

The District of Columbia provides three forms of compassionate release to incarcerated individuals with serious medical conditions and incarcerated individuals who are older: **Compassionate Release**,¹ **Medical and Geriatric Suspension of Sentence**,² and **Medical and Geriatric Parole**.³

COMPASSIONATE RELEASE

In March 2020, the D.C. Council passed emergency legislation allowing individuals serving a prison term for a D.C. Code offense to file a motion asking the sentencing judge for Compassionate Release.⁴ In April 2021, the D.C. Council made the law permanent.⁵ Compassionate Release is an additional form of release and does not replace or repeal Medical and Geriatric Suspension of Sentence or Medical and Geriatric Parole.

I. ELIGIBILITY

Medical Condition/Age – To be eligible for Compassionate Release, an individual must:

- Have a terminal illness, defined as a disease or condition with “an end-of-life trajectory”;⁶
- Have a debilitating medical condition involving an incurable illness or a debilitating injury from which the individual will not recover;⁷
- Be age 60 or older and (1) suffering from a chronic or serious medical condition related to the aging process or that causes an “acute vulnerability” to severe medical complications or death as a result of COVID-19 and (2) having served the lesser of 15 years or 75% of a prison sentence;⁸
- Be age 60 or older and have served at least 20 years in prison;⁹
- Be the parent of a child or children whose family member caregiver has become incapacitated or died;¹⁰ or
- Be the spouse or domestic partner of a person who has become incapacitated and would be their only available caregiver.¹¹

Other Eligibility Criteria – The individual must not be a danger to the safety of any other person or the community¹² and show evidence of rehabilitation while incarcerated.¹³

II. APPLICATION/REFERRAL

To ask for Compassionate Release, a motion must be filed with the incarcerated individual's sentencing judge asking for a reduction in sentence.¹⁴ Motions may be brought by (1) the individual, (2) the U.S. Attorney's Office for the District of Columbia, (3) the Bureau of Prisons, and (4) the U.S. Parole Commission.¹⁵

III. DOCUMENTATION AND ASSESSMENT

The Compassionate Release law does not include a petition form or provide any details on what medical evidence or other documentation should be included in the petition. The D.C. Public Defender Service has stated that it's helpful for individuals to include in their petitions "evidence of rehabilitation." The examples given include classes taken, work opportunities, programs, disciplinary record, and letters of reference and support.¹⁶

IV. DECISION-MAKING PROCESS

Decision-Maker – The Superior Court of the District of Columbia makes all decisions on Compassionate Release requests.¹⁷ The Statute directs that the court "shall" modify the term of imprisonment if it determines the individual is not a danger to the safety of any other person in the community, in light of statutory factors in 18 U.S.C. §§ 3142 (g) and 3553 (a) and evidence of the individual's rehabilitation while incarcerated.¹⁸

Process – Hearings are not required, and at the request of the incarcerated individual's attorney, the court may waive the individual's appearance should a hearing be scheduled.¹⁹

V. POST-DECISION

Appeals – Denials of Compassionate Release motions are considered "final orders" and, as such, can be appealed to the D.C. Court of Appeals.²⁰

Supervision – The Court Services and Offender Supervision Agency (CSOSA) – a federal, executive branch agency that coordinates with the Superior Court and the U.S. Parole Commission – supervises individuals granted Compassionate Release.²¹

VI. REPORTING/STATISTICS

The District of Columbia Corrections Information Council reported that from March 2020 through March 16, 2021, 143 individuals were granted Compassionate Release.²²

MEDICAL AND GERIATRIC SUSPENSION OF SENTENCE

I. ELIGIBILITY

Medical Condition/Age – To be considered for Medical and Geriatric Suspension of Sentence, an incarcerated individual must be serving a sentence for crimes committed on or after August 5, 2000,²³ and must be:

- Permanently incapacitated due to a medical condition that was not known to the court at the time of sentencing;²⁴
- Terminally ill, having a medical condition that was not known to the court at the time of sentencing;²⁵ or
- Geriatric, being age 65 or older with a chronic infirmity, illness, or disease related to aging.²⁶

Exclusions – Incarcerated individuals convicted of first degree murder or certain crimes committed while armed may be eligible for a Medical Suspension of Sentence but are not eligible for Geriatric Suspension of Sentence.²⁷

II. APPLICATION/REFERRAL

The Director of the Federal Bureau of Prisons must file a motion with the Superior Court of the District of Columbia on behalf of an incarcerated individual asking that the sentence be suspended due to incapacitation, terminal illness, or age.²⁸

- If the court receives a request for Medical and Geriatric Suspension of Sentence directly from an incarcerated individual or that person's representative, it may refer the request to the Federal Bureau of Prisons for (1) a motion or (2) a statement of the reasons the Bureau will not be filing a motion.²⁹

III. DOCUMENTATION AND ASSESSMENT

A copy of the motion is served on the individual's attorney and the prosecutor.³⁰ No additional information on documentation that is needed for the motion is provided in the regulations.

IV. DECISION-MAKING PROCESS

Decision-Maker – The Superior Court of the District of Columbia makes all decisions regarding Medical and Geriatric Suspension of Sentence.

- Note that the court must give the prosecutor and the incarcerated individual’s attorney notice and an opportunity to be heard regarding the motion.³¹
- The court is directed to act “expeditiously” on any motion submitted by the Bureau of Prisons for a Medical and Geriatric Suspension of Sentence.³² However, “expeditiously” is not defined.

Decision Factors – The Court must determine whether the person’s release under supervision is compatible with public safety.³³

V. POST-DECISION

Supervision – If the court grants a Medical and Geriatric Suspension of Sentence, it will impose a period of probation/supervision equal to the suspended period of incarceration.³⁴

- The Court Services and Offender Supervision Agency (CSOSA) – a federal, executive branch agency that coordinates with the Superior Court and the U.S. Parole Commission – supervises individuals granted Medical and Geriatric Suspension of Sentence.³⁵

VI. REPORTING/STATISTICS

There is no publicly available information providing the number of individuals whom the Superior Court of the District of Columbia has granted a Medical and Geriatric Suspension of Sentence.

MEDICAL AND GERIATRIC PAROLE

I. ELIGIBILITY

Medical Condition/Age – To be eligible for Medical and Geriatric Parole, an incarcerated individual must be serving a sentence for a crime committed **before August 5, 2000**, and meet one of the following criteria:

- Permanently and irreversibly incapacitated due to a physical or medical condition that is not terminal and that did not exist at the time of sentencing;³⁶
- Terminally ill, due to an incurable illness or disease that did not exist at the time of sentencing, with the individual being within six months of death;³⁷ or

- Geriatric, defined as age 65 or older with a chronic infirmity, illness, or disease related to aging that did not exist at the time of sentencing.³⁸

Exclusions – Individuals convicted of first-degree murder or certain crimes committed while armed are not eligible for Medical and Geriatric Parole.³⁹

II. APPLICATION/REFERRAL

An incarcerated individual, or a representative for the individual,⁴⁰ may submit an application for Medical and Geriatric Parole to the appropriate case management staff at the correctional facility.⁴¹

III. DOCUMENTATION AND ASSESSMENT

The institution is responsible for submitting the application and relevant documentation to the U.S. Parole Commission. If the individual is seeking Medical Parole, the institution must provide supporting documentation that the individual is terminally ill or irreversibly incapacitated by a physical or medical condition that is not terminal.⁴² If the individual is seeking Geriatric Parole, the institution must submit a report documenting the person's age and chronic infirmity, illness, or disease related to aging.⁴³

Medical Parole Applications – Within 15 days of receiving an application for Medical Parole from an incarcerated individual or the person's representative, the institution's case management staff must forward the application, a medical report, and any recommendations to the Parole Commission.⁴⁴

- If the individual has requested Medical Parole based on a terminal illness, the institution's medical staff must provide the Parole Commission "with a reasonable medical judgment" that the person is within six months of death due to an incurable illness or disease.⁴⁵

Geriatric Parole Applications – Within 30 days of receiving an application for Geriatric Parole from an incarcerated individual or the person's representative, the institution's case management staff must forward the application, a medical report, and any recommendations to the Parole Commission.⁴⁶

IV. DECISION-MAKING PROCESS

Decision Maker – The U.S. Parole Commission has sole authority to grant Medical and Geriatric Parole and define conditions of release for individuals.⁴⁷

Time Frames

- The Parole Commission must make a decision within a set number of days, and that varies depending on whether an individual has requested Medical Parole or Geriatric Parole. The Commission must decide within 15 days of receiving a Medical Parole application and report⁴⁸ and within 30 days of receiving a Geriatric Parole application and report.⁴⁹

Hearings – The general parole regulations include detailed requirements for hearings.⁵⁰ However, nothing in the regulations indicates that those requirements apply to Medical and Geriatric Parole cases. Given the expedited time frames for Medical and Geriatric Parole decisions, the general parole hearing rules would not appear to apply.

Victim Input – The general parole rules state that the victim of a crime, or a representative of the victim’s immediate family, has the right to testify and/or offer a written or recorded statement as to whether parole should be granted.⁵¹ Although the Medical and Geriatric Parole rules do not state that this requirement applies, the Parole Commission’s website says that “[v]ictims or victim’s next-of-kin who are registered to receive notification will receive information regarding an application for medical parole. The victim has the opportunity to provide input to the Parole Commission on this decision.”⁵²

Decision Factors: Medical Parole Cases – To find an individual eligible for Medical Parole, the Parole Commission considers the following factors:

- **Seriousness of the Crime** – Although the Parole Commission can order release on Medical Parole at any time, regardless of whether a person has completed the minimum sentence,⁵³ it will still consider the seriousness of the individual’s crime in deciding whether to grant release prior to the person completing the minimum sentence.⁵⁴
- **Danger to Self or Others** – The Parole Commission must find that the individual will not be a danger to self or others if released.⁵⁵
 - For incarcerated individuals applying for Medical Parole on the basis of permanent and irreversible incapacitation, the Parole Commission must find that the person will not be a danger to self or others **because** the medical condition has resulted in an inability to continue criminal activity.⁵⁶
- **Welfare of Society** – The Commission will consider whether the individual’s release is compatible with the welfare of society.⁵⁷

Decision Factors: Geriatric Parole Cases – To find an incarcerated individual eligible

for Geriatric Parole, the Parole Commission considers the following factors:

- Whether there is a low risk that the person will commit new crimes;⁵⁸
- Whether the person's release is compatible with the welfare of society;⁵⁹
- Seriousness of the crime and the age at which it was committed;⁶⁰
- Current age;⁶¹
- A comprehensive health evaluation, including the severity of the individual's illness, disease, or infirmities;⁶²
- Institutional behavior;⁶³
- Level of risk for violence;⁶⁴
- Criminal history;⁶⁵ and
- Alternatives to a traditional prison setting.⁶⁶

Conditions and Prerelease Planning – The general parole rules state that release plans must include evidence that the necessary “aftercare” will be available for parolees who are ill or who have any other “demonstrable problems” for which special care is necessary, such as hospitalization.⁶⁷

V. POST-DECISION

Effect of Medical or Geriatric Parole Request on Nonmedical Parole Eligibility – The Parole Commission can consider Medical and Geriatric Parole in addition to any other parole for which an individual is eligible.⁶⁸

Denials and Appeal Rights – On the basis of “changed circumstances,” an individual, a representative, or staff at the institution in which the person is housed can ask the Parole Commission to reconsider a decision denying Medical and Geriatric Parole.⁶⁹

Supervision – The Court Services and Offender Supervision Agency (CSOSA) – a federal, executive branch agency that coordinates with the Superior Court and the U.S. Parole Commission – supervises individuals granted Medical and Geriatric Parole.⁷⁰

Revocation/Termination – The Parole Commission has authority to return parolees to prison upon an order of revocation.⁷¹ However, there are no revocation grounds specific to Medical and Geriatric Parole.

VI. REPORTING/STATISTICS

The Parole Commission has not provided any statistics on how many people have been released on Medical and Geriatric Parole. The Commission did not respond to FAMM's request for information on how many individuals were released in 2019 and 2020.

DISTRICT OF COLUMBIA COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

COMPASSIONATE RELEASE

Statute

Code of the District of Columbia, § 24-403.04 (2021), available through the Council of the District of Columbia, <https://code.dccouncil.us/dc/council/code/sections/24-403.04.html>.

MEDICAL AND GERIATRIC SUSPENSION OF SENTENCE

Statutes

Code of the District of Columbia, § 24-468 (2021), available through the Council of the District of Columbia, <https://code.dccouncil.us/dc/council/code/sections/24-468.html>.

Code of the District of Columbia, § 24-467 (2021), available through the Council of the District of Columbia, <https://code.dccouncil.us/dc/council/code/sections/24-467.html>.

MEDICAL AND GERIATRIC PAROLE

Regulations

Code of Federal Regulations, Title 28, §§ 2.77 and 2.78 (2020), available through the U.S. Government Printing Office, <https://www.govinfo.gov/content/pkg/CFR-2020-title28-vol1/pdf/CFR-2020-title28-vol1-sec2-78.pdf>.

NOTES

* *Id.* means see prior note.

¹ D.C. Code, § 24-403.04.

² D.C. Code §§ 24-467 and 24-468.

³ 28 C.F.R. §§ 2.77 and 2.78. Note that the D.C. Code, §§ 24-461 through 24-467, also covers Medical and Geriatric Parole. However, the D.C. Code sections include provisions that are no longer current,

e.g., references to the D.C. Board of Parole, which was abolished over 20 years ago. Because of that, only the relevant C.F.R. sections are cited when discussing Medical and Geriatric Parole.

⁴ D.C. Act 23-286, COVID-19 Response Supplemental Emergency Amendment Act of 2020, <https://code.dccouncil.us/us/dc/council/acts/23-286>.

⁵ D.C. Code § 24-403.04 [as added April 27, 2021, D.C. Law 23-274, § 1203 (b)].

⁶ Id. at (a) (1).

⁷ Id. at (a) (3) (A).

⁸ Id. at (a) (3) (B) (i) through (B) (iii).

⁹ Id. at (a) (2).

¹⁰ Id. at (a) (3) (C).

¹¹ Id. at (a) (3) (D).

¹² Id. at (a), referencing 18 U.S.C. §§ 3142 (g) and 3553 (a).

¹³ Id.

¹⁴ Note that for individuals serving a prison sentence for violations of the D.C. Code who are housed in federal prisons, there is no requirement that the individual first ask the Bureau of Prisons for Compassionate Release; this is different from the federal Compassionate Release law and different from the D.C. Medical and Geriatric Suspension of Sentence requirements.

¹⁵ D.C. Code § 24-403.04 (b).

¹⁶ The Public Defender Service for the District of Columbia, *The D.C. Reentry Navigator* (January 2021), 28, <https://www.pdsdc.org/docs/default-source/d.c.-reentry-navigator/the-d-c-reentry-navigator-empowering-you-to-succeed-with-a-d-c-criminal-record.pdf>.

¹⁷ D.C. Code § 24-403.04 (a).

¹⁸ Id.

¹⁹ Id. at (c).

²⁰ D.C. Code § 11-721 (a) (1).

²¹ D.C. Code § 24-133 (c). See also the CSOSA website at <https://www.csosa.gov> and the CSOSA *Guidance for Individuals on Community Supervision* (2020), <https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2020/06/Guidance-for-Individuals-on-Community-Supervision-v20200228.pdf>. For additional resources to help individuals succeed on supervision, see the D.C. Public Defender Service's *The D.C. Reentry Navigator* at <https://www.pdsdc.org/need-legal-advice/dcreentrynavigator>.

²² District of Columbia Corrections Information Council, *The Implementation of D.C. Code 24-403.04 Motions for Compassionate Release as of March 16, 2021* (April 23, 2021), <https://cic.dc.gov/page/implementation-dc-code-24-40304-motions-compassionate-release-march-16-2021>.

²³ D.C. Code § 24-468 (a) (1).

²⁴ Id. at (b) (1) (A).

²⁵ Id.

²⁶ Id. at (b) (1) (B).

²⁷ D.C. Code § 24-467, referencing D.C. Code §§ 22-4502, 22-4504 (b), and 22-2803.

²⁸ D.C. Code § 24-468 (a) (1).

²⁹ Id. at (b) (2).

³⁰ Id. at (a) (1).

³¹ Id. at (b) (1).

³² Id. at (b) (2).

³³ Id. at (b) (1) (A) and (B).

³⁴ Id. at (a) (1).

³⁵ D.C. Code § 24-133 (c). See the CSOSA website at <https://www.csosa.gov> and the *CSOSA Guidance for Individuals on Community Supervision* (2020), <https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2020/06/Guidance-for-Individuals-on-Community-Supervision-v20200228.pdf>. For additional resources to help individuals succeed on supervision, see the D.C. Public Defender Service's *The D.C. Reentry Navigator* at <https://www.pdsdc.org/need-legal-advice/dcreentrynavigator>.

³⁶ 28 C.F.R. §§ 2.77 (a) and 2.77 (g) (2).

³⁷ 28 C.F.R. §§ 2.77 (a) and 2.77 (b) (1) and (g) (2).

³⁸ 28 C.F.R. §§ 2.78 (a) and (g) (2).

³⁹ 28 C.F.R. §§ 2.77 (g) (1) and 2.78 (g) (1), referencing crimes listed in D.C. Code §§ 22-4502, 22-4504 (b), and 22-2803. Note that § 2.77 (g) (1), which says this exclusion applies to Medical Parole, lists D.C. Code § 24-467 as its source. However, D.C. Code § 24-467 states that incarcerated individuals are not eligible for **Geriatric** Parole if they have been convicted of first-degree murder or certain crimes committed while armed – it does **not** include such an exclusion for individuals applying for **Medical** Parole. Thus, the C.F.R. and D.C. Code conflict with each other.

⁴⁰ The regulation does not define “representative.”

⁴¹ 28 C.F.R. §§ 2.77 (e) and 2.78 (d).

⁴² 28 C.F.R. § 2.77 (a)

⁴³ 28 C.F.R. § 2.78 (a).

⁴⁴ 28 C.F.R. § 2.77 (e).

⁴⁵ Id. at (b) (1).

⁴⁶ 28 C.F.R. § 2.78 (d).

⁴⁷ Sections 11231 (a) and (b) of the Revitalization Act transferred the authority of the Board of Parole to the U.S. Parole Commission and abolished the D.C. Board of Parole. See also D.C. Code § 24-131 and 28 C.F.R. §§ 28-270 (b) and (d). Thus, the U.S. Parole Commission handles all parole-related matters for Washington, D.C. residents convicted of crimes before August 5, 2000. *Id.* Note that the D.C. Code still erroneously includes references to the D.C. “Board of Parole” even though the Board was abolished and its functions were taken over by the U.S. Parole Commission.

⁴⁸ 28 C.F.R. § 2.77 (e).

⁴⁹ 28 C.F.R. § 2.78 (d).

⁵⁰ 28 C.F.R. § 2.72.

⁵¹ *Id.* at (c).

⁵² U.S. Parole Commission, Sentencing, Incarceration & Parole Offenders webpage, “Medical Parole,” <https://www.justice.gov/uspc/sentencing-incarceration-parole-offenders>.

⁵³ 28 C.F.R. § 2.77 (a).

⁵⁴ *Id.* at (d).

⁵⁵ *Id.* at (b) (2) (i) and (c) (1).

⁵⁶ *Id.* at (c) (1).

⁵⁷ *Id.* at (b) (2) (ii) and (c) (2).

⁵⁸ 28 C.F.R. § 2.78 (b) (1).

⁵⁹ *Id.* at (b) (2).

⁶⁰ *Id.* at (c).

⁶¹ *Id.* at (e) (1).

⁶² *Id.* at (e) (2) and (e) (3).

⁶³ *Id.* at (e) (4).

⁶⁴ *Id.* at (e) (5).

⁶⁵ *Id.* at (e) (6).

⁶⁶ *Id.* at (e) (7).

⁶⁷ 28 C.F.R. § 2.83 (e) (3).

⁶⁸ 28 C.F.R. §§ 2.77 (a) and 2.78 (a).

⁶⁹ 28 C.F.R. §§ 2.77 (f) and 2.78 (f).

⁷⁰ D.C. Code § 24-133 (c). See the CSOSA website at <https://www.csosa.gov> and the *CSOSA Guidance for Individuals on Community Supervision* (2020), <https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2020/06/Guidance-for-Individuals-on-Community-Supervision-v20200228.pdf>. For additional resources to help individuals succeed on supervision, see the D.C. Public Defender Service's *The D.C. Reentry Navigator* at <https://www.pdsdc.org/need-legal-advice/dcreentrynavigator>.

⁷¹ 28 C.F.R. § 2.70 (e).