

Oregon provides compassionate release to eligible incarcerated individuals who (1) have serious medical conditions or (2) are elderly and permanently incapacitated through **Early Medical Release**.¹

EARLY MEDICAL RELEASE

I. ELIGIBILITY

Medical Condition/Age – To be eligible for Early Medical Release, an incarcerated individual must be (1) suffering from a severe medical condition² or (2) elderly and permanently incapacitated, resulting in the individual being unable to move “from place to place” without assistance from another person.³

Exclusions – Early Medical Release is not available to individuals sentenced to life imprisonment without the possibility of release or parole.⁴ In addition, individuals with severe medical conditions are not eligible for Early Medical Release if (1) serving a mandatory minimum sentence for any of 26 specific offenses considered violent and/or sexual in nature⁵ or (2) there is a sentencing order stating the person is not entitled to any form of early release.⁶ These exclusions do not apply to individuals seeking Early Medical Release who meet the elderly and permanently incapacitated criteria.⁷

- Note that the Early Medical Release regulation, but not the statute, says that individuals sentenced to death for aggravated murder may be granted Early Medical Release only if the Governor commutes the sentence.⁸

II. APPLICATION/REFERRAL

The only information from the Oregon Department of Corrections (Department) regarding how to apply for Early Medical Release is on its website. It simply states “[i]f you believe an adult in custody meets the requirements linked above, you can initiate a medical release request by calling (503) 934-0780 or sending an email to ParoleBoardEarlyReleaseRequests@doc.state.or.us.”⁹

III. DOCUMENTATION AND ASSESSMENT

All requests for Early Medical Release should include the following documentation:¹⁰

- The individual’s age;
- A medical authority’s report describing the nature and severity of the incarcerated individual’s medical condition, including whether the person is able to move “from place to place” without the assistance of someone else;

- If the individual has a terminal illness, the medical authority’s indication of whether there is a “reasonable belief” that the person’s life expectancy is less than 12 months;
- The reasons that continued incarceration of the individual would be cruel and inhumane;
- A recommendation from the superintendent of the individual’s facility;
- The Department Director’s recommendation as to whether an early release is compatible with the best interests of the incarcerated individual and society; and
- A release plan, which must include Department-verified information describing the individual’s housing options in the community and proposed continuation of medical care.

IV. DECISION-MAKING PROCESS

Decision-Maker – The Board of Parole and Post-Prison Supervision is responsible for granting Early Medical Releases.¹¹

Decision Process – The Board reviews the Department’s recommendation and will grant Early Medical Release if it determines that continued incarceration of the individual is cruel and inhumane and that early release is compatible with the best interests of both the individual and society.¹²

- **Hearing** – If a hearing would threaten the individual’s or Board members’ health and safety, the Board will consider the Early Medical Release “administratively” and may grant it upon an affirmative majority vote.¹³ The Board’s general hearing, disclosure, and record-making rules apply to Early Medical Release hearings.¹⁴
- **Notice** – Prior to any hearing or administrative decision under the Early Medical Release rules, the Board must notify victims who have requested notification of the release of a particular individual.¹⁵

Conditions and Prerelease Planning – The Board is responsible for establishing the individual’s release plan criteria and must ensure appropriate supervision and services.¹⁶

V. POST-DECISION

Neither Oregon law nor Department or Board rules provide information on (1) the appeal rights of individuals denied Early Medical Release; (2) the effect, if any, on

eligibility for other forms of release; or (3) when Early Medical Releases can be revoked or terminated.

VI. REPORTING/STATISTICS

The Board is not required to report any data on Early Medical Releases and has not published information on how many Early Medical Release requests it granted in 2019 and 2020.

The Department provided the following information in response to FAMM's request for information on the number of Early Medical Releases.¹⁷

- In 2019, of the 47 individuals for whom release was requested:
 - 20 were statutorily ineligible;
 - 10 did not meet medical criteria;
 - Seven individuals were released;
 - Six individuals passed away or before they could be released or while their cases were pending;
 - Three were handled outside the process; and
 - One was denied due to seriousness of the offense.
- In 2020, of the 11 individuals for whom release was requested:
 - Five were statutorily ineligible;
 - Four did not meet medical criteria;
 - Two were handled outside the process; and
 - No one was released to Early Parole Release.

OREGON COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

EARLY MEDICAL RELEASE

Statute

Oregon Revised Statutes, §§ 144.122 and 144.126 (2019), available through the Oregon Legislature, https://www.oregonlegislature.gov/bills_laws/ors/ors144.html.

Regulations

Oregon Administrative Rule 255-040-0028 (2021), available through the Oregon Secretary of State, <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=32804>.

Agency Policy/Publications

Oregon Department of Corrections, Early Release Options (May 28, 2020), <https://olis.oregonlegislature.gov/liz/201911/Downloads/CommitteeMeetingDocument/222066>.

Oregon Department of Corrections, Frequently Asked Questions: Early Medical Release (undated), <https://www.oregon.gov/doc/covid19/Pages/faq.aspx>.

Oregon Board of Parole and Post-Prison Supervision, Early Medical Release Eligibility (undated), <https://www.oregon.gov/boppps/Documents/Policies/Early%20Medical%20Release%20Eligibility.pdf>.

NOTES

* *Id.* means see prior note.

¹ Or. Rev. Stat. §§ 144.122 and 144.126; Or. Admin. R. 255-040-0028.

² Or. Rev. Stat. §§ 144.122 (1) (b) and 144.126 (1) (a); Or. Admin. R. 255-040-0028 (1). Note that the statute says that “severe medical condition” includes a terminal illness.

³ Or. Rev. Stat. §§ 144.122 (1) (c) and 144.126 (1) (b); Or. Admin. R. 255-040-0028 (1).

⁴ Or. Rev. Stat. §§ 144.122 (4) and 144.126 (3).

⁵ Or. Admin. R. 255-040-0028, referencing Or. Rev. Stat. § 137.700 and often referred to as “Measure 11” offenses.

⁶ *Id.* at (4).

⁷ *Id.*

⁸ *Id.* at (1) (d).

⁹ Oregon Department of Corrections, Frequently Asked Questions: Early Medical Release.

¹⁰ Or. Admin. R. 255-040-0028 (1) (a) through (1) (c); Oregon Board of Parole and Post-Prison Supervision’s “Early Medical Release Eligibility” information page, available on its website.

¹¹ Or. Rev. Stat. §§ 144.122 (1) and 144.126 (1).

¹² *Id.*

¹³ Or. Admin. R. 255-040-0028 (2).

¹⁴ Or. Admin. R. 255-040-0035, referencing Or. Admin. R. 255-030-0010 through 255-030-0055.

¹⁵ Or. Rev. Stat. §§ 144.122 (5) and 144.126 (4). See Or. Rev. Stat. § 144.750 (3) for the general notification rules.

¹⁶ Or. Rev. Stat. §§ 144.122 (2) (c) and 144.126 (2). See also the Board’s general supervision rules at <https://www.oregon.gov/boppps/Pages/Supervision.aspx>.

¹⁷ Email from Oregon Department of Corrections, Correctional Services Division to FMM (Jan. 24, 2021) (on file with FMM, Office of the General Counsel).