

Missouri provides compassionate release to eligible incarcerated individuals in two ways: (1) **Medical Parole**, for those who are terminally ill, older and in need of long-term care or greatly endangered or expected to have their lives shortened by confinement;<sup>1</sup> and (2) **Executive Clemency/Commutation** due to illness or advanced age.<sup>2</sup>

## **MEDICAL PAROLE**

### **I. ELIGIBILITY**

**Medical Condition/Age** – An incarcerated individual may be eligible for Medical Parole due to (1) a terminal illness, meaning that death is anticipated within six months;<sup>3</sup> (2) advanced age, to the extent there is a need for long-term nursing home care;<sup>4</sup> or (3) confinement greatly endangering or shortening the person’s life.<sup>5</sup>

**Exclusions** – An individual is not eligible for Medical Parole consideration if (1) serving a sentence that has no possibility of parole<sup>6</sup> or (2) the person has not yet served a minimum prison term.<sup>7</sup>

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

All requests for Medical Parole must first go to the primary care physician at the individual’s correctional facility.<sup>8</sup>

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

**Recommendation: Physician** – To make a recommendation for Medical Parole, the correctional facility’s physician must certify the incarcerated individual’s medical condition and state whether the person meets the Medical Parole criteria.<sup>9</sup> There are no additional publicly available details about required documentation.

**Approval: Department Director** – The medical information then goes to the Chief Medical Administrator. Upon approval from the Department Director, the Administrator forwards the certification to the Parole Board.<sup>10</sup>

- The Parole Board procedures differ from those outlined in the statute, saying that the individual’s information goes first to the Institutional Parole Officer, who then sends a report to the Parole Board.<sup>11</sup>

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

**Decision-Maker** – The Missouri Parole Board is responsible for making all Medical Parole decisions.<sup>12</sup>

**Decision** – The Board reviews each Medical Parole request without holding a personal hearing<sup>13</sup> and then decides whether the incarcerated individual will be able to obtain proper medical care, treatment, and “helpful attention” outside of the correctional facility.<sup>14</sup>

- Note that the Department’s publication *For Family and Friends: A Guide to Understanding the Institutional Corrections System in Missouri* states that the individual must have an “acceptable” home plan to be released on Medical Parole; however, that requirement is not in the law or the Parole Board procedural manual.<sup>15</sup>

The Parole Board sends its final written decision to the individual.<sup>16</sup>

## **V. POST-DECISION**

**Conditions** – Individuals granted Medical Parole must comply, “as far as practicable and possible,” with any conditions the Board lists in its release document.<sup>17</sup> All those released on Medical Parole are financially responsible for their medical costs and any other needs.<sup>18</sup>

**Supervision** – Individuals on Medical Parole are under the same “kind and degree” of field supervision as all others on parole **unless** the Parole Board modifies the supervision conditions due to a medical condition.<sup>19</sup>

**Revocation** – If individuals on Medical Parole recover, they may be subject to a return to custody.<sup>20</sup>

## **VI. REPORTING/STATISTICS**

State law does not require the Department and Board to report the number of Medical Paroles granted each year, and there is no publicly available data on the number of individuals granted Medical Parole.<sup>21</sup>

- The Department’s publication *For Family and Friends: A Guide to Understanding the Institutional Corrections System in Missouri* states that Medical Parole releases “do not routinely occur.”<sup>22</sup>
- In response to FMM’s request for information on the number of Medical Parole requests granted, the Board responded by stating that all of its records are closed to the public.<sup>23</sup>

# EXECUTIVE CLEMENCY/COMMUTATION DUE TO ILLNESS OR AGE

The Missouri Constitution gives the Governor power to grant reprieves, commutations, and pardons after conviction.<sup>24</sup>

## I. ELIGIBILITY

**Medical Condition** – The Governor may consider an incarcerated individual for Executive Clemency Due to Illness or Age if the person has a terminal illness, is of advanced age and needs long-term care, or confinement is greatly endangering or shortening the person’s life.<sup>25</sup>

**Age** – The Department of Corrections Executive Clemency webpage states that any individual who is 70 years or older and has served 12 or more years has the right to petition for Executive Clemency.<sup>26</sup>

## II. APPLICATION/REFERRAL

Incarcerated individuals, or anyone else on their behalf, may submit applications for Executive Clemency/Commutation to the Missouri Parole Board.<sup>27</sup>

## III. DOCUMENTATION AND ASSESSMENT

The Parole Board determines whether the existing documentation is sufficient for it to make an informed recommendation. If not, it can order an investigation that includes an assessment of the individual’s medical and/or mental health needs and institutional conduct, as well as statements from the appropriate prosecuting attorney, judge, defense attorney, and victim.<sup>28</sup>

- Note that the Board’s website says there is no set time frame for completion of the Executive Clemency/Commutation process and the Governor’s decision. There is no mention of an expedited process for incarcerated individuals who are terminally ill.<sup>29</sup>

## IV. DECISION-MAKING PROCESS

**Decision-Maker** – The Governor makes all final decisions on Executive Clemency/Commutation requests.<sup>30</sup>

**Parole Board Recommendation** – The Parole Board is responsible for recommending individuals for Executive Clemency/Commutation to the Governor.<sup>31</sup> The Board

submits a letter of recommendation, investigative report, and all relevant documents to the Governor.

**Decision** – The Governor considers the Board’s recommendation and makes a determination regarding the Executive Clemency/Commutation request, sending the incarcerated individual a written notice of the final decision.<sup>32</sup>

**Conditions** – The Governor sets the Executive Clemency/Commutation conditions, restrictions, and/or limitations.<sup>33</sup>

## **V. POST-DECISION**

There is no specific mention of post-decision issues, such as appeals and supervision, in Missouri’s Executive Clemency/Commutation law.

## **VI. REPORTING/STATISTICS**

There are no publicly available statistics on the number of Commutations Due to Illness or Age the Governor has granted. The Governor’s office did not respond to FAMM’s request for that information.

## **MISSOURI COMPASSIONATE RELEASE** **PRIMARY LEGAL SOURCES**

### **MEDICAL PAROLE**

#### **Statute**

Revised Statutes of Missouri, § 217.250 (2020), available through the Missouri Revisor of Statutes, <https://revisor.mo.gov/main/OneSection.aspx?section=217.250&bid=11757&hl=>.

#### **Regulations**

Missouri Code of State Regulations, Title 14, § 80-2.010 (2020), available through the Missouri Secretary of State, <https://www.sos.mo.gov/cmsimages/adrules/csr/current/14csr/14c80-2.pdf>.

#### **Agency Policy**

Missouri Department of Corrections/Missouri Parole Board, Procedures Governing the Granting of Paroles and Conditional Releases (2020), § 29, <https://doc.mo.gov/media/pdf/rules-and-regulations-governing-granting- paroles-and-conditional-releases-appendices-0>.

## **EXECUTIVE CLEMENCY/COMMUTATION DUE TO ILLNESS OR ADVANCED AGE**

#### **State Constitution**

Missouri Constitution, Article IV, § 7, available through the Missouri Secretary of State, <https://www.sos.mo.gov/pubs/constitution>.

#### **Statute**

Revised Statutes of Missouri, §§ 217.250 and 217.800 (2020), available through the Missouri Revisor of Statutes, <https://revisor.mo.gov/main/OneSection.aspx?section=217.800&bid=11873&hl=>.

#### **Agency Policy/Publications**

Missouri Department of Corrections, Executive Clemency (2021), <https://doc.mo.gov/divisions/probation-parole/executive-clemency>.

Missouri Department of Corrections, *Application for Executive Clemency* (May 2020), <https://doc.mo.gov/media/pdf/application-executive-clemency-confined-applicant>.

## NOTES

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\* *Id.* means see prior note.

<sup>1</sup> Mo. Rev. Stat. § 217.250; Mo. Code Regs. tit. 14, § 80-2.010; Missouri Department of Corrections/Missouri Parole Board, Procedures Governing the Granting of Paroles and Conditional Releases (Parole Board Procedures), § 29.

<sup>2</sup> Mo. Const. art. IV, § 7; Mo. Rev. Stat. § 217.800; Mo. Rev. Stat. § 217.250.

<sup>3</sup> Mo. Rev. Stat. § 217.250; Parole Board Procedures, § 29 (A) (1). “Terminal illness” is not defined in the statute or regulations; however, the Parole Board Procedures define it as a disease where death is anticipated within six months.

<sup>4</sup> Mo. Rev. Stat. § 217.250; Parole Board Procedures, § 29 (A) (2).

<sup>5</sup> Mo. Rev. Stat. § 217.250; Parole Board Procedures, § 29 (A) (3).

<sup>6</sup> Parole Board Procedures, § 25. Offenses for which there is no parole include murder in the first degree and tampering with a witness or victim. *Id.*

<sup>7</sup> Mo. Rev. Stat. § 217.250; Mo. Code Regs. tit 14, § 80-2.010 (2) (A); Parole Board Procedures, § 22.

<sup>8</sup> Parole Board Procedures, § 29 (B).

<sup>9</sup> Mo. Rev. Stat. § 217.250.

<sup>10</sup> *Id.*

<sup>11</sup> Parole Board Procedures, § 29 (B).

<sup>12</sup> Mo. Rev. Stat. § 217.250; Mo. Code Regs. tit 14, § 80-2.010 (2) (B); Parole Board Procedures, § 29 (B).

<sup>13</sup> Parole Board Procedures, § 29 (B).

<sup>14</sup> Mo. Code Regs. tit 14, § 80-2.010 (2) (B); Parole Board Procedures, § 29 (D).

<sup>15</sup> Missouri Department of Corrections, For Family and Friends: A Guide to Understanding the Institutional Corrections System in Missouri (For Family and Friends) (2018), 30, [https://doc.mo.gov/sites/doc/files/2018-01/Family\\_Friends\\_Handbook.pdf](https://doc.mo.gov/sites/doc/files/2018-01/Family_Friends_Handbook.pdf).

<sup>16</sup> Parole Board Procedures, § 29 (B).

<sup>17</sup> Mo. Code Regs. tit 14, § 80-2.010 (2) (C); Parole Board Procedures, § 29 (C).

<sup>18</sup> Parole Board Procedures, § 29 (C).

<sup>19</sup> Mo. Code Regs. tit 14, § 80-2.010 (2) (D); Parole Board Procedures, § 29 (C).

<sup>20</sup> Mo. Code Regs. tit 14, § 80-2.010 (2) (E); Parole Board Procedures, § 29 (D).

<sup>21</sup> In 2017, the Missouri Parole Board responded to a request from FMM and provided the following information: (1) in 2017, eight people were granted Medical Parole and (2) from 2013 through 2016, 10

individuals were granted Medical Parole. Email from Pam Rogers, Missouri Parole Board, to Daniel Landsman, FAMM (Sept. 22, 2017).

<sup>22</sup> Missouri Department of Corrections, For Family and Friends, 30.

<sup>23</sup> Email from Don Phillips, Chair, Missouri Parole Board, to FAMM (April 6, 2021) (on file with FAMM, Office of the General Counsel).

<sup>24</sup> Mo. Const. art. IV, § 7; Mo. Rev. Stat. § 217.800.

<sup>25</sup> Mo. Rev. Stat. § 217.250.

<sup>26</sup> Missouri Department of Corrections, Executive Clemency webpage.

<sup>27</sup> Note that the *Application for Executive Clemency* does not include any questions related to medical conditions, terminal illness, or age.

<sup>28</sup> Missouri Department of Corrections, Executive Clemency webpage.

<sup>29</sup> *Id.*

<sup>30</sup> Mo. Const. art. IV, § 7; Mo. Rev. Stat. § 217.800.

<sup>31</sup> Mo. Rev. Stat. § 217.250; Mo. Rev. Stat. § 217.800.

<sup>32</sup> Missouri Department of Corrections, Executive Clemency webpage.

<sup>33</sup> Mo. Rev. Stat. § 217.800 (1); Mo. Const. art. IV, § 7.