

Rhode Island provides compassionate release to eligible prisoners with serious medical conditions through **Medical Parole**, stating that “[m]edical parole is made available for humanitarian reasons and to alleviate exorbitant medical expenses associated with inmates whose chronic and incurable illness render their incarceration non-punitive and non-rehabilitative.”¹

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition - To be eligible for Medical Parole, a prisoner must meet one or more of the following definitions:

- *Permanently physically incapacitated*, defined as suffering from an injury, disease, illness, or “cognitive insult” (such as dementia or a persistent vegetative state) that, to a reasonable degree of medical certainty, permanently and irreversibly physically incapacitates the prisoner to the extent that (1) he or she needs help with most of the activities that are necessary for independence, such as feeding, toileting, dressing, and bathing and transferring, or (2) no significant physical activity is possible, and the prisoner is confined to bed or a wheelchair.²
- *Severely ill*, defined as suffering from a significant and permanent or chronic physical and/or mental condition that: (1) requires extensive medical and/or psychiatric treatment with little to no possibility of recovery and (2) precludes significant rehabilitation from further incarceration.³
 - Note that prisoners who are severely ill, as defined above, are only considered for Medical Parole “when their treatment causes the state to incur exorbitant expenses as a result of continued and frequent medical treatment during incarceration, as determined by the office of financial resources of the department of corrections.”⁴
- *Terminally ill*, defined as suffering from a condition caused by injury (except self-inflicted injury), disease, or illness that, to a reasonable degree of medical certainty, is a “life-limiting” diagnosis that will lead to profound functional, cognitive, and/or physical decline, and likely will result in death within 18 months.⁵

Exclusions - Individuals serving life sentences without parole are not eligible for Medical Parole.⁶

II. APPLICATION/REFERRAL

The following individuals can file a Medical Parole application with the Director of the Department of Corrections (Department):

- The prisoner, with an attending physician’s written approval;
- The prisoner’s family members or friends, with the attending physician’s approval;⁷
or
- The prisoner’s physician, on behalf of the prisoner.⁸

III. DOCUMENTATION AND ASSESSMENT

Medical Report/Health Service Unit - Within 72 hours after the application is filed, the Director must refer the application to the Department’s Health Service Unit for a medical report and a medical discharge plan, which must be completed within 10 days.⁹

- The *medical report* must contain, at a minimum, the following information:
 - Diagnosis of the prisoner’s medical conditions, including related medical history;¹⁰
 - Detailed description of the conditions and treatments;¹¹
 - Prognosis, including life expectancy, likelihood of recovery, likelihood of improvement, mobility, trajectory of the condition, and rate of debilitation;¹²
 - Degree of incapacity or disability, including an assessment of whether the prisoner is ambulatory, capable of engaging in any substantial physical activity, “ability to independently provide for the daily life activities,” and the extent of that activity;¹³ and
 - An opinion from the Medical Director as to whether the individual is terminally ill and, if so, the stage of the illness or whether the person is permanently physically incapacitated or severely ill. Note that if the Medical Director’s opinion is that the person is not terminally ill, permanently physically incapacitated, or severely ill, the petition for Medical Parole will not be forwarded to the Board. ¹⁴

Note that in the case of a severely ill prisoner, the report must also include a determination from the office of financial resources that the illness causes the state “to incur exorbitant expenses as a result of continued and frequent medical treatment during incarceration.”¹⁵

- The *medical discharge plan* must ensure, at a minimum, the following:¹⁶
 - An appropriate placement for the individual has been secured, including (but not limited to) a hospital, nursing facility, hospice, or family home;

- A referral has been made for the prisoner to secure a source for payment of his or her medical expenses; and
- A parole officer has been assigned to periodically obtain updates on the prisoner's medical condition to report back to the Board.

Submission to Board/Director - Once this documentation is complete, the Director transfers the application, medical information, and discharge plan to the Parole Board for its consideration and decision.¹⁷

IV. DECISION-MAKING PROCESS

Decision Maker - The Rhode Island Parole Board is responsible for granting Medical Parole.

Decision Process - Within seven days of receiving an application, the Parole Board must make a decision as to whether Medical Parole may be warranted.¹⁸ If the Board finds that Medical Parole is not warranted, it will deny the application without a hearing and notify the prisoner within seven days of its decision, providing a brief statement of the reasons for the denial.¹⁹ If it appears that Medical Parole may be warranted, the Board sets the case for a hearing within 30 days.²⁰

• *Hearing* -

- The Board will send notice of the hearing to the prosecutor and the victim, if any, of the offense for which the prisoner is incarcerated.²¹
- There is a presumption that the opinion of the doctor and/or Medical Director will be accepted.²² However, the prisoner, the physician, the Director, or the Parole Board can ask for an additional, independent medical evaluation within seven days after the doctor and/or Medical Director's report is presented.²³ The new evaluation must be completed, and the report filed with the Board (with a copy sent to the prisoner), within 14 days of the date of the request.²⁴
- At the hearing, the prisoner is entitled to be represented by an attorney, by the public defender (if qualified), or any other representative.²⁵
- Both the victim and the prosecutor have the right be heard at the hearing, submit written comments, or both.²⁶

Hearing Decision - Within seven days of the hearing, the Board must issue a written decision granting or denying Medical Parole and explaining the reasons for the decision.²⁷

- If the Board finds that the prisoner meets the medical eligibility criteria, it will grant Medical Parole if, in light of the prisoner's medical condition, the following are

true: (1) there is a reasonable probability that he or she will not violate the law if released; (2) the release is compatible with the welfare of society; and (3) release will not “depreciate” the seriousness of the crime in a way that undermines respect for the law.²⁸

Conditions - The Board determines the conditions of release, which can include any of the following: (1) periodic medical examinations;²⁹ (2) periodic reporting to a parole officer, at specified intervals;³⁰ and (3) any other terms or conditions the Board decides are necessary.³¹ In addition, if the prisoner has been granted Medical Parole due to being “severely ill,” electronic monitoring is required unless he or she is placed in a medical facility that cannot accommodate the monitoring.³²

V. POST-DECISION

Denials and Appeal Rights - Denial of Medical Parole release does not prevent the prisoner from reapplying again after sixty days. A reapplication must, however, demonstrate a “material change in circumstances.”³³

Revocation/Termination - If, after release, a parolee’s condition changes so that he or she does not meet the Medical Parole criteria, the Board may order him or her returned to custody to await a hearing to determine whether or not the release should be revoked.³⁴ Medical Parole can also be revoked for violation of any of the other conditions the Board has set for the parolee.³⁵

VI. REPORTING/STATISTICS

The Department is directed to prepare an annual report for the Parole Board and Rhode Island General Assembly that includes the following information: ³⁶

- The number of prisoners who have applied for Medical Parole;
- The number of prisoners who have been granted Medical Parole;
- The nature of the illnesses of the applicants and the type of placements according to the medical discharge plans;
- The categories of reasons for denial for those who have been denied; and
- The number of people released on Medical Parole who have been returned to DOC custody and the reasons for their return.

The Department’s website does not currently include any reports that provide Medical Parole numbers. However, a 2015 news article stated that between 1991 (when Rhode Island’s Medical Parole law started) and the date of the article, only 66 applications were forwarded to the Parole Board for consideration and, of those, 38 were granted:³⁷

Despite the low risk, the careful vetting and infrequent rate of release, medical discharge planner Susan Corkran says navigating income issues, paperwork and societal attitudes make frail parolees difficult to place. They may be old enough to qualify for Medicare, but to pay for full-time skilled care, most also need a supplement from Medicaid. And few have an adequate external source of income - most have spotty employment histories and small monthly Social Security allotments. In more than two years, Corkran has only placed three medical parolees.³⁸

The 2017 amendments to the Medical Parole law appear intended to address some of the concerns about the low numbers of prisoners with serious medical conditions who are released, but it did not add a geriatric parole provision, which would have addressed the serious concerns also raised in the above article about the increasing numbers of elderly prisoners in Rhode Island.³⁹

NOTES

¹ R.I. Gen. Laws § 13-8.1-2. Note that the Parole Board rules and Department policies do not include any additional rules on Medical Parole beyond those in the statute.

² R.I. Gen. Laws § 13-8.1-3 (a), as modified in House Bill 5128, signed and effective on Sept. 28, 2017, <http://webserver.rilin.state.ri.us/BillText/BillText17/HouseText17/H5128A.pdf>.

³ Id. at (c).

⁴ Id. at (a) and (c) (6).

⁵ R.I. Gen. Laws § 13-8.1-3 (b). Note that the new law changed the definition of “terminal illness” to 18 months.

⁶ R.I. Gen. Laws § 13-8.1-2.

⁷ Family and friends can apply on behalf of a prisoner as of Sept. 28, 2017, the date the amendments to the Medical Parole law went into effect.

⁸ R.I. Gen. Laws § 13-8.1-4 (b).

⁹ Id.

¹⁰ Id. at (c) (1).

¹¹ Id. at (c) (2).

¹² Id. at (c) (3).

¹³ Id. at (c) (4).

¹⁴ Id. at (c) (5).

¹⁵ Id. at (c) (6).

¹⁶ Id. at (e). Note that in 2017, the Rhode Island Division of Purchases published a solicitation entitled “Medical Discharge Planning for Offenders” describing the services the Department intended to provide. This language provides additional detail on the scope of their discharge planning: “The agency chosen for this award will provide discharge planning services for inmates designated for medical parole or whose release requires intensive coordination with medical providers and/or medical residential living settings and who require significant assistance with SSI or SSDI [Social Security Disability Insurance] applications, long term care applications, etc. The vendor chosen must offer to provide staff to the contract that have experience with placing individuals in hospice, nursing homes or assisted living facilities. They must also have successful experience with SSI, Long-term Care, Medicaid and Medicare application paperwork and the acquisition of State and Federal benefits.” See Rhode Island Division of Purchases, “Medical Discharge Planning for Offenders,” Solicitation Information, RFP # 7551483 (Mar. 20, 2017), <http://www.purchasing.ri.gov/RIVIP/StateAgencyBids/7551483.pdf>.

¹⁷ R.I. Gen. Laws § 13-8.1-4 (b).

¹⁸ Id. at (h).

¹⁹ Id.

²⁰ Id. at (i) (1).

²¹ Id. at (i) (2).

²² Id. at (g).

²³ Id.

²⁴ Id.

²⁵ Id. at (i) (3).

²⁶ Id.

²⁷ Id. at (j).

²⁸ Id. at (f).

²⁹ Id. at (j) (1).

³⁰ Id. at (j) (2).

³¹ Id. at (j) (3).

³² Id. at (j) (4). See also Department of Corrections Policy No. 28-11: Parolee Assisted Living, for additional guidance on supervision when an individual is released to a nursing home, assisted living, or other facility, <http://www.doc.ri.gov/administration/policy/policies/28.11%20DOC.pdf>.

³³ R.I. Gen. Laws § 13-8.1-4 (h).

³⁴ Id. at (k).

³⁵ Id.

³⁶ Id. at (l).

³⁷ Ellen Liberman, “Aging Behind Bars in Rhode Island,” Rhode Island Monthly, Sept. 4, 2015, <http://www.rimonthly.com/aging-behind-bars-in-rhode-island/>.

³⁸ Id.

³⁹ House Bill 5128, *supra* note 2.