

Maryland provides compassionate release to eligible incarcerated individuals through (1) **Medical Parole**, for those with serious medical conditions,¹ and (2) **Geriatric Parole**, for certain incarcerated individuals aged 60 and older.²

MEDICAL PAROLE

Note that Maryland's Medical Parole laws and policies are not consistent, and the contradictions and differences are noted below. In addition, there are gaps in the statute, regulations, and agency policy, with little information provided regarding terminology and the assessment and decision processes.

I. ELIGIBILITY

Medical Condition – Maryland law provides two very different sets of eligibility criteria:

- The Medical Parole statute and the Division of Correction Case Management Manual (DOC Manual) state that to be eligible, an incarcerated individual must be so chronically debilitated or incapacitated by a medical or mental health condition, disease, or syndrome that the person is physically incapable of presenting a danger to society.³
- The Medical Parole regulation says that to be eligible, an incarcerated individual must be “imminently terminal” or have a condition indicating that continued imprisonment serves no useful purpose (with the example given being if the individual is in an irreversible coma).⁴ In addition, the individual's release must not “unduly” jeopardize public safety.⁵

Exclusions – The statute says that only individuals sentenced to a term of incarceration with the possibility of parole are eligible for Medical Parole consideration.⁶ The DOC Manual does not include this exclusionary language and appears to say that any incarcerated individual who meets the medical criteria may be eligible for Medical Parole.⁷

- Note that the Governor must approve Medical Parole for any individuals serving life sentences (discussed below in Decision-Making Process).⁸

II. APPLICATION/REFERRAL

As with the eligibility requirements, the Medical Parole statute and regulations provide different (and seemingly conflicting) information:

- According to the Medical Parole statute and the DOC Manual, (1) the incarcerated individual, (2) an attorney, (3) a family member, (4) a medical

professional, (5) a prison official or employee, or (6) “any other person” may file a request for Medical Parole with the Maryland Parole Commission.⁹ The request must be in writing and include the reasons supporting the incarcerated individual’s release on Medical Parole.¹⁰

- According to the Medical Parole regulation, the Warden initiates an individual’s consideration for Medical Parole.¹¹

III. DOCUMENTATION AND ASSESSMENT

The needed documentation and the process leading up to a Medical Parole decision are described somewhat differently in the statute and the regulation. Because the differences and inconsistencies are not explained or reconciled, both are included below.

MEDICAL PAROLE STATUTE

Initial Review – The statute says that the Parole Commission can review each Medical Parole request to determine (1) whether the request is inconsistent with the best interests of public safety, in which case the Parole Commission will take no further action,¹² or (2) whether the Parole Commission needs additional information from the Department of Public Safety and Correctional Services (Department) or the correctional facility so it can formally consider the incarcerated individual for Medical Parole.¹³

Documentation/Department or Facility – The Department and/or correctional facility must provide the needed information to the Parole Commission,¹⁴ including:

- A medical recommendation by the medical professional treating the incarcerated individual.¹⁵
 - If the incarcerated individual or someone on the person’s behalf (which essentially means anyone other than the individual’s treating medical professional) submits the Medical Parole request, a medical professional who is independent of the Division of Correction or the correctional facility will conduct an evaluation at no cost to the incarcerated person.¹⁶
- Medical documentation, including (1) a description of the incarcerated individual’s condition, disease, or syndrome; (2) the prognosis regarding the person’s likelihood of recovery from the condition, disease, or syndrome; (3) a description of the person’s physical incapacity and score on the Karnofsky Performance Scale Index¹⁷ or similar evaluation tool; and (4) a mental health evaluation, when relevant.¹⁸

- Discharge information, including (1) the availability of treatment or professional services within the community; (2) family support in the community; and (3) available housing, including hospital or hospice care.¹⁹
- Case management information, including (1) the circumstances of the individual's current offense; (2) institutional history; (3) pending charges, sentences in other jurisdictions, and any other detainers; and (4) criminal history.²⁰

MEDICAL PAROLE REGULATIONS

Initial Review – The regulations do not mention an initial review by the Parole Commission.

Documentation and Recommendation: Warden – The Warden must submit the following documents to the Commissioner of Correction through the Division Director:²¹

- A history of program participation in prison;²²
- Any special housing requirements;²³
- A statement from the individual's attending physician that includes the person's diagnosis, prognosis, inpatient or outpatient status, and justification for meeting the Medical Parole criteria;²⁴ and
- The Warden's statement, including a recommendation to approve or disapprove the Medical Parole request, the reasons for the recommendation, and a treatment plan for the individual.²⁵

Review and Recommendation: Commissioner – The Division Director sends the Commissioner of Correction the recommendation and documentation.²⁶

- If the Commissioner **denies** Medical Parole, the decision is final.²⁷
- If the Commissioner **recommends approval**, the Medical Parole request is submitted to the Parole Commission for consideration.²⁸

IV. DECISION-MAKING PROCESS

Decision-Maker – The Maryland Parole Commission makes all decisions to grant or deny Medical Parole.²⁹

Decisions – The Medical Parole statute provides very little information about the Parole Commission’s decision-making process on Medical Parole requests, and the Medical Parole regulation does not address the decision-making process at all.³⁰

- Victim Notification and Input – The Medical Parole statute specifically states that the general parole provisions relating to victim notification and the opportunity to be heard apply to all Medical Parole proceedings.³¹
 - For Medical Parole cases of “imminent death,” the Parole Commission can reduce or waive any time limits related to victim notification and the opportunity to be heard.³²

Governor’s Approval Required for Certain Individuals – If the Parole Commission grants parole to a person serving a life sentence, it must then transmit the decision to the Governor.³³

- The Governor may disapprove the decision and, if so, must then transmit that decision in writing to the Parole Commission.³⁴
- If the Governor does not disapprove the decision within 180 days of receiving the Commission’s written decision, the decision granting Medical Parole becomes effective.³⁵

Conditions

- Environment – The Parole Commission may require that the individual agree to placement “for a definite or indefinite period of time” in a hospital, hospice, or other housing that is appropriate for the person’s medical condition. That can include the individual’s family home, if approved by the Commission or supervising parole officer.³⁶
- Medical Updates – The Parole Commission may require the individual to send medical records on an ongoing basis to indicate that the specific medical condition continues to exist.³⁷

V. POST-DECISION

Appeals – If the Parole Commission denies the request for Medical Parole, that decision is final.³⁸

Effect of Medical Parole Request on Other Parole Eligibility – An individual whose Medical Parole is revoked because the medical condition has improved may be considered for parole under the general parole eligibility requirements.³⁹

Revocation/Termination

- If the Parole Commission determines that the individual on Medical Parole is no longer so debilitated or incapacitated as to be physically incapable of presenting a danger to society, it will return the person to the custody of the Division of Correction or the appropriate correctional facility.⁴⁰
- If the individual is returned to custody, the Commission will “promptly” hold a hearing to consider whether the person is still incapacitated. If incapacitation no longer exists, the individual will stay in custody.⁴¹

VI. REPORTING/STATISTICS

The Parole Commission’s annual reports list how many Medical Parole cases are considered, processed, and “coordinated” – although no definition of “coordinated” is provided. The reports do not say how many requests for Medical Parole the Commission actually granted.

The most recent annual report available online is for 2018, and it says that the Parole Commission processed 34 Medical Parole requests.⁴² Again, the Commission only reports on how many were processed and does not provide information on how many of those 34 requests were granted.

- The Parole Commission did not respond to FAMM’s request for information on the number of individuals granted Medical Parole in 2019 and 2020.

GERIATRIC PAROLE (PAROLE CONSIDERATION BASED ON AGE): LIMITED TO SPECIFIC INDIVIDUALS

I. ELIGIBILITY

Age – An incarcerated individual sentenced under Maryland’s “Mandatory Sentences for Crimes of Violence” law⁴³ may petition for Geriatric Parole if the person (1) is at least 60 years old and (2) has served at least 15 years of the sentence.⁴⁴

- Note that in 2019 the Justice Reinvestment Oversight Board in the Governor’s Office of Crime Control and Prevention proposed several recommendations that would expand Geriatric Parole to other categories of older incarcerated individuals.⁴⁵ As of the date of this publication, none of those recommendations have been enacted into law.

Exclusions – Individuals registered (or eligible for registration) under Maryland’s sex offender registration law are not eligible for parole consideration under this law.⁴⁶

II. ADDITIONAL INFORMATION: PETITION AND DECISION

The Geriatric Parole statute says that the Maryland Parole Commission must adopt regulations to implement the law.⁴⁷ As of September 1, 2021, no new Commission regulations have been published, and the existing regulation includes outdated age criteria.⁴⁸ However, until the Parole Commission adopts updated rules, the existing regulatory guidance may be useful:

- Incarcerated individuals who meet the age and time served requirements but were sentenced for a crime of violence may petition the Chair of the Parole Commission in writing.⁴⁹
- The Chair schedules consideration of the petition by a panel composed of two commissioners,⁵⁰ which decides whether to grant the individual a parole release hearing.⁵¹
 - If the panel cannot agree on granting a hearing, the Chair must schedule consideration of the petition by a third member of the Commission, and the majority opinion determines whether the incarcerated individual is granted a hearing.⁵²
 - If the panel does not grant a hearing, the individual must wait two years from the date of the denial to petition again.⁵³
- If the panel grants the petitioner a Geriatric Parole release hearing, it is scheduled and conducted according to the usual parole hearing rules.⁵⁴

The Parole Commission did not respond to FAMM's request for information on how many individuals, if any, were granted Geriatric Parole in 2019 and 2020.

MARYLAND COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

MEDICAL PAROLE

Statute

Maryland Code, Correctional Services § 7-309 (2021), available through the Maryland State Archives, Maryland Manual On-Line, <https://msa.maryland.gov/msa/mdmanual/html/mmtoc.html>, by selecting Code of Maryland (Laws) and Correctional Services, then clicking on Title 7, Subtitle 3.

Regulations

Code of Maryland Regulations, 12.02.09.04, Medical Parole (2021), available through the Maryland Division of State Documents, <http://www.dsd.state.md.us/comar/comarhtml/12/12.02.09.04.htm>.

Code of Maryland Regulations, 12.02.09.05, Contents of Medical Parole Request (2021), available through the Maryland Division of State documents, <http://www.dsd.state.md.us/comar/comarhtml/12/12.02.09.05.htm>.

Agency Policy

Department of Public Safety and Correctional Services, Division of Correction Case Management Manual, DOC 100.0002 (July 31, 2019), Section 22 (D), Medical Parole, <https://itcd.dpccs.state.md.us/PIA/ShowFile.aspx?fileID=578>.

GERIATRIC PAROLE

Statute

Maryland Code, Criminal Law § 14-101 (2021), available through the Maryland State Archives, Maryland Manual On-Line, <https://msa.maryland.gov/msa/mdmanual/html/mmtoc.html>, by selecting Code of Maryland (Laws) and Criminal Law, then clicking on Title 14, Subtitle 1.

Regulations

Code of Maryland Regulations, 12.02.09.04, Consideration and Review (2021), available through the Maryland Division of State Documents, <http://www.dsd.state.md.us/comar/comarhtml/12/12.08.01.23.htm>.

NOTES

* *Id.* means see prior note.

¹ Md. Code Ann., Corr. Servs. § 7-309; Md. Code Regs. 12.02.09.04 and 12.02.09.05.

² Md. Code Ann., Crim. Law § 14-101 (f).

³ Md. Code Ann., Corr. Servs. § 7-309 (b); Department of Public Safety and Correctional Services, Division of Correction Case Management Manual 100.0002 (DOC Manual), § 22 (D) (2).

⁴ Md. Code Regs. 12.02.09.04 (A).

⁵ *Id.* at (B).

⁶ Md. Code Ann., Corr. Servs. § 7-309 (a).

⁷ DOC Manual 100.0002, § 22 (D) (2).

⁸ Md. Code Ann., Corr. Servs. § 7-309 (i).

⁹ Md. Code Ann., Corr. Servs. §§ 7-309 (c) (1) (i) through (c) (1) (vi). See also DOC Manual 100.0002, §§ 22 (D) (1) and (D) (3).

¹⁰ Md. Code Ann., Corr. Servs. § 7-309 (c) (2).

¹¹ Md. Code Regs. 12.02.09.05 (B).

¹² Md. Code Ann., Corr. Servs. § 7-309 (d) (1).

¹³ *Id.* at (d) (2).

¹⁴ *Id.*

¹⁵ Md. Code Ann., Corr. Servs. § 7-309 (e) (1) (i).

¹⁶ *Id.* at (e) (1) (ii).

¹⁷ The Karnofsky Performance Scale Index classifies individuals according to their functional impairment and is used to compare effectiveness of different therapies and assess an individual's prognosis. The lower the Karnofsky score, generally the worse the odds of survival for most serious illnesses. See the National Palliative Care Resource Center, Karnofsky Performance Scale Index, http://www.npcrc.org/files/news/karnofsky_performance_scale.pdf.

¹⁸ Md. Code Ann., Corr. Servs. §§ 7-309 (e) (2) (i) through (e) (2) (iv).

¹⁹ *Id.* at (e) (3) (i) through (e) (3) (iii).

²⁰ *Id.* at (e) (4) (i) through (e) (4) (iv).

²¹ It is not clear whom the regulation is referring to when it uses the term "Division Director." The Maryland Department of Public Safety and Correctional Services webpage lists a Department Secretary and a Commissioner of Correction but no Division Director. See <https://msa.maryland.gov/msa/mdmanual/22dpscs/html/dpscs.html>.

²² Md. Code Regs. 12.02.09.05 (B) (1).

²³ Id. at (B) (2).

²⁴ Id. at (B) (3) (a) through (3) (d).

²⁵ Id. at (B) (4) (a) through (4) (c).

²⁶ Id. at (C). Note that the regulation does not address who these documents go to if the Commissioner of Correction position is vacant, as it was as of the date of publication. See <https://msa.maryland.gov/msa/mdmanual/22dpscs/html/dpscs.html>.

²⁷ Id. at (C).

²⁸ Id. at (A).

²⁹ Md. Code Ann., Corr. Servs. § 7-309.

³⁰ The statutory general parole provisions are at Md. Code Ann., Corr. Servs. §§ 7-301 through 7-308; however, it is not clear whether they all apply to Medical Parole.

³¹ Md. Code Ann., Corr. Servs. § 7-309 (h) (1). The general parole provisions on victim notification and the opportunity to be heard are at Md. Code Ann., Corr. Servs. § 7-801. For a summary of victims' rights in the parole process, see also the Department and Parole Commission's victim services information at <https://dpscs.maryland.gov/victimservs/index.shtml>.

³² Md. Code Ann., Corr. Servs. § 7-309 (h) (2).

³³ Id. at (i) (1).

³⁴ Id. at (i) (2).

³⁵ Id. at (i) (3).

³⁶ Id. at (f) (1).

³⁷ Id. at (f) (2).

³⁸ DOC Manual 100.0002, § 22 (D) (4).

³⁹ Md. Code Ann., Corr. Servs. § 7-309 (g) (3), referencing Md. Code Ann., Corr. Servs. § 7-301.

⁴⁰ Id. at (g) (1).

⁴¹ Id. at (g) (2).

⁴² Maryland Parole Commission, Fiscal Year 2018 Annual Report (Nov. 5, 2018), http://dlslibrary.state.md.us/publications/Exec/DPSCS/MPC/COR7-208_2018.pdf.

⁴³ Crimes of violence include murder, rape, kidnapping, and 21 other serious crimes. For the full list, see Md. Code Ann., Crim. Law § 14-101 (a).

⁴⁴ Md. Code Ann., Crim. Law § 14-101 (f) (2).

⁴⁵ Justice Reinvestment Oversight Board, Governor's Office of Crime Control and Prevention, Geriatric Parole Workgroup (July 2019), <http://goccp.maryland.gov/wp-content/uploads/Geriatric-Parole-Summary.pdf>.

⁴⁶ Md. Code Ann., Crim. Law § 14-101 (f) (1), referencing the Criminal Procedure Code, Title 11, Subtitle 7. Subtitle 7 covers sex offender registration. See Md. Code Ann., Crim. Proc. §§ 11-701 through 11-727.

⁴⁷ Md. Code Ann., Crim. Law § 14-101 (f) (3).

⁴⁸ Md. Code Regs. 12.08.01.23 (C) (1).

⁴⁹ Id. at (C) (1) and (C) (2).

⁵⁰ Id. at (C) (3).

⁵¹ Id. at (C) (4).

⁵² Id. at (C) (5).

⁵³ Id. at (C) (6).

⁵⁴ Id. at (C) (7), referencing Md. Code Regs. 12.08.01.17 and Md. Code Regs. 12.08.01.19. See also Md. Code Regs. 12.08.01.23 (C) (8), referencing Md. Code Regs. 12.08.02.