

Oklahoma provides compassionate release to eligible prisoners with serious medical conditions through its **Medical Parole** program and to eligible elderly prisoners through new general parole rules allowing **Parole Based on Advanced Age**.

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition - To be eligible for Medical Parole, a prisoner must:

- Have a medical condition that renders him or her no longer a threat to public safety; or
- Be dying or near death, as certified by the Department's Medical Director.

Exclusions - Prisoners who are serving life sentences without the possibility of parole are not eligible for Medical Parole. Department of Corrections (Department) policy states that prisoners who have death sentences are also not eligible for Medical Parole, but this is not in the statute.

II. APPLICATION/REFERRAL

The Department Director can ask the Executive Director of the Pardon and Parole Board (Board) to place a prisoner on the Board docket for medical reasons ("compassionate parole consideration"), outside of the normal processing procedures.

The process generally starts with a correctional facility doctor identifying a prisoner as a Medical Parole candidate and completing a "Medical Services Medical Parole" form documenting the request. The form asks for the prisoner's diagnosis, prognosis, functional ability, treatment regimen, and care plan. In addition, there are questions about the prisoner's available resources if Medical Parole were to be granted, including a "home offer," community and family support, and income and health benefits (such as Social Security, veterans' benefits, and Indian Health Services).

III. DOCUMENTATION AND ASSESSMENT

Recommendation/Department's Chief Medical Officer - The facility's medical unit notifies the Department's Chief Medical Officer about its Medical Parole request and recommendation. He or she will review the documentation and make a recommendation:

- A recommendation that the request be denied must be supported by documentation stating the reasons for denial.
- A recommendation supporting Medical Parole will be forwarded along with the

partially completed *Medical Parole Evaluation* form to the Department's Sentence Administration and Offender Records Unit.

Eligibility Confirmation/Sentence Administration and Offender Records Unit - The Unit's administrator has five working days after receiving the Chief Medical Officer's paperwork to do the following:

- Make sure the prisoner is eligible for Medical Parole based on his or her sentence and any other relevant legal criteria;
- Run a current National Crime Information Center (NCIC) report and attach that report;
- Review the "Consolidated Record Card(s)" and attach a copy; and
- Complete the sections of the *Medical Parole Evaluation* form involving the prisoner's criminal history, disciplinary information, risk assessment, case plan needs, and any additional relevant information.

If the Unit administrator finds that the prisoner is not eligible for Medical Parole, he or she returns the *Medical Parole Evaluation* form to the Chief Medical Officer. If the prisoner is eligible for Medical Parole, the form is forwarded to the Facility Head (Warden), the Parole Process Unit, and the Chief Medical Officer.

Threat Determination/Facility Head - The Facility Head generally has three days to make the determination as to whether the prisoner would present a threat to public safety if granted Medical Parole. This decision (a "yes" or "no" as to being a threat) is noted on the *Medical Parole Evaluation* and then forwarded to the "appropriate division manager."

Review and Recommendation/Division Manager - The Division Manager has three working days to review the Facility Head's recommendation and agree or disagree with it. He or she notes the recommendation on the *Medical Parole Evaluation* form and forwards it to the Chief Medical Officer.

Home Offer Verification/Parole Process Unit - At the same time, the Parole Process Unit (PPU) forwards the information on the form about the "proposed home offer" to the appropriate probation and parole district for verification.

- If the home offer is denied, the PPU will contact the health service administrator who works with facility staff to obtain a new home offer appropriate for the prisoner's medical needs.

Once a home offer has been approved, the PPU also forwards this information to the Chief Medical Officer.

Review/Chief Medical Officer - The Chief Medical Officer has three working days to review all the documentation and forward approved requests to the Department Director.

Review/Department of Corrections Director - The Director considers all of the recommendations, and then approves or denies the request for Medical Parole.

- If he or she denies the request, it is returned to the Chief Medical Officer.
- If the request for Medical Parole is approved, the Director submits it to the Pardon and Parole Board.

IV. DECISION-MAKING PROCESS

Decision Maker - The Oklahoma Pardon and Parole Board has the authority to grant Medical Parole.

Time Frame - The Board has the authority to bring prisoners who have applied for Medical Parole before it at any time, on the first available parole review docket.

Hearing - Prisoners who meet the medical eligibility criteria are *not* subject to the usual two-stage parole hearing process. Beyond this brief statement in the statute, there is no additional information on Medical Parole hearings.

Decision - The Board is a five-member, part-time board. At least three members of the Board must agree to consider an individual for Medical Parole.

- The Board has statutory authority to grant paroles *only* for prisoners who committed nonviolent offenses. For prisoners serving sentences for certain violent offenses, only the Governor can grant paroles (including Medical Parole) after a favorable recommendation by the Board. In these cases, the Governor also has full discretion to include additional “stipulations or conditions” to any parole approval.

Conditions and Pre-Release Planning - As discussed previously, Department staff work to find an appropriate placement or “home offer,” and information is gathered on available support and resources for the prisoner. There is no additional information beyond that regarding pre-release assistance or planning, and no specific conditions referenced for prisoners released on Medical Parole.

V. POST-DECISION

Denials and Appeal Rights - The general parole rules regarding “re-docketing” prisoners after a denial are based on the nature of their offenses. The Board will reconsider parole for prisoners convicted of nonviolent offenses one year after the date of their last consideration; however, prisoners convicted of violent offenses may have to wait longer, based on how much of their sentence has been completed.

- There is no information provided as to whether or not these “re-docketing” rules apply to prisoners who are denied Medical Parole.

Revocation/Termination - If the prisoner’s medical condition changes to the point that continuation of Medical Parole presents an increased risk to the public, he or she is subject

to parole revocation and the Department follows the usual revocation procedures for parole violators.

VI. REPORTING/STATISTICS

Oklahoma law does not require the Board to report on Medical Parole and they have not published any statistics on how many requests they have considered, granted, and denied.

- A 2012 news article reported that from 2010 to 2012, 158 prisoners were considered for Medical Parole and 45 were approved.

PAROLE BASED ON ADVANCED AGE

I. ELIGIBILITY

Age/Time Served - As of Nov. 1, 2018, eligible prisoners age 60 or older who have served either 10 years of their sentence or one-third of the total term of imprisonment, whichever is shorter, may be eligible for Parole Based on Advanced Age.

Exclusions - Prisoners serving sentences for specific crimes of violence and sex offenses are not eligible for Parole Based on Advanced Age.

II. APPLICATION/REFERRAL

Prisoners who meet the age and time served eligibility criteria may request a parole hearing before the Oklahoma Pardon and Parole Board (Board).

III. DOCUMENTATION AND ASSESSMENT

As of June 1, 2018, there are no new regulations or agencies policies to implement the new law. Unless and until there are new rules, the Oklahoma's general parole rules will apply.

IV. DECISION-MAKING PROCESS

Decision Maker - The Oklahoma Pardon and Parole Board has the authority to make decisions whether or not to grant eligible prisoners Parole Based on Age.

Time Frame - Once a prisoner requests a parole hearing based on the new age/time served eligibility criteria, the Board may place him or her on the next available docket.

Decisions - The Board may grant Parole if the Board finds by a "preponderance of the evidence" that the prisoner, if released, "can live and remain at liberty without posing a substantial risk to public safety." The new law directs the Board to use an "evidence-based risk assessment instrument" to assess the public safety risk posed by aging prisoners upon release.

- The Board may provide prisoners with the opportunity to speak on their own behalf at parole hearings. Prisoners will also have the option of having counsel present at the hearings.

There is no additional information regarding parole hearings for elderly prisoners seeking Parole Based on Age, so Oklahoma’s general parole rules appear to apply for other aspects of the parole decision-making process.

V. POST-DECISION

The general parole rules appear to apply for all post-decision aspects of Parole Based on Age.

VI. REPORTING/STATISTICS

As this law does not go into effect until Nov. 1, 2018, as of the publication of this report, no prisoners have been released under the Parole Based on Age provision.

NOTE RE: “OLD-LAW” PRISONERS AGE 60 AND OLDER

Under Oklahoma’s existing general parole rules, prisoners serving sentences for crimes committed prior to July 1, 1998 (“old-law” prisoners), are eligible for parole consideration if they are age 60 or older and have served at least 50 percent of their sentence. The new law did not repeal this provision and it still appears to be in effect.

NOTES

¹ Okla. Stat. tit. 57, § 332.18 (2016); Oklahoma Department of Corrections, Auditing and Compliance Policies and Procedures, Operations Memoranda (DOC-OP) 060205: Parole Process Procedures, § I.C (2016); Oklahoma Pardon and Parole Board Policy and Procedures Manual (Board Manual), Procedure 001-1, § I.B (2009).

² Okla. Stat. tit. 57, §§ 332.7 and 332.21.

³ Okla. Stat. tit. 57, § 332.18 (B); DOC-OP 060205, § I.C.

⁴ Okla. Stat. tit. 57, § 332.18 (B); DOC-OP 060205, § I.C.

⁵ Okla. Stat. tit. 57, § 332.18 (E); DOC-OP 060205, § I.C.

⁶ DOC-OP 060205, § I.C.

⁷ Okla. Stat. tit. 57, § 332.18 (A); Board Manual, Procedure 001-1, § I.B.

⁸ DOC-OP 060205, Attachment E.

⁹ DOC-OP 060205, § I.C.1.a. This information is documented in the prisoner’s electronic health record.

¹⁰ The process leading up to the official request is laid out in the “Oklahoma Department of Corrections Medical Parole/Algorithm” in the Department’s policy manual, <http://doc.ok.gov/Websites/doc/Images/Documents/Policy/060205ab.pdf>. DOC-OP 060205, Attachment B; see also DOC-OP 060205, § I.C.1.k.

¹¹ DOC-OP 060205, § I.C.1.c. This “normally” occurs within three working days of receiving the request.

¹² Id.

¹³ Id. at Attachment E.

¹⁴ Id. at § I.C.1.c.

¹⁵ Id. at 1.d.

¹⁶ Id.

¹⁷ Id. at 1.e.

¹⁸ Id. at 1.f.

¹⁹ Id. at 1.g. Note that the district normally verifies the home offer within three working days.

²⁰ Id.

²¹ Id.

²² Id. at 1.h.

²³ Id. at 1.i.

²⁴ Id.

²⁵ Id. at 1.j.

²⁶ Okla. Stat. tit. 57, §§ 332.18 (A) and (B); Okla. Admin. Code § 515:3-11-1.

²⁷ Okla. Stat. tit. 57, § 332.18 (B).

²⁸ Id. at (C). The vote on whether to consider the individual, and the names of the concurring Board members, must be provided in the Board's written minutes. Id.

²⁹ Okla. Stat. tit. 57, § 332.16. See also Oklahoma Pardon and Parole Board, Frequently Asked Questions on Parole, <https://www.ok.gov/ppb/documents/FAQs%20Paroles.pdf>.

³⁰ Id.

³¹ Okla. Admin. Code § 515:3-7-1.

³² Id.

³³ Okla. Stat. tit. 57, § 332.18 (D), referencing Okla. Stat. tit. 57, § 516.

³⁴ Lance West, "Inmates released, too sick to serve time," KFOR, May 4, 2012, <http://kfor.com/2012/05/04/inmates-released-too-sick-to-serve-time/>.

³⁵ Okla. Stat. tit. 57, §§ 332.21 (A) (1) and (2). Note that this is a new parole eligibility category, enacted by HB 2286 and signed into law on April 26, 2018. The new law becomes effective on November 1, 2018. See bill text at http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20ENR/hB/HB2286%20ENR.PDF.

³⁶ Okla. Stat. tit. 57, §§ 332.21 (A) (4) and (A) (5), referencing Okla. Stat. tit 21, § 13.1 and tit. 57, § 571.

³⁷ Id. at (D).

³⁸ See Okla. Stat. tit 57, §§ 332.7 - 332.360. See also the Pardon and Parole Board's information pages on the Board Hearing Process, https://www.ok.gov/ppb/Paroles_and_Revocations/Board_Hearing_Process/index.html, and Parole FAQs, <https://www.ok.gov/ppb/documents/FAQs%20Paroles.pdf>.

³⁹ Okla. Stat. tit. 57, § 332.21 (B).

⁴⁰ Id. at (F).

⁴¹ Id. at (C) and (G). "Evidence-based" is defined as "programs or practices that have been scientifically tested in controlled studies and proven to be effective." Id. at (I) (2).

⁴² Id. at (H).

⁴³ See the general parole statutes and resources, *supra* note 38.

⁴⁴ Id.

⁴⁵ Okla. Stat. tit. 57, § 332.7 (A) (2).