

To: Connecticut Sentencing Commission, Subcommittee on Incarceration and the Collateral Consequences of Criminal Conviction
From: Cade Lewis, Research Technician, Connecticut Sentencing Commission
Subject: Compassionate Release Statutes in Connecticut
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This memo reviews Connecticut’s current compassionate release statutes, the recent changes to the federal compassionate release statute, and recent attempts in Connecticut to amend the compassionate release statutes.

I. Connecticut’s Current Compassionate Release Statutes

Connecticut offers compassionate release only in three very limited circumstances. The Board of Pardons and Paroles has discretion over incarcerated individuals who meet the statutory requirements for medical and compassionate parole.¹ The Department of Correction administers Nursing Home Release. There are three current types of compassionate release an incarcerated individual can qualify for under Connecticut statutes: medical parole, compassionate parole, and nursing home release.

A. Medical Parole

Medical parole is available to incarcerated individuals who suffer from terminal illnesses that make them “physically incapable of presenting a danger to society.”² To apply, an incarcerated individual, their lawyer, family, or warden must request a medical diagnosis to determine their eligibility.³ If the incarcerated individual qualifies, the Board of Pardons and Paroles (or a delegated panel) may decide to grant medical parole.⁴ If the Board grants medical parole, the incarcerated individual must agree to be placed in a suitable housing accommodation and may be subject to periodic medical diagnoses.⁵ If a medically paroled individual is found to be “physically capable of posing a danger to society, they may be returned to prison.⁶ Medical parole does not extend to those serving sentences for a capital felony or for murder with special circumstances.⁷

B. Compassionate Parole Release

To qualify for compassionate parole release, an incarcerated individual must (1) be “so physically or mentally debilitated, incapacitated or infirm as a result of advanced age or as a result of a condition, disease or syndrome that is not terminal as to be physically incapable of presenting a danger to society” and (2) have served, at minimum, half of their sentence.⁸ Compassionate parole release is for those incarcerated people who suffer from debilitating diseases or conditions that make them “physically incapable” of posing a threat. Compassionate parole does not extend to those serving sentences for a capital felony or for murder with special circumstances.⁹ Below is the medical and compassionate parole data in Connecticut.

¹ Conn. Gen. Stat. § 54-131a.

² *Id.* § 54-131a.

³ *Id.* § 54-131c.

⁴ *Id.* § 54-131e.

⁵ *Id.* § 54-131d.

⁶ *Id.* § 54-131d.

⁷ *Id.* § 54-131b.

⁸ *Id.* § 54-131k.

⁹ *Id.*

		2014	2015	2016	2017	2018	2019	2020	2021
Compassionate	Grant	1	4	1	1	2	4	25	8
	Denied	0	0	0	1	1	2	6	2
Medical	Grant	1	2	2	2	3	5	5	4
	Denied	0	0	0	1	0	0	1	0

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C. Nursing Home Release

Nursing Home Release (Conn. Gen. Stat. §18-100i and DOC Administrative Directive 8.16) is administered by the Department of Correction. Under the statute, wardens, “by the authority of the Commissioner [of Correction],” may release an incarcerated individual from custody for placement in a state contracted nursing home if the DOC Medical Director determines the incarcerated individual is suffering from a terminal condition. Incarcerated people released through this process may be subjected to periodic medical reviews and are subject to return to DOC custody if they no longer meet the medical criteria for release. As of July 2019, 7 individuals were on Nursing Home Release in Connecticut.

II. Recent Proposals to Change the Law

Connecticut State Senate Bill 460, [*An Act Concerning Compassionate or Medical Parole and Credits Awarded for Release During an Emergency Declaration*](#), is Connecticut’s most recent proposal to expand compassionate and medical parole in the state. The bill sought to expand eligibility for compassionate parole release by (1) lowering the “danger to society” threshold for certain incarcerated individuals’ conditions for release and (2) allowing these releases during a major disaster or emergency declaration.

Further, this bill allowed incarcerated individuals to be released at any time during their incarceration if a parole panel found that (1) circumstances exist that pose a high risk of harm to the incarcerated individual if he or she remains confined and (2) the incarcerated individual presents a reduced risk of presenting any danger to society. This bill also established a public health release credit awarded to incarcerated people toward release from imprisonment during a declared major disaster or emergency. The bill did not seek to change the provision under current law that requires incarcerated individuals to serve at least half of their sentence to be eligible for compassionate parole.

III. Compassionate Release Across the States

FAMM has compiled a database that outlines each state’s statutory scheme for compassionate release. There are three major trends that can be outlined by the data amongst the many states with compassionate release statutes.¹¹ Most states have a terminal illness provision, a serious medical condition provision, and a time served provision.

¹⁰ “Statistics.” CT.gov, <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Historical>.

¹¹ See FAMM, Executive Summary Chart (<https://famm.org/wp-content/uploads/Executive-Summary-Chart.pdf>)

A. Terminal Illness

Every state that has a compassionate release statute has some form of terminal illness provision. These provisions are mostly centered around a maximum-days-left-to-live standard. The state's statutes vary from 30 days or less to live, all the way to two years left to live.¹² Most states fall closer to a 12 to 18-month standard. For example, Massachusetts defines terminally ill as an "incurable" illness that the incarcerated individual will succumb to in "less than 18 months" and is "so debilitating that the prisoner does not pose a public safety risk."¹³

B. Serious Medical Conditions

Along with a terminal illness provision, most states also have a Serious Medical Condition provision. The majority of states carve out exemptions for certain crimes, namely aggravated murder.¹⁴ Generally, most states also include a definition of "serious medical conditions" that includes that the individual is incapable of being a threat to society.¹⁵

C. Time Served Requirement

Of all the states with some form of compassionate release, only six states maintain a 'time served requirement' similar to that of Connecticut.¹⁶ Connecticut requires an incarcerated individual to serve at a minimum half of their sentence, whereas a handful of other states put an age restriction onto their compassionate release programs. For example, Oklahoma requires incarcerated people to have served 10 years, or half of their sentence, and be over the age of 60 to qualify.¹⁷

IV. The Federal System Overview

In 2018, Congress passed the First Step Act, which gives individuals serving federal sentences the opportunity to petition courts directly for a reduction of their sentences. Judges may grant these petitions if "extraordinary and compelling reasons" exist to support the requested reduction and the reduction is consistent with the purposes of sentencing.¹⁸

Previously, the Bureau of Prisons ("BOP") was the gatekeeper for sentence modification under this provision. Prior to the First Step Act, the Sentencing Commission issued a policy statement regarding what circumstances constitute "extraordinary and compelling."¹⁹ The policy statement provides that a sentence reduction for "extraordinary and compelling reasons" must be accompanied by a finding by the court that the person is not "a danger to the safety of any other person or to the community." Reasons supporting a reduction may include the defendant's medical condition, age, or family circumstances, or "other reasons" that are "extraordinary and compelling."

Following enactment of the First Step Act, courts have granted compassionate release in a wide range of cases for medical and family-related reasons. Many were granted release because they have

¹² *Id*

¹³ Mass. Gen. Laws ch. 127, § 119A (a).

¹⁴ See, e.g., Or. Rev. Stat. § 144.126 (2015).

¹⁵ *Id*

¹⁶ See FAMM, Executive Summary Chart (<https://famm.org/wp-content/uploads/Executive-Summary-Chart.pdf>)

¹⁷ Okla. Stat. tit. 57, §§ 332.21

¹⁸ 18 U.S.C. § 3582(c)(1)(A)(i)

¹⁹ See U.S.S.G. § 1B1.13

medical conditions that increase their risk of severe illness from COVID-19. Courts have also considered other circumstances such as rehabilitation and changes in sentencing policy.

Release may also be granted to people over age 70 who have served at least 30 years of their sentence where a determination has been made that the defendant is not a danger to the safety of any other person or the community.²⁰

²⁰ 18 U.S.C. § 3582(c)(1)(A)(ii).