



## PRISONERS' LEGAL SERVICES OF MASSACHUSETTS

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### The Massachusetts Medical Parole Law, G.L. chapter 127, § 119A

Massachusetts' medical parole law became effective on April 13, 2018. The law allows for prisoners to be released on medical parole if they are permanently incapacitated, either physically or cognitively, or if they are terminally ill with less than 18 months to live. With the passage of the medical parole law, Massachusetts joined the majority of other states in having a procedure to release prisoners who are too ill to present a safety risk to the public.

#### The goal

This law was intended by the Legislature to serve several purposes:

- 1) To relieve our prisons and jails of providing security for those too debilitated to need it. It is expensive to incarcerate a person in prison and provide the round the clock security required in that setting. Massachusetts' incarcerated population is heavy with people who are old and sick,<sup>1</sup> with some prisoners clearly too old or sick to pose any risk to the community if they were released;
- 2) To relieve prisons and jails of providing resource intensive medical care for those extremely sick and incapacitated. Prisons are not equipped to provide intensive end of life care and often need to send terminally ill prisoners to community based hospitals or specialists in order to provide the necessary care.
- 3) To allow for those who, because of their incapacity, do not pose a risk to society to be released to the community to pass their last days. This goal both recognizes the humanity of the incapacitated prisoner patients as well as formalizing the compassionate intent of our Commonwealth's laws.

#### The process

The medical parole process is governed by statute, G.L. c. 127, § 119A, and also by Executive Office of Public Safety and Security regulations and Department of Correction and Parole Board policies. Once a prisoner files a medical parole petition, the following review steps are taken:

1. The Superintendent or Sheriff recommends for or against medical parole within 21 days of the petition, then sends the petition and other information to the Commissioner of Correction.

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<sup>1</sup> <https://www.wgbh.org/news/local-news/2018/05/20/with-aging-prison-population-massachusetts-looks-to-possible-cost-saving-compassionate-fix>

2. The Commissioner notifies the district attorney and the victim or victim's family, all of whom are permitted to provide written statements to the Commissioner. Where the prisoner was convicted of first degree murder, a hearing may be requested.
3. The Commissioner will consider medical parole only when she is provided with: a physician's written diagnosis of permanent incapacitation or terminal illness with a prognosis of less than 18 months; an assessment of the prisoner's risk of violence; and a medical parole plan including documentation of an acceptable housing placement in a home or facility, of arrangements for appropriate medical care and a plan for how that care will be funded.
4. A Multidisciplinary Review Team including staff from the Commissioner's office, health services and classification divisions will investigate all aspects of the prisoner's petition and plan, including the risk assessment information obtained by applying standardized assessment tools. This review will take into account the observations of on site health care and correctional staff who observe and interact with the prisoner on a daily basis.
5. The Commissioner must make the final decision within 45 days after receiving the petition from the superintendent or sheriff. If granted medical parole, a petitioner's parole conditions are set by the Parole Board and they remain under parole supervision for the remainder of their sentence. If the patient violates parole, or if their health improves such that they no longer qualify for medical parole, the person would be returned to incarceration.

### The reality

Medical parole is granted only in very rare circumstances when a prisoner is unquestionably incapacitated. The following statistics may help illustrate this fact: The population of prisoners incarcerated in state and county prisons and jails is roughly 17,100. By report of the DOC, in a year and a half only 34 petitions for medical parole were submitted, most of those from state prisoners. Of the 34 petitions, only 4 were granted. At the time of that report, 4 prisoners had died before a decision to grant or deny parole was made. Since October when those numbers were reported, we are aware of 1 more person granted medical parole and 2 more who died before a decision.

### What's missing in order to realize the goals

A confirmed placement in a home or care facility is a requirement in order for medical parole to even be considered. Many prisoners do not have family or friends able to take them into their homes to provide 24 hour care. For those without that option, placement in a care facility in the community is required. Understandably, admissions decisions for any patient must take into account the potential impact on other patients. Where the patient is determined to not pose a risk to the community, however, the underlying conviction should be rendered irrelevant to concerns about risk to other patients. The rigorous requirements and screening process performed before medical parole is granted by the Commissioner, ensures that only those patients whose health is so markedly deteriorated to not pose a risk to the community would ever be afforded medical

parole. The lack of an appropriate medical plan and community care placement results in someone who is otherwise eligible being denied medical parole.

For any questions, please contact:

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