

Rhode Island provides compassionate release to eligible incarcerated individuals with serious medical conditions through **Medical Parole**.¹

MEDICAL PAROLE

I. ELIGIBILITY

Medical Condition – To be eligible for Medical Parole, an incarcerated individual must be permanently physically incapacitated, severely ill, or terminally ill, as defined below:

- “Permanently physically incapacitated” means suffering from an injury, disease, illness, or “cognitive insult” (such as dementia or a persistent vegetative state) that, to a reasonable degree of medical certainty, permanently and irreversibly physically incapacitates the individual to the extent that (1) the person needs help with most of the activities that are necessary for independence, such as feeding, toileting, dressing, bathing, and transferring; or (2) no significant physical activity is possible and the individual is confined to bed or a wheelchair.²
- “Severely ill” is defined as suffering from a significant and permanent or chronic physical and/or mental condition that: (1) requires extensive medical and/or psychiatric treatment with little to no possibility of recovery and (2) precludes significant rehabilitation from further incarceration.³
 - Department of Corrections (Department) policy adds a third part to the definition – that the illness must render the individual’s incarceration “non-punitive” – but that requirement is not in the statute, and the Department does not provide guidance on how that would be determined.⁴
 - Note that individuals who are severely ill are only considered for Medical Parole when their treatment causes the state to incur “exorbitant expenses as a result of continued and frequent medical treatment during incarceration” as determined by the Department’s Office of Financial Resources.⁵
- “Terminally ill” is defined as suffering from a condition caused by injury (except self-inflicted injury), disease, or illness that, to a reasonable degree of medical certainty, is a “life-limiting” diagnosis that will lead to profound functional, cognitive, and/or physical decline and likely will result in death within 18 months.⁶

- Note that Department policy contradicts the statute by saying that for an individual to meet the definition of “terminally ill,” death must be expected within six months.⁷

Exclusions – Individuals serving life sentences without parole are not eligible for Medical Parole.⁸

II. APPLICATION/REFERRAL

The following individuals can file a Medical Parole application with the Director of the Department:⁹

- The incarcerated individual, with the written approval of an “attending physician” (defined as a licensed physician that is a Department employee or contractor¹⁰);
- The incarcerated individual’s family members or friends, with the attending physician’s approval; or
- The incarcerated individual’s physician.

III. DOCUMENTATION AND ASSESSMENT

Medical Report: Health Service Unit – Within 72 hours after the Medical Parole application is filed, the Director must refer the application to the Department’s Health Service Unit for a medical report and a medical discharge plan, which must be completed within 10 days.¹¹ The medical report must contain, at a minimum, the following information:

- Diagnosis of the individual’s medical conditions, including related medical history;¹²
- A detailed description of the conditions and treatments;¹³
- The prognosis, including life expectancy, likelihood of recovery, likelihood of improvement, mobility, trajectory of the condition, and rate of debilitation;¹⁴
- Degree of incapacity or disability, including an assessment of whether the individual is ambulatory, capable of engaging in any substantial physical activity, able to independently provide for daily life activities, and the extent of those activities;¹⁵

- An opinion from the Medical Director as to whether the individual is terminally ill and, if so, the stage of the illness or whether the person is permanently physically incapacitated or severely ill.¹⁶
 - Note that if the Medical Director’s opinion is that the person is not terminally ill, permanently physically incapacitated, or severely ill, the petition for Medical Parole will not be forwarded to the Parole Board.¹⁷

Note that, as referenced in the Eligibility section, in the case of a severely ill individual, the report must also include a determination from the Department’s Office of Financial Resources that the illness causes the state “to incur exorbitant expenses as a result of continued and frequent medical treatment during incarceration.”¹⁸

- The medical discharge plan¹⁹ must ensure, at a minimum, the following:²⁰
 - An appropriate placement for the individual has been secured, including (but not limited to) a hospital, nursing facility, hospice, or family home;
 - A referral has been made for the individual to secure a source for payment of medical expenses;
 - A parole officer has been assigned to periodically obtain updates on the individual’s medical condition to report back to the Board.

Medical Eligibility Determination: Department Medical Program Director – If the Medical Program Director’s opinion is that the incarcerated individual is not physically incapacitated, severely ill, or terminally ill, the petition for Medical Parole is not forwarded to the Parole Board.²¹

- The Medical Program Director notifies the Department’s Office of Legal Counsel that the individual’s petition is not being forwarded.²²
- The Office of Legal Counsel notifies the Rhode Island Deputy Attorney General that the incarcerated individual applied for Medical Parole but that it is not being forwarded to the Parole Board.²³

Submission to Parole Board: Director – If the Medical Program Director’s opinion is that the individual meets the medical eligibility requirements, the Department Director transfers the Medical Parole application, medical information, and medical discharge plan to the Parole Board for its consideration and decision.²⁴

- The Director’s Office notifies the Department’s Office of Legal Counsel that the Medical Parole application is being transferred to the Board.²⁵
- The Office of Legal Counsel notifies the Rhode Island Deputy Attorney General that the incarcerated individual’s application is being forwarded to the Board.²⁶

IV. DECISION-MAKING PROCESS

Decision-Maker – The Rhode Island Parole Board is responsible for granting Medical Parole.

Decision Process – Within seven days of receiving an application, the Parole Board must make a decision as to whether Medical Parole may be warranted.²⁷

- Note that Department policy states that the Board Chair – not the entire Board – conducts this initial determination as to whether Medical Parole may be warranted.²⁸ If the Chair decides that Medical Parole is **not** warranted, the Chair denies the application without a further hearing or proceedings and notifies the incarcerated individual within seven days of that decision.²⁹ The statute adds that the notice must include a brief statement of the reasons for denying Medical Parole without a hearing.³⁰

If the Board Chair determines that Medical Parole **may** be warranted, the case is set for a hearing within 30 days.³¹

Hearing

- The Board will send notice of the hearing to the prosecutor and the victim of the offense for which the individual is incarcerated.³²
 - There is a presumption that the physician’s and/or Medical Director’s opinion will be accepted.³³ However, the incarcerated individual, the physician, the Director, or the Parole Board can ask for an additional, independent medical evaluation within seven days after the physician’s and/or Medical Director’s report is presented.³⁴ The new evaluation must be completed and the report filed with the Board (with a copy sent to the incarcerated individual) within 14 days of the date of the request.³⁵
- At the hearing, the individual is entitled to be represented by an attorney, by a public defender (if qualified), or any other representative.³⁶

- Both the victim and the prosecutor have the right be heard at the hearing, submit written comments, or both.³⁷

Hearing Decision – Within seven days of the hearing, the Parole Board must issue a written decision granting or denying Medical Parole and explaining the reasons for the decision.³⁸

- If the Parole Board finds that the incarcerated individual meets the medical eligibility criteria, it will grant Medical Parole if, in light of the person’s medical condition, the following are true: (1) There is a reasonable probability that if released the individual will not violate any laws; (2) the release is compatible with society’s welfare; and (3) release will not “depreciate” the seriousness of the crime in a way that undermines respect for the law.³⁹
- The Parole Board notifies the Department’s Medical Program Director (or appropriate designee) and the Parole Coordinator of its decision.⁴⁰

Conditions – If the Parole Board grants Medical Parole, it imposes the following conditions of release:⁴¹ (1) periodic medical examinations; (2) periodic reporting to a parole officer at specified intervals; and (3) any other terms or conditions the Board decides are necessary. In addition, if the individual has been granted Medical Parole due to being “severely ill,” electronic monitoring is required unless the person is placed in a medical facility that cannot accommodate the monitoring.⁴²

V. POST-DECISION

Denials and Appeal Rights – Denial of Medical Parole release does not prevent the individual from reapplying again after 60 days. A reapplication must, however, demonstrate a “material change in circumstances.”⁴³

Revocation/Termination – If, after release, the individual’s condition changes so that the Medical Parole criteria are no longer met, the Parole Board may order the person returned to custody to await a hearing to determine whether the release should be revoked.⁴⁴ The Board can also revoke Medical Parole for violation of any of the other conditions it has set for the individual.⁴⁵

VI. REPORTING/STATISTICS

The Department is required to prepare an annual report for the Parole Board and the Rhode Island General Assembly that includes the (1) number of individuals who have applied for Medical Parole; (2) number of individuals who have been granted Medical Parole; (3) the nature of the applicants’ illnesses and the type of placements according to the medical discharge plans; (4) categories of reasons for

denial for those who have been denied; and (5) the number of people released on Medical Parole who have been returned to Department custody and the reasons for their returns.⁴⁶

Although the report for the General Assembly is not available to the public, in response to FAMM’s request for information, the Department provided the following information regarding Medical Parole requests:⁴⁷

- In 2019, seven individuals applied for Medical Parole and four were granted.
 - Of the three applications for Medical Parole not granted: (1) One individual did not meet the Medical Parole criteria but was still released, due to a court order, to hospice care; (2) one individual died before a hearing could be held; and (3) one individual was denied due to the seriousness of the crime “and other factors not compatible with the welfare of society.”
- In 2020, three individuals applied for Medical Parole and two were granted. The third individual who applied died before a hearing could be held.

RHODE ISLAND COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

MEDICAL PAROLE

Statute

State of Rhode Island General Laws, §§ 13-8.1-1 through 13-8.1-4 (2021), available through the Rhode Island General Assembly, <http://webserver.rilin.state.ri.us/Statutes/>.

Agency Policy

Rhode Island Department of Corrections Policy and Procedure, Policy 20.08-3 (March 5, 2012). This policy is not publicly available on the Department’s website; to obtain a copy, contact the Department at (401) 462-1000 or 40 Howard Avenue, Cranston RI 02920.

NOTES

* *Id.* means see prior note.

¹ R.I. Gen. Laws §§ 13-8.1-1 through 13-8.1-4; Department of Corrections Policy and Procedure (DOC Policy) 20.08-3.

² R.I. Gen. Laws § 13-8.1-3 (a). Note that DOC Policy 20.08-3, § III (A) (3) also includes a definition of “permanently incapacitated”; however, the policy is dated 2012 and does not reflect the 2017 statutory changes that added “cognitive insult” and criteria stating that an incarcerated individual may be eligible for Medical Parole if the person needs help with most of the activities necessary for independence. See Public Law 2017, Chapter 346, § 2.

³ R.I. Gen. Laws § 13-8.1-3 (c); DOC Policy 20.08-3, § III (A) (2).

⁴ DOC Policy 20.08-3, § III (A) (2).

⁵ R.I. Gen. Laws §§ 13-8.1-4 (a) and (c) (6); DOC Policy 20.08-3, § II.

⁶ R.I. Gen. Laws § 13-8.1-3 (b).

⁷ DOC Policy 20.08-3, § III (A) (1).

⁸ R.I. Gen. Laws § 13-8.1-2.

⁹ R.I. Gen. Laws § 13-8.1-4 (b); DOC Policy 20.08-3, § III (B) (1). Note that only the statute says that family members or friends may file on the incarcerated individual’s behalf; the DOC Policy does not include this.

¹⁰ DOC Policy 20.08-3, § III (A) (5).

¹¹ R.I. Gen. Laws § 13-8.1-4 (b); DOC Policy 20.08-3, § III (B) (2). Note that the DOC Policy states that the referral is to the Department’s Medical Program Director.

¹² R.I. Gen. Laws § 13-8.1-4 (c) (1); DOC Policy 20.08-3, § III (B) (3) (a).

¹³ R.I. Gen. Laws § 13-8.1-4 (c) (2); DOC Policy 20.08-3, § III (B) (3) (b).

¹⁴ R.I. Gen. Laws § 13-8.1-4 (c) (3); DOC Policy 20.08-3, § III (B) (3) (c).

¹⁵ R.I. Gen. Laws § 13-8.1-4 (c) (4); DOC Policy 20.08-3, § III (B) (3) (d).

¹⁶ R.I. Gen. Laws § 13-8.1-4 (c) (5); DOC Policy 20.08-3, § III (B) (3) (e).

¹⁷ R.I. Gen. Laws § 13-8.1-4 (c) (6); DOC Policy 20.08-3, § III (B) (3) (f).

¹⁸ R.I. Gen. Laws § 13-8.1-4 (c) (6); DOC Policy 20.08-3, § III (B) (3) (g).

¹⁹ According to the Department’s Medical Parole policy, the Professional Services Coordinator for Transitional Services is responsible for completing the medical discharge plan. DOC Policy 20.08-3, § III (B) (2) (a).

²⁰ R.I. Gen. Laws § 13-8.1-4 (e); DOC Policy 20.08-3, § III (B) (4).

²¹ DOC Policy 20.08-3, § III (B) (3) (f).

²² Id.

²³ Id. at (B) (3) (h).

²⁴ R.I. Gen. Laws § 13-8.1-4 (b); DOC Policy 20.08-3, § III (B) (5).

²⁵ DOC Policy 20.08-3, § III (B) (5) (a).

²⁶ Id. at (B) (5) (b).

²⁷ R.I. Gen. Laws § 13-8.1-4 (h); DOC Policy 20.08-3, § III (C) (1).

²⁸ DOC Policy 20.08-3, § III (C) (1).

²⁹ Id.

³⁰ R.I. Gen. Laws § 13-8.1-4 (h).

³¹ R.I. Gen. Laws § 13-8.1-4 (i) (1); DOC Policy 20.08-3, § III (C) (2).

³² R.I. Gen. Laws § 13-8.1-4 (i) (2); DOC Policy 20.08-3, § III (C) (2).

³³ R.I. Gen. Laws § 13-8.1-4 (g).

³⁴ Id.

³⁵ Id.

³⁶ Id. at (i) (3).

³⁷ Id. at (i) (2).

³⁸ R.I. Gen. Laws § 13-8.1-4 (j); DOC Policy 20.08-3, § III (C) (3).

³⁹ R.I. Gen. Laws § 13-8.1-4 (f).

⁴⁰ DOC Policy 20.08-3, §§ III (C) (3) and (C) (4).

⁴¹ R.I. Gen. Laws §§ 13-8.1-4 (j) (1) through (j) (3); DOC Policy 20.08-3, §§ III (C) (5) (a), (5) (b), and (5) (d).

⁴² R.I. Gen. Laws § 13-8.1-4 (j) (4); DOC Policy 20.08-3, § III (C) (5) (c). See also Department of Corrections Policy No. 28-11, Parolee Assisted Living, for additional guidance on supervision when an individual is released to a nursing home, assisted living, or other facility, <http://www.doc.ri.gov/documents/policies/APA/240-RICR-40-00-1%20Parolee%20Assisted%20Living.pdf>.

⁴³ R.I. Gen. Laws § 13-8.1-4 (h).

⁴⁴ R.I. Gen. Laws § 13-8.1-4 (k); DOC Policy 20.08-3, § III (C) (6).

⁴⁵ Id.

⁴⁶ R.I. Gen. Laws § 13-8.1-4 (l); DOC Policy 20.08-3, § III (D).

⁴⁷ Letter from the Rhode Island Department of Corrections Office of Legal Counsel to FMM (May 20, 2021) (on file with FMM, Office of the General Counsel).