

Tennessee provides compassionate release to eligible individuals with serious medical conditions or terminal illnesses through **Medical Furlough**<sup>1</sup> and **Executive Clemency**,<sup>2</sup> and to those age 70 and older through new **Geriatric Parole** provisions included in the state parole law.<sup>3</sup>

## **MEDICAL FURLOUGH**

### **I. ELIGIBILITY**

**Medical Condition** – An incarcerated individual may be eligible for Medical Furlough if, due to a “chronically debilitated or incapacitated medical condition,” the individual is (1) expected to die within one year<sup>4</sup> or (2) is no longer able to provide self-care in prison due to severe physical or psychological deterioration.<sup>5</sup>

#### **Exclusions**

- Individuals will only be granted Medical Furlough if they can be released “without substantial risk” that they will commit a crime while in the community.<sup>6</sup>
- According to existing Department of Correction (Department) policy, incarcerated individuals who are under a death sentence are not eligible for Medical Furlough.<sup>7</sup> That exclusion is not in the Medical Furlough statute.

### **II. APPLICATION/REFERRAL**

The Medical Furlough statute does not provide information on applying and simply states that it may be granted upon the medical recommendation of the Department’s Director of Medical Services.<sup>8</sup>

- The Department’s Medical Furlough policy, which as of November 15, 2021, has not been updated to reflect the April 2021 statutory changes, states that Medical Furlough requests may be submitted to a facility’s physician by (1) the incarcerated individual, (2) the individual’s legal guardian or conservator, (3) a family member acting on behalf of the individual, or (4) Tennessee Department staff.<sup>9</sup>
- The physician initiates the process by completing the appropriate sections of the Department’s *Medical Furlough Request* form and, if the individual meets the medical criteria, informing the Institutional Health Administrator and the Institutional Clinical Case Manager.<sup>10</sup>

### III. DOCUMENTATION AND ASSESSMENT

The Medical Furlough statute states that the recommendation from the Department's Director of Medical Services must be accompanied by a notarized report from the individual's attending physician and a security recommendation from the head of the institution in which the individual is held.<sup>11</sup>

The Department's Medical Furlough policy, which has not been updated since the statute was amended, provides additional documentation and assessment steps. They are provided here for informational purposes; as of September 1, 2021, it is unclear whether they will be changed or updated to reflect the statutory changes.

- The Institutional Clinical Case Manager (1) identifies available health care resources in the community; (2) identifies housing resources, including the family home, nursing home, or hospice; and (3) initiates the application process for Social Security benefits, Medicaid, Medicare, veterans' benefits, and any other resources or support systems for which the individual may be eligible.<sup>12</sup>
- The Institutional Health Administrator (1) notifies the incarcerated individual and obtains an *Authorization for Release of Health Services*; (2) completes the *Medical Furlough Request* form; (3) obtains a supporting statement from the person or organization accepting responsibility for the individual upon release (e.g., family members, nursing home, or hospice); and (4) gets a notarized report from the facility physician that includes a description of the individual's illness or condition, a history of the condition, how continued incarceration will affect the condition, the prognosis and life expectancy, release plans, and a recommendation.<sup>13</sup> The Health Administrator then submits all those documents to the Warden.<sup>14</sup>
- The Warden reviews the individual's institutional record, the completed *Medical Furlough Request*, and any accompanying documents. The Warden can attach additional remarks and then recommends approval or denial. Within two business days, the recommendation and all documents are forwarded to the Department's Chief Medical Officer for evaluation.<sup>15</sup>
- At the same time that the Warden is reviewing everything, the Department's Statewide Clinical Case Program Manager (1) ensures that the community health care resources, housing, and support systems are available; (2) provides the status of the applications for benefits (such as Social Security, Medicare, Medicaid, and veteran's benefits); and (3) documents progress of the individual's re-entry plan.<sup>16</sup>

- The Chief Medical Officer (1) conducts and documents a physical assessment of the individual; (2) reviews the *Request for Medical Furlough* and accompanying documentation; (3) recommends approval or denial of the request; (4) and forwards all the documents to the Department’s Victim Services Director.<sup>17</sup>
- The Victim Services Director must determine whether there is any opposition to the Medical Furlough from the individual’s victims. The Director notifies the victims of the Medical Furlough request and that responses are required within three days. The documented responses are then forwarded to the Department’s Chief Medical Officer.<sup>18</sup>
- The Chief Medical Officer confirms that all the documents are completed and forwards them to the Assistant Commissioner of Community Supervision.<sup>19</sup>
- The Assistant Commissioner (1) reviews the proposed residence arrangements, family support, medical and financial arrangements, and social services resources and (2) determines and documents whether there is community opposition from the district attorney, chief law enforcement officers (both in the county where the individual plans to live and the county in which the offense was committed), or the sentencing judge.<sup>20</sup> The Assistant Commissioner then recommends approval or denial of the Medical Furlough, includes a written summary of the field investigation, and returns everything to the Chief Medical Officer.<sup>21</sup>
- The Chief Medical Officer forwards all documents for final review to the Department’s General Counsel, Assistant Commissioner of Prisons, Chief of Staff, and Commissioner of Correction.<sup>22</sup>

#### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The Commissioner of the Department of Correction makes the decision to grant or deny Medical Furlough.<sup>23</sup>

**Decision** – The Commissioner will not grant a Medical Furlough unless the individual can be released into the community without “substantial risk” that the person will commit another crime while furloughed.<sup>24</sup>

The Department’s Medical Furlough rules provide additional information on the decision process, and those are presented here for informational purposes. As noted above, as of November 15, 2021, the rules have not been updated to reflect the statutory changes that became effective April 30, 2021.

- The Chief Medical Officer prepares a written notification of the Commissioner’s final decision, sending the original to the Warden of the individual’s institution and copying other appropriate Department staff.<sup>25</sup>
- The Warden instructs the Institutional Counselor to verbally advise the incarcerated individual of the conditions for the Medical Furlough, coordinates the effective furlough date with the Department’s Medical Furlough Coordinator, and carries out other required paperwork to process the decision and release.<sup>26</sup>

## Notice

- When the Department grants any type of furlough, including a Medical Furlough, it must notify the chief law enforcement officer of the county in which the individual will reside.<sup>27</sup>
- The Department must also notify the Tennessee Senate’s State and Local Government Committee and the Tennessee House of Representatives State Government Committee of the release of any person under the Medical Furlough provision. The notice must include the name of the person released, the rationale for release, and the period for which the furlough will be effective.<sup>28</sup>

**Conditions and Prerelease Planning** – The Commissioner is allowed to set any “reasonable” conditions for the Medical Furlough.<sup>29</sup>

## V. POST-DECISION

**Denials and Appeal Rights** – According to Department policy, a Medical Furlough request cannot be resubmitted unless there is a significant change in the individual’s condition.<sup>30</sup>

**Supervision** – Individuals released under the Medical Furlough law are under the supervision of the Department’s Division of Community Supervision.<sup>31</sup> Community Supervision staff are assigned to establish a reporting schedule and supervise the furloughed person. In general, a Probation/Parole Officer will visit the individual on a monthly basis, “periodically” contact the physician, and submit a written status report each month.<sup>32</sup>

**Length of Medical Furlough** – Furloughs under Tennessee law are generally for just three days. However, Medical Furloughs can be granted for an “indeterminate duration.”<sup>33</sup>

- Note that Department policy says that the Chief Medical Officer or a designee will review individuals on a semi-annual basis for consideration of a Medical Furlough continuation. The assigned Probation/Parole Officer conducts a comprehensive review to ensure the furloughed individual is in compliance with all Medical Furlough conditions.<sup>34</sup>

**Revocation/Termination** – If the Parole/Probation Officer reports that any Medical Furlough conditions are broken, the individual may be ordered returned to the institution.<sup>35</sup> In addition, if the furloughed individual’s medical condition improves so that there is no longer imminent peril of death or so that adequate self-care can be provided in a prison environment, the Commissioner may order the person be returned to prison.<sup>36</sup>

- Commissioner’s Discretion – Note that Department policy says that a Medical Furlough can be revoked at the Commissioner’s discretion at any time because furloughs “are a privilege and are to be considered as such.”<sup>37</sup>

When an individual has been returned to an institution pursuant to an Order of Revocation of Medical Furlough and Return to Prison, the Commissioner’s designee holds a due process hearing.<sup>38</sup> After conducting the hearing, the designee has three working days to submit a report and recommendation to the Commissioner, and the Commissioner then has three working days to decide whether there are substantial reasons to believe that the Medical Furlough should be revoked or modified. The decision must be in writing and is provided to the individual “in a timely manner.” The Commissioner’s decision is final.<sup>39</sup>

**Eligibility for Parole** – If an individual becomes eligible for parole while on Medical Furlough, the person and the appropriate Probation/Parole Officer are notified with details on the parole hearing. If parole is granted, the parole certificate is issued through the [releasing] institution, and the individual is transferred from Medical Furlough status to parole supervision.<sup>40</sup>

## **VI. REPORTING/STATISTICS**

The Tennessee Department of Correction is not required to publish the number of Medical Furloughs granted each year. However, in response to FAMM’s request for information, the Department reported the following:<sup>41</sup>

- In 2019, 16 individuals met the Medical Furlough eligibility criteria and were submitted for approval; however, the Department released just three of those individuals on Medical Furlough.

- In 2020, 20 individuals met the Medical Furlough eligibility criteria and were submitted for approval; however, the Department again released just three individuals on Medical Furlough.

## **EXECUTIVE CLEMENCY DUE TO ILLNESS OR DISABILITY**

### **I. ELIGIBILITY**

**Medical Condition** – An incarcerated individual with a life-threatening illness or severe chronic disability may be eligible for Executive Clemency/Commutation.<sup>42</sup>

**Other Eligibility Criteria** – The Governor will only consider requests from individuals who have made “exceptional strides” in self-development and self-improvement and who will be law-abiding citizens upon release.<sup>43</sup>

**Exclusions** – Individuals serving capital sentences are not considered for Executive Clemency/Commutation.<sup>44</sup>

### **II. APPLICATION/REFERRAL**

An individual who meets the eligibility criteria may submit an *Application for Commutation*<sup>45</sup> to the Board of Parole’s Executive Clemency Unit. The application form is available on the Board’s website.

### **III. DOCUMENTATION AND ASSESSMENT**

Neither the Board of Parole’s Executive Clemency rules nor the *Application for Commutation* include much detail on required documentation. The application says the request must be supported by “appropriate” medical documentation and indicate that the Commutation would mitigate the individual’s illness or disability.<sup>46</sup> For emergency requests, the Board’s report to the Governor must include a complete medical report and detailed statement of the emergency situation.<sup>47</sup>

### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The Tennessee Board of Parole is responsible for considering each Commutation request and making a nonbinding recommendation to the Governor, who makes the final decision.<sup>48</sup>

## Board Decision Process

- **Hearings** – After the Board receives an application, it must – in a timely manner – advise the individual and the individual’s attorney as to whether the case will be scheduled for a hearing. The individual is entitled to appear at the hearing (which is to be held promptly) and to present witnesses and other evidence.<sup>49</sup>
- **Notice** – The Board will notify the appropriate judge and district attorney that the individual’s Commutation request has been set for a hearing and ask for their views and recommendations on the request.<sup>50</sup>
- **Investigation** – Board staff and, if appropriate, a Probation/Parole Officer, may compile information on the individual before the hearing, including a parole summary, circumstances surrounding the offense and conviction, a psychological evaluation if the individual was convicted of a sexual offense or sex-related crime, and additional medical information.<sup>51</sup>
- **Emergency Medical Clemency Requests** – The Board will consider recommendations from Department medical staff regarding individuals who have serious illnesses or disabilities who are unable to apply on their own behalf. The Board rules state that such cases may require immediate action.<sup>52</sup>

**Board Decision and Recommendation** – At the individual’s Clemency hearing, the Board considers, among other things, the nature of the crime and any previous criminal record, the person’s institutional record, the views of the appropriate trial judge and the district attorney, the views of the community and the victims, and any medical evaluations.<sup>53</sup> At the end of the hearing, the Board will inform the individual and attorney, if present at the hearing, of its recommendation, or it will take the case under advisement.<sup>54</sup> A designated Board member writes a report to the Governor concerning the case and the Board’s recommendation.<sup>55</sup>

## V. POST-DECISION

**Supervision** – When the Governor commutes an individual’s sentence and makes community supervision a condition of the commutation, the Department of Correction assigns a Probation/Parole Officer as if the individual were on parole.<sup>56</sup>

**Revocation** – If the Probation/Parole Officer has reasonable cause to believe the individual has violated any conditions of the Commutation, the Officer will detail the violation and transmit it to the Director of Probation and Parole. If appropriate, the Director will send the information to the Governor, who may ask the Board to conduct a revocation hearing. After the hearing, the Board will send its findings and recommendations to the Governor for a decision.<sup>57</sup>

## **VI. REPORTING/STATISTICS**

The Board is required to forward the names of all individuals receiving both favorable and unfavorable Commutation recommendations to (1) the appropriate General Assembly standing committees, as designated by the Speaker of the Senate and Speaker of the House of Representatives, and (2) the district attorney for the district in which the individual was convicted.<sup>58</sup>

- In response to a request for information from FMM, the Board of Parole reported that Governor Bill Lee did not grant any Clemency requests in 2019 and 2020.<sup>59</sup>

## **GERIATRIC PAROLE**

Effective April 30, 2021, Tennessee's parole law now includes a Geriatric Parole provision.<sup>60</sup>

### **I. ELIGIBILITY**

**Age and Medical Condition** – Incarcerated individuals who are debilitated or incapacitated and (1) at least 70 years of age, (2) have a condition that is chronic and incurable, and (3) who are likely to die may be eligible for Geriatric Parole.<sup>61</sup>

**Other Eligibility Criteria** – Individuals must have served a minimum of five years in custody.<sup>62</sup>

**Exclusions** – Individuals serving a sentence for a violent sexual offense,<sup>63</sup> more than one conviction for first-degree murder or facilitation of first-degree murder,<sup>64</sup> or a life sentence without the possibility of parole<sup>65</sup> are not eligible for Geriatric Parole.

### **II. APPLICATION/REFERRAL**

As of October 1, 2021, the Parole Board has not provided any information on the application process for Geriatric Parole.

### **III. DOCUMENTATION AND ASSESSMENT**

The individual must produce two sworn statements from physicians, at least one of whom is the Department of Correction's Director of Medical Services, certifying that the individual's condition is chronic and incurable and will likely result in death.<sup>66</sup>



#### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The Tennessee Board of Parole makes all parole decisions, including those for Geriatric Parole.

#### **V. POST-DECISION**

The general parole rules apply for all individuals released under the new Geriatric Parole provisions.<sup>67</sup>

#### **VI. REPORTING/STATISTICS**

As of November 15, 2021, the Board of Parole has not published information indicating that any individuals have been released under the new Geriatric Parole provisions.

## **TENNESSEE COMPASSIONATE RELEASE** **PRIMARY LEGAL SOURCES**

### **MEDICAL FURLOUGH**

#### **Statute**

Tennessee Code, § 41-21-227 (i) (2021), available through the Tennessee General Assembly, <http://www.capitol.tn.gov/about/links.html>, by selecting Tennessee Code (listed under “In This Section”) and then selecting Title 41, Chapter 21, Part 2, Section 227.

#### **Agency Policy/Publication**

Tennessee Department of Correction Administrative Policies and Procedures, 511.01.1-Medical Furloughs (July 1, 2019), <https://www.tn.gov/content/dam/tn/correction/documents/51101-1.pdf>. Note that this policy has not been updated to reflect the 2021 changes to the Medical Furlough statute.

### **EXECUTIVE CLEMENCY DUE TO ILLNESS OR DISABILITY**

#### **Constitution**

Tennessee Constitution, Article III, Section 6, available through the Tennessee General Assembly, <http://www.capitol.tn.gov/about/docs/TN-Constitution.pdf>.

#### **Statute**

Tennessee Code, § 40-27-101 (2021), available through the Tennessee General Assembly, <http://www.capitol.tn.gov/about/links.html>, by selecting Tennessee Code (listed under “In This Section”) and then selecting Title 40, Chapter 27, Part 1, Section 101.

#### **Agency Policy**

Tennessee Board of Parole, *Application for Commutation* (January 2021), <https://www.tn.gov/bop/agency-services/executive-clemency-unit.html>.

Tennessee Board of Parole Rules, Rule 1100-01-01-.16, Duties and Procedures of Board in Executive Clemency Matters (March 2020), <https://publications.tnsosfiles.com/rules/1100/1100-01-01.20200322.pdf>. See paragraph (e), Emergency Medical Clemency Requests.

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## **TENNESSEE COMPASSIONATE RELEASE**

### **PRIMARY LEGAL SOURCES**

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### **GERIATRIC PAROLE**

#### **Statute**

Tennessee Code, § 40-35-501, available through the Tennessee General Assembly, <http://www.capitol.tn.gov/about/links.html>, by selecting Tennessee Code (listed under “In This Section”) and then selecting Title 40, Chapter 35, Part 5, Section 501.

#### **Agency Policies**

Tennessee Board of Parole, Rules, Chapter 1100-01-01, Conduct of Parole Proceedings (March 2020), <https://publications.tnsosfiles.com/rules/1100/1100-01-01.20200322.pdf>.

## **NOTES**

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\* *Id.* means see prior note.

<sup>1</sup> Tenn. Code Ann. §§ 41-21-227 (i) (1) through (i) (5), as amended by House Bill 0072, effective April 30, 2021 (Tenn. Pub. Ch. 282); Tennessee Department of Correction, Administrative Policies and Procedures, Policy 511.01.1. Note that as of September 1, 2021, the 2019 Department Policy has not been updated to reflect the changes in the amended statute and states it remains in effect until July 1, 2022. Department Policy 511.01.1, § VIII.

<sup>2</sup> Tenn. Const. art. III, § 6; Tenn. Code Ann. § 40-27-101; Tennessee Board of Parole, *Application for Commutation*; Tennessee Board of Parole Rules, Rule 1100-01-01-.16, Duties and Procedures of Board in Executive Clemency Matters.

<sup>3</sup> Tenn. Code Ann. § 41-21-227, as amended by House Bill 0072, effective April 30, 2021 (Tenn. Pub. Ch. 282).

<sup>4</sup> Tenn. Code Ann. § 41-21-227 (i) (2) (A); Department Policy 511.01.1, § VI (A) (1). Note Department policy conflicts with the statute; rather than giving a specific time frame, it says the individual must be in “imminent peril of death” due to a medical condition.

<sup>5</sup> Tenn. Code Ann. § 41-21-227 (i) (2) (A); Department Policy 511.01.1, § VI (A) (2). The Department policy adds that the level of deterioration must render the individual incapable of performing basic activities of daily living or unable to “think cognitively” to the point where there is any threat to the public.

<sup>6</sup> Tenn. Code Ann. § 41-21-227 (i) (2) (B).

<sup>7</sup> Department Policy 511.01.1, § VI (A) (3).

<sup>8</sup> Tenn. Code Ann. § 41-21-227 (i) (1).

<sup>9</sup> Department Policy 511.01.1, § VI (C) (1).

<sup>10</sup> Id. at § VI (C) (2) (a).

<sup>11</sup> Tenn. Code Ann. § 41-21-227 (i) (1).

<sup>12</sup> Department Policy 511.01.1, § VI (C) (2) (b).

<sup>13</sup> Id. at § VI (C) (2) (c).

<sup>14</sup> Id.

<sup>15</sup> Id. at § VI (C) (3).

<sup>16</sup> Id. at § VI (C) (4).

<sup>17</sup> Id. at § VI (C) (5).

<sup>18</sup> Id. at § VI (C) (6).

<sup>19</sup> Id. at § VI (C) (7).

<sup>20</sup> Id. at § VI (C) (8) (a).

<sup>21</sup> Id. at §§ VI (C) (8) (b), (C) (9), and (C) (10).

<sup>22</sup> Id. at § VI (C) (11).

<sup>23</sup> Tenn. Code Ann. § 41-21-227 (i) (1); Department Policy 511.01.1, § VI (D) (1).

<sup>24</sup> Tenn. Code Ann. § 41-21-227 (i) (2) (B).

<sup>25</sup> Department Policy 511.01.1, § VI (D) (3).

<sup>26</sup> Id. at §§ VI (D) (4) and (D) (5). The Department policy lists all the Department and community entities that must receive notice of the effective furlough date.

<sup>27</sup> Tenn. Code Ann. § 41-21-227 (e).

<sup>28</sup> Id. at (i) (4).

<sup>29</sup> Id. at (i) (2) (B).

<sup>30</sup> Department Policy 511.01.1, § VI (D) (2).

<sup>31</sup> Id. at §§ IV (A) and VI (F).

<sup>32</sup> Id. at §§ VI (F) (1) (a) through (1) (j). Note that Department Policy 511.01.1 says that the individual is required to pay supervision fees, referencing Tenn. Code Ann. §40-28-201. Id. at § VI (F) (1) (h).

<sup>33</sup> Tenn. Code Ann. § 41-21-227 (i) (1).

<sup>34</sup> Department Policy 511.01.1, § VI (G) (2).

<sup>35</sup> Tenn. Code Ann. § 41-21-227 (i) (3); Department Policy 511.01.1, § VI (F) (6).

<sup>36</sup> *Id.*

<sup>37</sup> Department Policy 511.01.1, § V.

<sup>38</sup> *Id.* at § VI (G) (1).

<sup>39</sup> *Id.* at §§ VI (G) (1) (g) and (1) (h).

<sup>40</sup> *Id.* at § VI (F) (2).

<sup>41</sup> Email from the Records Management Division, Tennessee Department of Correction, to Famm (August 26, 2021) (on file with Famm, Office of the General Counsel).

<sup>42</sup> Tennessee Board of Parole, *Application for Commutation*, 1. Note that the application states that individuals petitioning for a Commutation who are eligible for a Medical Furlough are “excepted” from this eligibility requirement.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 1 (a) (i) and 6.

<sup>47</sup> Tennessee Board of Parole Rules, Rule 1100-01-01-.16 (e).

<sup>48</sup> Tenn. Const. art. III, § 6; Tenn. Code Ann. § 40-27-101; Tennessee Board of Parole Rules, Rule 1100-01-01-.16 (1).

<sup>49</sup> Tennessee Board of Parole Rules, Rule 1100-01-01-.16 (1) (d) (1).

<sup>50</sup> *Id.* at (1) (d) (2).

<sup>51</sup> *Id.* at (d) (3).

<sup>52</sup> *Id.* at (e).

<sup>53</sup> *Id.* at (d) (6).

<sup>54</sup> *Id.* at (d) (7).

<sup>55</sup> *Id.* at (d) (8).

<sup>56</sup> *Id.* at (h) (1).

<sup>57</sup> *Id.* at (h) (2) through (h) (4).

<sup>58</sup> Id. at (f) and (g).

<sup>59</sup> Email from Dustin Krugel, Tennessee Board of Parole to FMM (July 23, 2021) (on file with FMM, Office of the General Counsel).

<sup>60</sup> House Bill 0072, effective April 30, 2021 (Tenn. Pub. Ch. 282), codified as Tenn. Code Ann. § 40-35-501 (x).

<sup>61</sup> Tenn. Code Ann. §§ 40-35-501 (x) (1) (A) and (D).

<sup>62</sup> Id. at (x) (1) (B).

<sup>63</sup> Id. at (x) (1) (C) (i). “Violent sexual offense” is defined in Tenn. Code Ann. § 41-21-227 (i) (2) (A).

<sup>64</sup> Id. at (x) (1) (C) (ii).

<sup>65</sup> Id. at (x) (1) (D).

<sup>66</sup> Id. at (x) (1) (E).

<sup>67</sup> See Tennessee Board of Parole, Rules, Chapter 1100-01-01, Conduct of Parole Proceedings.