

Indiana provides compassionate release to eligible incarcerated individuals with serious medical conditions through **Special Medical Clemency**<sup>1</sup> and to eligible individuals with terminal illnesses through the **Temporary Leave** program.<sup>2</sup>

## **SPECIAL MEDICAL CLEMENCY**

### **I. ELIGIBILITY**

**Medical Condition** – An individual may be considered for Special Medical Clemency if the person has (1) a terminal medical condition<sup>3</sup> or (2) a medical condition that would be more effectively treated in another type of facility in the community.<sup>4</sup>

- The medical condition must make it unlikely for the individual to be involved in further criminal activity.<sup>5</sup>

**Exclusions** – Indiana law states that any incarcerated individual may be considered for Special Medical Clemency.<sup>6</sup>

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

Each correctional facility's Warden must designate a staff person to initiate the Special Medical Clemency process in response to (1) requests submitted by incarcerated individuals, family members, or friends and (2) identification of potentially eligible individuals by Department of Correction (Department) Health Services staff.<sup>7</sup>

- Department policy points out that initiating this process does not ensure the Governor's review or approval of a Special Medical Clemency request.<sup>8</sup>
- The Warden's Staff Designee completes an *Application for Offender Medical Clemency* for the incarcerated individual and forwards it to the Department's Chief of Staff, copying the facility's Warden and Classification Supervisor.<sup>9</sup>

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

**Initial Meetings: Staff Designee** – The Warden's Staff Designee meets with the incarcerated individual, Case Management, and Health Services to make sure everyone is aware of the Special Medical Clemency process.<sup>10</sup>

**Decision to Move Forward: Chief of Staff and Warden** – After the Chief of Staff and Warden receive the *Application for Offender Medical Clemency* from the Staff Designee, they discuss the individual's situation and make a decision whether to proceed.<sup>11</sup>

- If the Warden or the Staff Designee decides to end the process at this point, the incarcerated individual and all relevant staff must be informed.<sup>12</sup>
- If the Warden or Staff Designee decides to proceed, the process moves on with appropriate Health Services staff.

**Medical Evaluation: Health Services Administrator and Facility Medical Director** – The correctional facility’s Health Services Administrator and Medical Director complete the “Medical Staff Report” section of the application (providing the individual’s medical condition, diagnosis, and prognosis)<sup>13</sup> and send it back to the Staff Designee.

**Application Completion: Staff Designee** – The Staff Designee completes the application’s “Institution or Facility Head” section and attaches the following documents regarding the individual:<sup>14</sup>

- A current progress report;
- Presentence investigation;
- Post-incarceration placement information (with Case Management assistance, if necessary);
- Disciplinary history;
- Diagnostic and classification summary; and
- Results of warrants, detainers, and/or holds.

**Review: Warden** – After receiving the documents listed above, the Warden signs and dates the *Application for Offender Medical Clemency* and forwards everything to the Chief Medical Officer and Executive Director of Classification.<sup>15</sup>

**Confirmation of Placement: Chief Medical Officer and Classification** – The Chief Medical Officer and Classification’s Re-Entry and Medicaid staff confirm the individual has an appropriate placement outside of the prison.<sup>16</sup> After completing the “Chief Medical Officer Report” section of the application, everything is sent to the Chief of Staff.<sup>17</sup>

**Recommendation: Chief of Staff** – The Chief of Staff reviews the application, makes a recommendation, and then forwards everything to the Indiana Parole Board.<sup>18</sup>

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

**Decision-Maker** – The Governor has sole authority for granting Special Medical Clemency<sup>19</sup> but only acts upon the Indiana Parole Board’s recommendation.<sup>20</sup>

**Parole Board Process** – Indiana law lays out the general process the Parole Board must follow when considering Clemency petitions, including notice, investigations, and hearings.<sup>21</sup>

- The only specific reference to Special Medical Clemency is the Parole Board’s general statement that the four months it usually takes to prepare the necessary background information for Clemency petitions does not apply to Special Medical Clemency requests.<sup>22</sup>
- As part of the general process for Clemency petitions, the Parole Board is required to conduct an investigation of “the attitudes and opinions” of the community in which the crime occurred, of the victim (or victim’s friends and relatives), and of the incarcerated individual’s friends and relatives.<sup>23</sup> The Board may waive the full investigation if it determines “time to be of the essence.”<sup>24</sup> However, the Board must make “every reasonable effort” to obtain the victim’s views before rendering its recommendations.<sup>25</sup>

After completing its review and investigation, the Parole Board makes a recommendation to the Governor.<sup>26</sup>

**Governor’s Decision** – Based on the documentation and the Parole Board’s recommendation, the Governor makes a decision and sends it back to the Board and the Department’s Chief of Staff.<sup>27</sup> The Chief of Staff forwards it to the Executive Director of Classification and the Warden, and the Warden notifies the incarcerated individual and other designated contacts.<sup>28</sup>

## **V. POST-DECISION**

An individual whose Special Medical Clemency petition is either denied or declined for consideration cannot reapply unless (1) there is “a substantial and documented change” in the medical condition that was the basis for the petition or (2) a new and serious medical condition arises.<sup>29</sup>

## **VI. REPORTING/STATISTICS**

There is no publicly available information as to how many Special Medical Clemency petitions the Governor of Indiana has granted. In response to FAMM’s request for information, the Department directed us to the Parole Board. The Parole Board did not respond to our request.<sup>30</sup>

## TEMPORARY LEAVE: TERMINAL ILLNESS

The Department of Correction (Department) rules allow “temporary” releases for certain incarcerated people, including individuals who are terminally ill.<sup>31</sup> If eligible, the Department may release them to their homes or other Department-authorized residences or facilities.<sup>32</sup>

- Note that although the Department’s general rule is that Temporary Leave is for five days or less, if leave is granted because the individual has a terminal illness, the five-day rule does not apply.<sup>33</sup>

### I. ELIGIBILITY

**Medical Condition** – Department policy does not provide a definition or examples of qualifying terminal illnesses.

**Exclusions** – Incarcerated individuals are not eligible for Temporary Leave if they (1) are on death row, (2) are in “Disciplinary or Administrative Segregation,” (3) have more than 7.5 years until their earliest possible release date, (4) have a history of assaultive behavior, or (5) have “special circumstances” that raise concerns regarding safety and security.<sup>34</sup>

### II. APPLICATION/REFERRAL

To apply for a Temporary Leave, an incarcerated individual must submit a request on the appropriate form to the Supervisor of Classification at the facility in which the person is housed.<sup>35</sup> The request must include the reason Temporary Leave is needed and any additional relevant information.<sup>36</sup>

Department staff, a family member, or any other person may also initiate a Temporary Leave request on behalf of a terminally ill individual by contacting the appropriate Caseworker or Case Manager who will complete the required forms for submission to the Supervisor of Classification.<sup>37</sup>

### III. DOCUMENTATION AND ASSESSMENT

The Supervisor of Classification, or a designated staff person, reviews the forms to ensure they are complete and that the individual meets the Temporary Leave criteria. After verifying the reason for the request, the Supervisor recommends approval or denial, completes the form, and submits it to the Warden “in a timely fashion.”<sup>38</sup>

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

**Decision-Maker** – The Warden of the appropriate facility reviews all Temporary Leave applications and makes the final decision to approve or deny the leave requests.<sup>39</sup>

**Decision** – Upon receiving a Temporary Leave request, the Warden considers all the following factors:

- Basis for and appropriateness of the request;<sup>40</sup>
- History of the individual’s criminal activity, including past crimes that could create “unusual concerns,” attract public attention, or depreciate the seriousness of the offense if Temporary Leave is granted;<sup>41</sup>
- Convictions or prison disciplinary actions related to alcohol or controlled substances<sup>42</sup> and any escape (or attempted escape) convictions or a guilty finding in a prison disciplinary action within the last five years;<sup>43</sup>
- Whether the individual is responsible enough to meet the Temporary Leave conditions, as determined by institutional behavior and “adjustment” while at the facility;<sup>44</sup> and
- Sufficient facility resources to grant the Temporary Leave request and still maintain adequate security.<sup>45</sup>

After a Warden makes a decision to approve or deny the Temporary Leave request, a copy of the form is forwarded to the incarcerated individual. If approved, appropriate steps are then taken to release the individual on Temporary Leave.<sup>46</sup>

**Conditions** – Department rules list several general conditions that an individual must follow if released on Temporary Leave, such as remaining in the state of Indiana.<sup>47</sup> There is no indication that any of those conditions are waived for an individual who is granted leave on the basis of a terminal illness.

## **V. POST-DECISION**

Department policy does not include any provisions for returning terminally ill individuals to custody after they have been granted Temporary Leave.

## **VI. REPORTING/STATISTICS**

The Department is not required to report the number of individuals granted Temporary Leave due to a terminal illness, and its annual reports do not include this information.

## **INDIANA COMPASSIONATE RELEASE**

### **PRIMARY LEGAL SOURCES**

#### **SPECIAL MEDICAL CLEMENCY**

##### **State Constitution**

Indiana Constitution, Article 5, § 17, available through the Indiana General Assembly, <http://iga.in.gov/legislative/laws/const/articles/001/>.

##### **Statute**

Indiana Code, § 11-9-2 (2020), available through the Indiana General Assembly, <http://iga.in.gov/legislative/laws/2020/ic/titles/011>.

##### **Regulations**

Indiana Administrative Code, Title 220, § 1.1-4-1.5 (2020), available through the Indiana General Assembly, [http://iac.iga.in.gov/iac//iac\\_title?iact=220](http://iac.iga.in.gov/iac//iac_title?iact=220).

##### **Agency Policy**

Indiana Department of Correction, Policy and Administrative Procedures, Policy 01-04-105-Adult Offender Releases (2019), § VIII (D), <https://www.in.gov/idoc/files/01-04-105-Adult-Offender-Releases.pdf>.

#### **TEMPORARY LEAVE: TERMINAL ILLNESS**

##### **Agency Policy**

Indiana Department of Correction Policy and Administrative Procedures, Policy 02-04-104 (2020), Temporary Leaves for Adult Offenders, § G, <https://www.in.gov/idoc/files/02-04-104-Temporary-Leaves-5-1-2020.pdf>.

## NOTES

---

\* *Id.* means see prior note.

<sup>1</sup> 220 Ind. Admin. Code § 1.1-4-1.5; Indiana Department of Correction Policy and Administrative Procedure (DOC Policy) 01-04-105, Adult Offender Releases, § VIII (D).

<sup>2</sup> DOC Policy 02-04-104, Temporary Leaves for Adult Offenders, § G.

<sup>3</sup> DOC Policy 01-04-105, §§ III (X) and VIII (D).

<sup>4</sup> *Id.* Note that a blog post from late 2020 states that only individuals with terminal conditions are considered for Special Medical Clemency even though DOC policy clearly states incarcerated individuals with medical conditions who could be more effectively treated in the community will also be considered. See Natalie Medley, “Compassionate Release in Indiana,” *IDOC Watch*, Nov. 20, 2020, <https://www.idocwatch.org/blog-1/2020/11/14/compassionate-release-in-indiana>.

<sup>5</sup> DOC Policy 01-04-105, §§ III (X) and VIII (D).

<sup>6</sup> 220 Ind. Admin. Code § 1.1-4-1.5 (a); DOC Policy 01-04-105, § VIII (D).

<sup>7</sup> DOC Policy 01-04-105, § VIII (E).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at (E) (2). Note that this section of the DOC Policy says that the *Application for Offender Medical Clemency* is State Form 42183 but does not provide the form or indicate how to access it online.

<sup>10</sup> *Id.* at (E) (1).

<sup>11</sup> *Id.* at (E) (3).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at (E) (4).

<sup>14</sup> *Id.* at (E) (5).

<sup>15</sup> *Id.* at (E) (6).

<sup>16</sup> *Id.* at (E) (7).

<sup>17</sup> *Id.* at (E) (8).

<sup>18</sup> *Id.* at (E) (9) and (E) (10).

<sup>19</sup> Ind. Const. article 5, § 17.

<sup>20</sup> Ind. Code §§ 11-9-2-1 and 11-9-2-2.

<sup>21</sup> Ind. Code § 11-9-2.

<sup>22</sup> 220 Ind. Admin. Code §§ 1.1-4-1.5 (b) and 1.1-4-2 (d).

<sup>23</sup> 220 Ind. Admin. Code § 1.1-4-4 (b).

<sup>24</sup> DOC Policy 01-04-105, § VIII (D).

<sup>25</sup> 220 Ind. Admin. Code § 1.1-4-1.5 (b).

<sup>26</sup> DOC Policy 01-04-105, § VIII (E) (10).

<sup>27</sup> Id. at (E) (11).

<sup>28</sup> Id. at (E) (12) and (E) (13).

<sup>29</sup> 220 Ind. Admin. Code § 1.1-4-1.5 (c); DOC Policy 01-04-105, § VIII (D).

<sup>30</sup> Email from Megan Little, Assoc. General Counsel, Indiana Dep't of Correction, to FAMM (July 23, 2021) (on file with FAMM, Office of the General Counsel).

<sup>31</sup> DOC Policy 02-04-104.

<sup>32</sup> Id. at § II-G.

<sup>33</sup> Id. at §§ II and IV (B).

<sup>34</sup> Id. at § IV (E).

<sup>35</sup> Id. at §§ VII (A) and (B). According to the policy, the required form is State Form 7797, *Application for Temporary Leave for Committed Offenders*, which is not publicly available.

<sup>36</sup> Id. at §§ II and VII (A).

<sup>37</sup> Id. at § VII (B).

<sup>38</sup> Id. at (A) (2).

<sup>39</sup> Id. at (A) (3).

<sup>40</sup> DOC Policy 02-04-104, § V (D).

<sup>41</sup> Id. at (A).

<sup>42</sup> Id. at (B).

<sup>43</sup> Id. at (C).

<sup>44</sup> Id. at (E).

<sup>45</sup> Id. at (F). Note that because individuals granted Temporary Leave due to a terminal illness are not limited to leave that is five days or less, this may not be a significant consideration.

<sup>46</sup> Id. at § VII (A) (3).

<sup>47</sup> DOC Policy 02-04-104, § X.