



PRISON LAW OFFICE

General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Executive Director:
Margot Mendelson

Attorneys:
Rana Anabtawi
Patrick Booth
Tess Borden
Claudia Ceseña
Steven Fama
Mackenzie Halter
Alison Hardy
Sophie Hart
Marissa Hatton
Jacob Hutt
A.D. Lewis
Rita Lomio
Sara Norman
Donald Specter

Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that incarcerated people often have trouble getting legal information and we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in the prison law library.

COMPASSIONATE RELEASE AND MEDICAL PAROLE FOR PEOPLE IN CDCR PRISONS (updated January 2024)

We send this letter because you asked for information about or assistance with compassionate release or medical parole, or because we think this information might be useful to you. We are sorry we cannot send a personal response, and we hope this letter will help answer your questions. This letter describes two ways in which people who are incarcerated in California Department of Corrections and Rehabilitation (CDCR) prisons and have very serious medical conditions may get released through either compassionate release resentencing (see pages 1 through 5, below), or serve their sentence in an outside facility through medical parole (see pages 6 through 9, below). Be aware that compassionate release and medical parole are different types of actions with different eligibility requirements and procedures.

I. COMPASSIONATE RELEASE RESENTENCING

Compassionate release allows a court to recall the sentence of someone who has a fatal illness or who is medically incapacitated or functionally impaired, and resentence them so that they can spend the rest of their life in the community. See Penal Code § 1172.2, effective on January 1, 2023. As of January 2024, CDCR's regulations on compassionate releases (15 CCR §§ 3076, 3076.3-3076.5) have *not* yet been updated to reflect the changes made by the new law.

Compassionate release resentencing first requires CDCR medical officials to determine whether a person has both a qualifying medical condition or incapacitation and a plan for housing and care if released.¹ If CDCR medical officials determine a person has a qualifying condition and a post-release plan, they must present the application for release to the superior court which sentenced the person. The law then requires the superior court to grant release if it determines the person has a qualifying medical condition or incapacitation, unless it determines there is an unreasonable risk that the person would commit a certain type of serious / violent crime (known as a super-strike felony) if released.²

¹ People sentenced to serve felony terms in county jails also may get compassionate release; the county jail staff and county correctional administrator must carry out the same type of evaluation and court referral process using the same criteria that CDCR uses for people in state prisons. Penal Code § 1172.2(n).

² Penal Code § 1172.2(b).

Eligibility for Compassionate Release

First, compassionate release is not available to people who are sentenced to death, life without the possibility of parole (LWOP), or have been convicted of first-degree murder of a police officer engaged in or as retaliation for performance of their duties.³

For all others, the law says that the Secretary of the CDCR *shall (meaning they are required to)* recommend a person for compassionate release if the CDCR statewide Chief Medical Executive determines that the person either:

- “[has] a serious and advanced illness with an end-of-life-trajectory. Examples include, but are not limited to, metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced end-stage dementia”; or
- is “permanently medically incapacitated with a medical condition or functional impairment” that makes them “permanently unable to complete activities of basic daily living, including, but not limited to, bathing, eating, dressing, toileting, transferring, and ambulation, or has progressive end stage dementia, and that incapacitation did not exist at the time of sentencing.”⁴

In practice, because the law requires CDCR to present “a post-release plan” with any recommendation for compassionate release resentencing,⁵ an application for compassionate release will not go forward, even if a person meets the medical eligibility criteria, if the person does not have a place to live where they will get adequate medical care. The requirement for a post-release plan can be a barrier because some people do not have a place to live (for example, with family and friends), or family and friends are not able to provide needed care, and placement in a community skilled nursing facility is not always possible. CDCR should and usually does help a person develop a post-release plan, if possible. People who meet compassionate release medical criteria but do not have a post-release plan may be eligible for medical parole (discussed at pages 6-9, below).

³ Penal Code §§ 1172.2(o) and 1170.02.

⁴ Penal Code § 1172.2(a)-(b) (underlines added for emphasis; note that as written the law appears to make “progressive end-stage dementia” its own criteria for release, whether or not there is an inability to complete activities of daily living). These standards went into effect on January 1, 2023, and made more people eligible for compassionate release compared to the previous law. Under the previous law, compassionate release could be granted only if the person was “terminally ill with an incurable condition caused by an illness or disease that is expected to cause death within 12 months” OR “permanently medically incapacitated” with a condition that makes them “permanently unable to perform activities of basic daily living” and “requiring 24-hour care.” Former Penal Code § 1170(e)(2). Also, the prior law provided the CDCR Secretary could but was not required to recommend compassionate release for someone who met the criteria. *See* Former Penal Code § 1170(e)(1). However, even under the old law, CDCR officials were not supposed to rely on factors other than those in the statute when deciding whether to recommend compassionate release. *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578, 595 [107 Cal.Rptr.3d 439] (improper to consider whether a person’s time in incarceration was proportionate to the seriousness of their crime).

⁵ Penal Code § 1172.2(h) (“Any recommendation for recall submitted to the court by the department shall include . . . a postrelease plan . . .”).

The Compassionate Release Process

An incarcerated person or their family member or advocate can request a compassionate release by contacting the Chief Medical Executive at the prison.⁶ Prison medical staff can also (and we believe should) discuss possible compassionate release with any person who appears to meet the medical eligibility criteria.

Whenever a prison doctor determines -- either on their own initiative or after receiving a request from an incarcerated person or a family member -- that an incarcerated person meets the medical requirements for compassionate release, the doctor shall notify the Chief Medical Executive at the prison. If the Chief Medical Executive agrees, they shall notify the Warden. Within 48 hours after receiving the notification, the Warden shall tell the incarcerated person about the compassionate release process and arrange to contact a family member or outside advocate about it; the law further requires CDCR to provide the incarcerated person and representative with updated information throughout the compassionate release process.⁷

As stated above, in practice a compassionate release application will not go forward, even if an eligible person meets all medical criteria, if CDCR cannot identify an adequate post-release plan, which CDCR is required to present to the court.

If a person is determined to meet all eligibility criteria (and has a post-release plan), CDCR must refer the case to the sentencing court within 45 days after the prison doctor made the determination of a qualifying medical condition and refers the matter to the prison's Chief Medical Executive.⁸ The CDCR's referral must include at least one medical evaluation, a post-release plan, and findings about how the person meets the medical criteria for compassionate release and their level of public safety risk.⁹

Currently, after the prison's Chief Medical Executive refers the matter to the Warden, the Warden refers it to classification staff (a correctional counselor), who prepare a report focusing on custody factors. The application is then sent to CDCR's statewide Chief Medical Executive (Statewide CME), who makes the final decision as to whether compassionate release should be recommended. If the Statewide CME determines compassionate release should be recommended, CDCR must send the recommendation to the sentencing court.

As stated above, if the CDCR recommends compassionate release, it must send the recommendation to the court within 45 days of the prison doctor starting the process.

⁶ Penal Code § 1172.2(g).

⁷ Penal Code § 1172.2(d),(f).

⁸ Penal Code § 1172.2(d), (g). Prior to January 1, 2023, CDCR's timeline was 30 days. Former Penal Code § 1170(e)(6). The CDCR regulations, which have not been updated to reflect the new law, specified who was to perform each task in preparing the referral and the timeline for each task. It is expected that CDCR will revise the regulations in accord with the new law. We will update this letter when new regulations are announced.

⁹ Penal Code § 1172.2(h).

The court that imposed the original sentence must hold a hearing within 10 days of receiving the compassionate release recommendation from the CDCR.¹⁰ The case should be heard by the same judge who did the original sentencing, if possible.¹¹ The incarcerated person has the right to an attorney, and the court must appoint an attorney if the person cannot afford to hire one.¹²

Importantly, the law now provides for a presumption favoring resentencing if the superior court finds that the person meets the medical criteria for release, unless the court also determines, based on “the current physical and mental condition,” that the person poses an unreasonable risk of committing a certain type of serious / violent crime, known as a super-strike felony, if released.¹³

If the court grants compassionate release, CDCR must release the person within 48 hours after receiving the court’s order, unless the person agrees to be held a longer period of time;¹⁴ for example, delayed release might be beneficial to allow for coordination of housing and medical needs in the community. Upon release, CDCR must ensure that the person has in their possession a medical discharge summary, their full medical records, state identification, appropriate medications, and all of their property.¹⁵

CDCR-reported information indicates that in calendar year 2023, compassionate release was considered for about 105 incarcerated people.¹⁶ Compassionate release was recommended for about 75 of those people, and superior courts granted release to about 50 people. This total, as we understand it, was approximately double the number granted compassionate release in each of the two previous years. The increased number granted compassionate release appears to be a result of the January 2023 changes in the law which (1) expanded the medical eligibility criteria, (2) required CDCR to make recommendations for release regardless of custody factors, and (3) required superior courts to grant release if people meet the medical criteria unless it is specifically determined there is an unreasonable risk the person will commit a certain type of serious / violent crime, known as a super-strike felony.

Challenging Denial of Compassionate Release

If a compassionate release request is not processed within the required timeframe or is denied, the incarcerated person (or if they are not competent, their family member or advocate on their behalf) can challenge the delay or denial. The steps to take depend on the stage of the process at which the problem occurs.

¹⁰ Penal Code § 1172.2(c).

¹¹ Penal Code § 1172.2(i).

¹² Penal Code § 1172.2(k).

¹³ Penal Code § 1172.2(b); see *Nijmeddin v. Superior Court of Monterey County*, 90 Cal.App.5th 77 (2023) (reversing denial of compassionate release because trial court failed to use the statutory violent super-strike felony standard when finding incarcerated person would be a danger if released).

¹⁴ Penal Code § 1172.2(l).

¹⁵ Penal Code § 1172.2(l).

¹⁶ CDCR medical headquarters reports compassionate release applications on a tracking log available to us because we represent all people in CDCR in the federal class action lawsuit, known as the *Plata* case, regarding medical care in the prisons. Beginning January 1, 2024, the California Judicial Council is required to issue an annual report on the CDCR compassionate release process, including among other things the number released and denied release for various reasons. See Penal § 1172.2(p).

If a prison doctor delays or refuses to determine whether the person has a qualifying medical condition, or if the doctor, prison Chief Medical Executive or Statewide Chief Medical Executive concludes that the person does not meet the medical criteria, the person can file a Health Care Grievance (CDCR Form 602-HC) within 30 days after they learn about the delay or the decision. If the person is terminally ill and likely has only a short time to live, the grievance should be processed as an urgent issue with faster response timelines than normal. If the grievance is denied, the person can appeal by filing the 602-HC to the Headquarters level of review.

If prison medical staff find that a person has a qualifying medical condition, but CDCR custody or classification staff do not timely complete the public safety evaluation or do not timely refer the case to the sentencing court, then the person should file a regular administrative Grievance (CDCR Form 602-1) within 60 days after they learn about the delay or the decision. If the grievance is denied, the person should file an Appeal of Grievance (CDCR Form 602-2) for Headquarters level review.

After “exhausting administrative remedies” by completing the appropriate CDCR administrative grievance and appeal, a person can file a state court petition for writ of habeas corpus challenging the CDCR’s delay or refusal to process a compassionate release request, or decision not to recommend compassionate release. In a situation where immediate action is necessary, a court may be willing to hear a habeas petition even if the person has not exhausted administrative remedies. There is no set deadline for filing a habeas corpus petition, but a person should not delay. A person who is terminally ill may also want to ask the court to hear the case on a quicker than normal schedule or issue a preliminary injunction. In a habeas corpus petition, a person could argue that CDCR staff did not comply with the state statute and regulations or did not provide adequate due process.¹⁷ A person could also argue that CDCR staff or officials incorrectly found that the person did not meet the medical criteria; the court should overturn the CDCR decision if it is not supported by “some evidence.”¹⁸

If the problem is that the sentencing court denied compassionate release, the person may take a direct appeal to the court of appeal for the district in which the sentencing court is located.¹⁹ No “exhaustion of administrative remedies” is needed. To take a direct appeal, the person should file a notice of appeal in the sentencing court within 60 days after the court issues its decision. In very limited circumstances, the court of appeal may allow the notice of appeal to be filed after the 60 day deadline. Among issues that might be raised on appeal are that the sentencing court did not provide due process because it did not appoint an attorney, allow submission of additional information, or hold a proper hearing. Another possible issue is that the sentencing court abused its discretion by denying release even though the person meets the statutory criteria.²⁰

¹⁷ See, e.g., *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578, 582, 592 [107 Cal.Rptr.3d 439] (ordering reconsideration because correctional officials must recommend a person for compassionate release if the person meets the statutory criteria, and officials had declined to recommend release based on irrelevant factors, such as whether the person’s period of incarceration had been proportionate to the seriousness of the crime).

¹⁸ See *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578, 595 [107 Cal.Rptr.3d 439].

¹⁹ *People v. Loper* (2015) 60 Cal.4th 1155 [184 Cal.Rptr.3d 715].

²⁰ *Nijmeddin v. Superior Court of Monterey County*, 90 Cal.App.5th 77 (2023) (reversing denial of compassionate release because trial court failed to use the statutory violent super-strike felony standard when finding incarcerated person would be a danger if released); *People v. Torres* (2020) 48 Cal.App.5th 550 [261 Cal.Rptr.3d 844] (reversing denial and ordering grant of compassionate release where sentencing court had found person

Free information packets on administrative appeals, state habeas corpus petitions, and direct appeals are available by writing to the Prison Law Office. Those information packets are also available on the Prison Law Office website at www.prisonlaw.com, on the Resources page.

II. MEDICAL PAROLE

Medical parole allows the Board of Parole Hearings (BPH) to parole people who are permanently incapacitated by a medical condition before they reach their normal release dates. The medical parole process is set forth in Penal Code § 3550, and a BPH Memorandum on “Expanded Medical Parole,” dated June 16, 2014. There are also CDCR rules at 15 CCR §§ 3359.1-3359.6, though these have not been updated since the medical parole process was expanded in 2014.

Eligibility for Medical Parole

To be eligible for medical parole, a person must be permanently medically incapacitated with a condition that did not exist at the time of sentence and which renders them permanently unable to perform activities of basic daily living and requiring 24-hour care. Activities of basic daily living are breathing, eating, bathing, dressing, transferring to a sitting or standing position, toileting, arm use, or physical ambulation (moving around). In addition, the conditions under which the person would be released must “not reasonably pose a danger to public safety.”²¹

Medical parole is not regular parole. People on medical parole continue to serve their sentence until their release date, and CDCR remains responsible for their care. CDCR determines where the person is housed in the community, and it says it can return medical parolees to prison without a hearing.

A person is ineligible for medical parole if they are sentenced to death or LWOP, if they are convicted of first-degree murder of a peace officer who was performing their duties.²²

The Medical Parole Process

Medical parole results in a person being placed in the community – typically a skilled nursing facility – but still technically in CDCR custody, and serving their original prison sentence.

An incarcerated person, or their family or advocate, can request medical parole consideration by contacting the prison’s Chief Medical Executive or the Statewide Chief Medical Executive. The person should then be evaluated by their CDCR Primary Care Physician to see if they meet the criteria for medical parole.²³ In addition, anytime a person’s CDCR Primary Care Physician believes that the person meets the criteria for

met statutory criteria but denied release based on other factors).

²¹ Penal Code § 3550(a); 15 CCR § 3359.1(a).

²² Penal Code § 3550(b); 15 CCR § 3359.1(a).

²³ Penal Code § 3550(d); 15 CCR § 3359.1(b). A request by an incarcerated person, family member or advocate will not be considered if it has been less than 90 days since the person’s Primary Care Physician previously reviewed such a request. 15 CCR § 3359.1(c).

medical parole, the physician must refer the case to the prison's Chief Medical Executive.²⁴ The referral will be on a CDCR 7478 Medical Parole Form.²⁵

CDCR health care staff evaluate people to determine how much help they need for activities of daily living using a tool called the Resource Utilization Guide IV (RUG IV). Generally, a medical condition that would make a person eligible for medical parole would be one that requires Correctional Treatment Center (CTC) level of medical care and housing in a CTC or other medical bed.

The prison's Chief Medical Executive must approve or reject the Primary Care Physician's recommendation within 30 days after a referral initiated by the incarcerated person (or their family, or their advocate) or within 30 days after a referral initiated by a CDCR Primary Care Physician. If the Chief Medical Executive decides the person does not meet the criteria for medical parole, they shall provide a written explanation of their reasons.²⁶ If the Chief Medical Executive approves the referral, the case will go to a Classification & Parole Representative (C&PR) for review and the C&PR will direct the person's correctional counselor to prepare an evaluation report on public safety factors. If the C&PR approves, the C&PR will forward the case to the CDCR Headquarters Classification Services Unit, which will prepare a referral to the BPH.²⁷

When a person is referred to the BPH for medical parole, the BPH will hold a hearing to determine whether the person's release would endanger public safety.²⁸ The BPH hearing will be in front of a two-person (or sometimes three-person) panel. The person may hire an attorney or an attorney will be appointed by the BPH to appear at the hearing if the person cannot afford to hire one. The hearing may be held without the person being present.²⁹ All other regular procedural rules for parole suitability hearings apply to medical parole hearings.³⁰

The BPH panel shall grant medical parole if it determines the conditions under which the person would be released would not reasonably pose a threat to public safety.³¹ Even though the BPH does not review the medical eligibility criteria, the person's RUG IV score is relevant to the public safety issue because the higher the RUG IV score (maximum = 16), the more dependent the person is on others and thus less likely to pose a risk to public safety. The BPH will review the panel's decision and either approve or disapprove it; however, it is not currently known whether the Governor can or will exercise review authority for medical parole decisions when the person is serving an indeterminate life sentence for murder.

After the panel issues its decision, CDCR health care and parole staff will attempt to find a community health care facility in which to place the person. When an appropriate facility is identified, the person will be transferred to it as a medical parolee. However, if no appropriate facility is identified within

²⁴ Penal Code § 3550(c); 15 CCR § 3359.1(b).

²⁵ 15 CCR § 3359.2(a).

²⁶ Penal Code § 3550(c)-(d); 15 CCR § 3359.1(b)-(c).

²⁷ BPH, *Expanded Medical Parole, Memorandum*, dated June 16, 2014; see also Penal Code § 3550(c)-(e) and 15 CCR § 3359.2.

²⁸ Penal Code § 3550(g).

²⁹ Penal Code § 3550(f); BPH, *Expanded Medical Parole, Memorandum*, dated June 16, 2014.

³⁰ BPH, *Expanded Medical Parole, Memorandum*, dated June 16, 2014.

³¹ Penal Code § 3550(a); 15 CCR § 3359(d).

120 days of the panel decision, the medical parole grant will lapse and the person will remain in a CDCR institution.³² Currently, all people who are granted medical parole, except for those on a ventilator, are placed in a facility in the Los Angeles area. As of January 2024, CDCR reported 46 people on medical parole.³³

A person on medical parole may be subject to special conditions. These may include GPS monitoring, doctor examinations to determine if the person remains medically incapacitated, and restrictions on visitors or types of staff that assist the person.³⁴ A person with a determinate sentence will remain on medical parole until their normal release date, at which point any normal parole or Post-Release Community Supervision (PRCS) period will begin. A person with an indeterminate sentence will become eligible for consideration under regular parole suitability provisions once the person reaches their minimum eligible parole date.³⁵

A person on medical parole can be returned to custody if their condition improves to the extent that they no longer qualify for medical parole, or if it is decided that a previous determination that they qualified was incorrect. They can also be returned to prison if they become a threat to themselves, another person, or public safety. The person also can be returned if they violate their conditions of parole or if the community facility can no longer care for them.³⁶

Challenging Denial of Medical Parole

If a medical parole request is not processed or is denied, the incarcerated person (or if they are not competent, their family member or advocate on their behalf) can challenge the delay or denial. The steps to take depend on the stage of the process at which the problem occurs.

In some situations, a person will have to “exhaust administrative remedies” through an administrative grievance and appeal process before they can bring a habeas corpus case in court. Whether a person must seek an administrative remedy, and what type of administrative grievance and appeal process to use, depends on the following circumstances:

- If a prison doctor delays or refuses to evaluate the person’s medical condition, or if the doctor or prison’s Chief Medical Executive concludes that the person does not meet the medical criteria, the person can file a Health Care Grievance (CDCR Form 602-HC) within 30 days after they learn about the delay or the decision. If the grievance is denied, the person can appeal by filing the 602-HC to the highest (Headquarters) level of review.
- If prison medical staff find that a person has a qualifying medical condition, but CDCR classification staff or administrative officials do not timely complete the public safety evaluation or decide not to

³² BPH, *Expanded Medical Parole, Memorandum*, dated June 16, 2014. The law authorizes the CDCR to enter into agreements with health care providers and to reimburse those providers for costs that are not covered by Medi-Cal. Penal Code § 2065.

³³ CDCR Weekly Report of Population, January 3, 2024 (available at <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2024/01/Tpop1d240103.pdf>).

³⁴ Penal Code § 3550(h); 15 CCR § 3359.5.

³⁵ Penal Code § 3550(h).

³⁶ 15 CCR § 3359.6; BPH, *Expanded Medical Parole, Memorandum*, dated June 16, 2014.

refer the case to the BPH, then the person can file a regular administrative Grievance (CDCR Form 602-1) within 60 days after they learn about the delay or the decision. If the grievance is denied, the person can file an Appeal of Grievance (CDCR Form 602-2) to the highest (Headquarters) level of review.

- Even if the problem is with CDCR health care or classification/administrative staff, a court might allow the person to file a court action without exhausting administrative remedies if taking the time to complete the administrative appeals and grievance process would cause the person irreparable harm.
- If CDCR refers a person to BPH for a medical parole hearing and the BPH does not schedule a timely hearing or denies parole, the person does not need to file an administrative grievance or administrative appeal before going to court. This is because the BPH does not have a general administrative grievance and appeal process.

A person can file a state court petition for writ of habeas corpus challenging any problem with the CDCR's or BPH's processing of a medical parole request or decision denying medical parole. There is no set deadline for filing a habeas corpus petition, but a person should not delay. In a habeas corpus petition, a person could argue that CDCR staff did not comply with the state statute and regulations or did not provide adequate due process.³⁷ A person could also argue that CDCR or BPH staff or officials incorrectly found that the person did not meet the medical criteria or would pose a threat to public safety; the court should overturn the CDCR or BPH decision if it is not supported by "some evidence."³⁸

Free information packets on administrative appeals, BPH parole suitability hearings, and state habeas corpus petitions are available by writing to the Prison Law Office. Information on those topics is also in *The California Prison and Parole Law Handbook*. The information packets and *Handbook* are also available on the Prison Law Office website at www.prisonlaw.com, on the Resources page. The *Handbook* is also available on the electronic Tablets available to people in CDCR.

³⁷ See, e.g., *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578, 582, 592 [107 Cal.Rptr.3d 439] (ordering reconsideration because officials declined to recommend release based on factors not relevant to compassionate release).

³⁸ *In re Martinez* (2012) 210 Cal.App.4th 800, 815 [148 Cal.Rptr.3d 657] (finding BPH decision not supported and ordering that person be released on medical parole).