter C, § .2103. Prisoners who are required to register under N.C. Gen. Stat. Article 27A are ineligible for Medical Release. Article 27A's Sex Offender and Public Protection Registration Program and Violent Sexual Predator Registration Program require a 30-year and lifetime registration, respectively, for persons who have committed sexual offenses or certain other offenses against minors.

⁸ N.C. Gen. Stat. § 15A-1369.3 (a).

⁹ *Id.*; see also Prisons Policy, Chapter C, § .2104 (b) (2). Note that the statute refers to the "Department of Correction" in several places; however, multiple North Carolina agencies merged in 2012 and the Department of Correction is now the Division of Adult Correction and Juvenile Justice in the North Carolina Department of Public Safety. See <https://www.ncdps.gov/Adult-Corrections>. Not all statutory references have been updated to reflect that change.

¹⁰ Prisons Policy, Chapter C, § .2104 (a).

¹¹ *Id.*

¹² *Id.* at (b) (1).

¹³ *Id.* at (l).

¹⁴ *Id.* at (c) and (d).

¹⁵ *Id.* at (e).

¹⁶ N.C. Gen. Stat. §§ 15A-1369.3 (b) (1); Prisons Policy, Chapter C, § .2104 (f).

¹⁷ Prisons Policy, Chapter C, § .2104 (g).

¹⁸ *Id.* at (h) and (k).

¹⁹ N.C. Gen. Stat. § 15A-1369.3 (b); Prisons Policy, Chapter C, § .2104 (h).

²⁰ Prisons Policy, Chapter C, §§ .2104 (i) and (j).

²¹ Corrections Policy, Chapter E, § .0903.

²² Corrections Policy, Chapter E, § .0905. This requirement is not referenced in the Medical Release statute or the Prisons Policy on Medical Release.

²³ *Id.* at (d).

²⁴ N.C. Gen. Stat. § 15A-1369.3 (c); Prisons Policy, Chapter C, § .2104 (m).

²⁵ N.C. Gen. Stat. § 15A-1369.3 (d); Corrections Policy, Chapter E, § .0901.

²⁶ N.C. Gen. Stat. § 15A-1369.3 (d).

²⁷ *Id.*

²⁸ *Id.*

²⁹ N.C. Gen. Stat. §§ 15A-1369.4 (a) (1), (a) (2), and (a) (5).

³⁰ Corrections Policy, Chapter E, § .0908. Note that this restriction is not in N.C. Gen. Stat. § 15A-1369, the Medical Release statute.

³¹ N.C. Gen. Stat. § 15A-1369.3 (f).

³² *Id.* at (e).

³³ N.C. Gen. Stat. § 15A-1369.4 (b).

³⁴ N.C. Gen. Stat. §§ 15A-1369.4 (b) and 1369.5 (b).

³⁵ Corrections Policy, Chapter E, § .0907.

³⁶ *Id.*

³⁷ N.C. Gen. Stat. § 15A-1369.4 (a) (3).

- ³⁸ Corrections Policy, Chapter E, § .0908.
- ³⁹ N.C. Gen. Stat. § 15A-1369.4 (a) (3); Corrections Policy, Chapter E, § .0908.
- ⁴⁰ Corrections Policy, Chapter E, § .0909.
- ⁴¹ N.C. Gen. Stat. § 15A-1369.5 (a); Prisons Policy, Chapter C, § .2105 (a) (2).
- ⁴² N.C. Gen. Stat. § 15A-1369.5 (a).
- ⁴³ *Id.*
- ⁴⁴ N.C. Gen. Stat. § 15A-1369.4 (b); Prisons Policy, Chapter C, § .2105 (a) (2).
- ⁴⁵ Prisons Policy, Chapter C, § .2105 (b).
- ⁴⁶ N.C. Gen. Stat. § 143B-707.2 (b).
- ⁴⁷ North Carolina Department of Correction Post Release Supervision and Parole Commission, Report on the Status of Medical Release Program (Feb. 15, 2012), <http://www.doc.state.nc.us/legislative/2012/MedicalRelease2012.pdf>. See also North Carolina Department of Correction Post Release Supervision and Parole Commission, Report on the Status of Medical Release Program (Mar. 1, 2011), http://www.doc.state.nc.us/legislative/2011/Status_of_the_Medical_Release_Program.pdf.
- ⁴⁸ N.C. Gen. Stat. § 148-4; Prisons Policy, Chapter C, § .2200.
- ⁴⁹ Prisons Policy, Chapter C, §§ .2202 (a) (9) and (b) (13).
- ⁵⁰ *Id.* at (a) (1).
- ⁵¹ *Id.*
- ⁵² *Id.* at (a) (2).
- ⁵³ *Id.* at (a) (4).
- ⁵⁴ *Id.* at (b) (1).
- ⁵⁵ *Id.* at (a) (3). Note that the Medical Director is directed to make information on terminally ill prisoners available to the Secretary within 10 working days so that his or her final determination can be made within 30 days of notification.
- ⁵⁶ *Id.* at (b) (1).
- ⁵⁷ *Id.*
- ⁵⁸ *Id.* at (b) (2) and (b) (3).
- ⁵⁹ *Id.* at (b) (4).
- ⁶⁰ *Id.* at (a) (6) and (b) (5).
- ⁶¹ *Id.* at (b) (6).
- ⁶² *Id.* at (b) (7).
- ⁶³ *Id.* at (a) (7) and (b) (8).
- ⁶⁴ *Id.* at (a) (7), (b) (8), and (b) (9).
- ⁶⁵ *Id.* at (a) (7).
- ⁶⁶ *Id.* at (b) (10).
- ⁶⁷ *Id.* at (a) (5) and (b) (10).
- ⁶⁸ *Id.* at (a) (7) and (b) (10).
- ⁶⁹ *Id.* at Prisons Policy, Chapter C, § .2202 (b) (12). If the prisoner is “mentally ill, comatose or otherwise unable to sign the agreement,” his or her guardian or power of attorney will sign. *Id.* Note that if the prisoner is approved for an Extension to a location that is not near his or her prison facility, the Department makes arrangements to have the closest prison facility to the care facility to be the responsible prison. This includes handling the Extension agreement and checking on the prisoner. *Id.* at (b) (11).
- ⁷⁰ Prisons Policy, Chapter C, §§ .2202 (a) (9) and (b) (13).
- ⁷¹ *Id.* at (a) (9).
- ⁷² *Id.* at (a) (8) and (b) (14).
- ⁷³ *Id.* The rules also state that the Secretary can return a prisoner to custody “at any time.” *Id.* at (a) (10). Note that the Office of Victim Services notifies a victim if a prisoner granted an Extension is returned to custody or dies. *Id.* at (a) (7).