

CONNECTICUT SENTENCING COMMISSION

Incarceration and the Collateral Consequences of Criminal Conviction Subcommittee

From: Alex Tsarkov, Executive Director, Connecticut Sentencing Commission
Richard Sparaco, Consultant, Connecticut Sentencing Commission
Connor Reed, Intern, Quinnipiac Law School
Amanda Difrancesca, Intern, Quinnipiac Law School
Ayesha Durrani, Fellow, Yale Law School
Subject: Compassionate Release in Connecticut
Date: January 25, 2024

This memo presents an overview of compassionate release options available to the Connecticut Board of Pardons and Paroles and the Connecticut Department of Correction, similar release options across the United States, and recent changes to federal compassionate release statutes. It also provides a brief overview of recent attempts to modify Connecticut’s compassionate release statutes.

Connecticut’s Medical, Compassionate, and Nursing Home Release Statutes

In Connecticut, both medical and compassionate parole are options that can be utilized in limited circumstances under the statutory authority of the Connecticut Board of Pardons and Paroles (“Board”). Although medical parole is sometimes referenced in conjunction with compassionate parole as forms of “compassionate” release, they are statutorily different. This distinction is relevant in comparing medical and compassionate parole in Connecticut with other states. In addition to medical and compassionate parole, the Commissioner of the Department of Correction (“DOC”) can grant another form of “compassionate release” under their statutory authority by placing eligible individuals into a nursing home. All individuals released by the Board or the Commissioner are supervised by the DOC Parole and Community Services Division.

I. Medical Parole ¹

Medical parole was established under Public Act 89-383 and has not been amended since its passage. An incarcerated individual, their legal representative, or any family member can apply. Additionally, an application can be initiated by the DOC or the Board of Pardons and Paroles.

ELIGIBILITY CRITERIA: Any incarcerated individual serving any sentence of imprisonment (excluding an incarcerated individual convicted of a capital felony or murder with special circumstances) who has been diagnosed by a licensed physician as suffering from a terminal condition, disease, or syndrome. A “terminal” diagnosis includes, but is not limited to, a diagnosis of six months or less to live.

¹ CONN. GEN. STAT. §54-131a-g (2022).

SUITABILITY CRITERIA: A person presenting with an eligible diagnosis must be “so debilitated or incapacitated by such condition, disease, or syndrome as to be physically incapable of presenting a danger to society.”

After a diagnosis that fits the above definition of terminal illness, the Board of Pardons and Paroles (or a special panel) can order a review and grant or deny release. If the individual is granted medical parole, they must agree to be placed in a nursing home or suitable housing accommodation and may be subject to periodic medical examination. If an individual granted medical parole is later found to be “physically capable of posing a danger to society,” the release decision can be overturned.

From 2014 to 2023, a total of twenty-five medical paroles were granted and two were denied. In contrast, 11,647 regular discretionary paroles were granted during the same period.²

II. Compassionate Parole³

Compassionate parole was established in 2004 under Public Act 04-234 and has not been amended since its passage. There are no current restrictions as to who can apply. Unlike medical parole, compassionate parole requires a time-served standard and does not require a terminal condition.

ELIGIBILITY CRITERIA: An incarcerated individual is eligible if he has served not less than one-half (50%) of his definite or aggregate sentence or has served not less than one-half of his remaining definite or aggregate sentence after commutation of the original sentence by the Board of Pardons and Paroles and is physically or mentally debilitated, incapacitated or infirm as a result of advanced age or as a result of a condition, disease or syndrome. As with medical parole eligibility, any incarcerated individual convicted of a capital felony or murder with special circumstances is not eligible.

SUITABILITY CRITERIA: An otherwise eligible incarcerated individual must be “so physically or mentally debilitated, incapacitated or infirm as a result of advance 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.”

From 2014 to 2023, a total of 50 compassionate paroles were granted and 14 were denied. In contrast, 11,647 regular discretionary paroles were granted during the same period.⁴

Issues: The current compassionate parole statute conflates eligibility and suitability, and also sets the same standard for suitability as medical parole. In addition, compassionate parole requires 50% time served, which is the same eligibility standard as regular discretionary release for non-violent offenders.

² Board of Pardons and Paroles, *Statistical Information*, CT.GOV (last visited Feb. 12, 2024).

³ CONN. GEN. STAT. §54-131k (2022).

⁴ Board of Pardons and Paroles, *Statistical Information*, CT.GOV (last visited Feb. 12, 2024).

III. Nursing Home Release ⁵

Nursing home release was established under Public Act 12-1 during a special session. This option is available to the DOC Commissioner and gives the DOC the discretion to release any incarcerated individual into a nursing home setting for palliative and end-of-life care. Community placement must be in a licensed community-based nursing home under contract with the state.

ELIGIBILITY CRITERIA: Any incarcerated individual serving any sentence of imprisonment (excluding an incarcerated individual convicted of a capital felony or murder with special circumstances) who has been diagnosed by the Medical Director of the DOC and is suffering from a terminal condition, disease, or syndrome.

SUITABILITY CRITERIA: The Medical Director of the DOC must determine that “the inmate is suffering from a terminal condition, disease or syndrome, or is so debilitated or incapacitated by a terminal condition, disease or syndrome as to (1) require continuous palliative or end-of-life care, or (2) be physically incapable of presenting a danger to society.”

Compassionate Release Across the States

Most states have a compassionate release provision that is based on terminal illness or serious medical condition (non-terminal).⁶ If approved, release under these provisions is generally defined as a form of parole (i.e., medical).⁷

- 1) **Terminal Illness** - Every state that has a compassionate release statute has some form of terminal illness provision.⁸ These provisions are mostly centered around a maximum-days-left-to-live standard. The statutes vary from 30 days or less to live up to two years left to live.⁹ 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.”¹⁰
- 2) **Serious Medical Conditions (non-terminal)** - Along with a terminal illness provision, most states also have a serious medical condition provision.¹¹ Some states carve out

⁵ CONN. GEN. STAT. §18-100i (2020).

⁶ See MARY PRICE, FAMILIES FOR JUSTICE REFORM, EVERYWHERE AND NOWHERE: COMPASSIONATE RELEASE IN THE STATES (2018), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>; FAMILIES FOR JUSTICE REFORM, COMPASSIONATE RELEASE STATE BY STATE (2022); ROBINA INSTITUTE, EXAMINING PRISON RELEASES IN RESPONSE TO COVID: LESSONS LEARNED FOR REDUCING THE EFFECTS OF MASS INCARCERATION (July 2022).

⁷ While some states have geriatric release policies that fall under the larger umbrella of compassionate release, we do not examine them in this memo.

⁸ MARY PRICE, FAMILIES FOR JUSTICE REFORM, EVERYWHERE AND NOWHERE: COMPASSIONATE RELEASE IN THE STATES (2018), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf> at 12.

⁹ See, e.g., CONN. GEN. STAT. §18-100i (2020).

¹⁰ MASS. GEN. LAWS ch. 127, § 119A (a).

¹¹ See FAMILIES FOR JUSTICE REFORM, COMPASSIONATE RELEASE STATE BY STATE (2022).

exemptions for certain crimes, namely aggravated murder, but not lesser categories of murder.¹² Some states also include a definition of “serious medical conditions” that requires that the individual in question is incapable of being a threat to society.¹³

In most states, the Board of Parole or Commissioner of Corrections is the releasing authority, but some states—including Delaware, New Jersey and Pennsylvania—require courts to be the final decision-maker.¹⁴ Only three states, Arizona, Connecticut, and Missouri, universally require a time-served condition for compassionate release for all offenses. Of these states, Connecticut is the only one with a time served requirement for non-terminal cases.¹⁵ Although several states have no categorical exclusions, a handful of states, such as Colorado, Mississippi, and New York, do have additional restrictions on eligibility. Some states, such as New Jersey and California, require non-terminal candidates to have a “permanent physical incapacity” or “inability to perform activities of daily living.” Other states have more unique rationales for medical parole; in Rhode Island, medical parole is “made available for humanitarian reasons to . . . inmates whose chronic and incurable illness render their incarceration non-punitive and non-rehabilitative.”¹⁶

Compassionate Release in the Federal System

The First Step Act, passed in 2018, gives federal prisoners the ability to petition courts for a reduction of their sentences. Under the Act, judges may grant compassionate release petitions if “extraordinary and compelling reasons” exist in which a reduction of time served would be beneficial to the purpose of sentencing.¹⁷ Prior to the passage of the First Step Act, the Bureau of Prisons had the ultimate authority over sentence reductions, but now that authority has shifted to the courts.

The First Step Act defines “extraordinary and compelling reasons” quite broadly, including factors such as medical condition, age, family circumstances, and other reasons as determined by the Director of the Bureau of Prisons.¹⁸ Many federal prisoners were released under the First Step Act during the Covid-19 pandemic, which constituted an “extraordinary” reason for release.

In April 2023, the U.S. Sentencing Commission promulgated an amendment to the federal sentencing guidelines effective November 2023.¹⁹ The amendment expands the list of “extraordinary and compelling reasons” in five ways to better account for the plain language of section 3582(c)(1)(A) and its legislative history, to reflect the reasons relied upon by many courts after passage of the First Step Act in the absence of a binding policy statement, and to

¹² See, e.g., OR. REV. STAT. § 144.126 (2015).

¹³ *Id.*

¹⁴ See FAMILIES FOR JUSTICE REFORM, COMPASSIONATE RELEASE STATE BY STATE (2022).

¹⁵ See Attachment B.

¹⁶ *Parole Consideration*, STATE OF RHODE ISLAND, <https://paroleboard.ri.gov/parole-consideration-guidelines#:~:text=Medical%20parole%20is%20made%20available,%20punitive%20and%20non%20rehabilitative>.

¹⁷ See U.S. Sent’g Guidelines Manual § 1B1.13.

¹⁸ *Id.*

¹⁹ United States Sentencing Commission, *2023 Amendments in Brief*, https://www.ussc.gov/sites/default/files/pdf/amendment-process/amendments-in-brief/AIB_814.pdf.

account for recent experiences—including those pertaining to the pandemic. The amendment: (1) adds “Medical Circumstances” subcategories; (2) modifies the “Family Circumstances” category; (3) adds a “Victim of Abuse” category; (4) revises the “Other Reasons” category; and (5) adds an “Unusually Long Sentences” category, permitting consideration of non-retroactive changes in law in a narrow set of circumstances. These changes became effective on November 1, 2023.

Recent Attempts to Modify Medical and Compassionate Statutes in CT

In 2021 and 2022, bills aimed at making medical and compassion release more accessible and allowing broader release of at-risk individuals during the COVID-19 pandemic were raised in the Connecticut Senate.²⁰

The first of these bills, 2021 SB 1058, passed the Senate but did not ultimately receive a vote in the house. This bill lowered the threshold for compassionate release by replacing the requirement that an incarcerated individual “be physically incapable of presenting a danger to society,” with a requirement that the incarcerated individual “present a significantly reduced risk of danger to society.” The bill contained an additional provision allowing for the release of a prisoner when “circumstances exist which pose a higher risk of harm to such inmate should he or she remain confined” during a major disaster or declaration of emergency.

The second bill, 2022 SB 460, was introduced by the Judiciary Committee but did not receive a vote. SB 460 was identical to 2021 SB 1058 except for three provisions. First, SB 460 incorporates compassionate and medical leave into §54-129, which states that the BOPP may at any time declare a person on parole, incarcerated individual eligible for parole, or person on special parole discharged from the DOC’s custody or terminate such a person’s special parole without a court order. Second, the bill established a mechanism in which incarcerated individuals receive 122 days credit per month they are incarcerated during a declaration of emergency by the Governor or President. There was a maximum of 244 total days credit earned, and incarcerated individuals would be granted proportional amounts of credit for partial months served while under a declaration of emergency. Finally, the bill omitted a section about DOC whistleblowers that had been present in the 2021 version of the bill.

In 2023, the Connecticut Sentencing Commission voted to adopt a proposal regarding medical parole (Attachment D). The proposal expands eligibility and suitability for medical parole. It merges medical and compassionate release into one statute and categorizes each option for release for those with a diagnosis of a “terminal” and or “non-terminal” condition, disease, or syndrome. The proposal adds a new suitability standard for both releases consistent with the majority of other states. It also requires victim notification as part of the review process. The proposal has been forward to the Judiciary Committee for consideration.

Conclusion

Connecticut’s approach to compassionate release differs from that of other states. Nationally, Connecticut is the only state that statutorily splits medical and compassionate parole into

²⁰ See Attachment C for further discussion of these bills.

separate categories of compassionate release with different eligibility requirements. Connecticut is also only one of three states that has a “time served” requirement for compassionate release and the only state that applies that standard for non-terminal cases. Connecticut and New Jersey are the only two states that set the suitability standard for release as “incapable of presenting a danger to the public/society.” In New Jersey, unlike in Connecticut, that decision is made by the court. In most other states, the standard is a “reasonable probability” that the person is no longer a danger to society or will not violate any laws.

Many states have designed their compassionate release mechanisms to target a limited group of incarcerated individuals whose medical condition or terminal illness renders them a reduced risk to society. As Connecticut legislators consider reform, compassionate release mechanisms should not be understood as early parole options; rather, they should be seen as economical and humane approaches to dealing with individuals who are chronically ill or nearing the end of life.

Attachment A

The following document summarizes the compassionate release mechanisms of New England states that neighbor Connecticut, as well as other states who have received high marks from both FAMM²¹ and the Robina Institute²² on their use of compassionate release.

COMPASSIONATE RELEASE **OVERVIEW OF STATE STATUTES**

- 1 New York
- 2 Massachusetts
- 3 Rhode Island
- 4 New Jersey
- 5 New Hampshire
- 6 Vermont
- 7 Utah
- 8 South Dakota
- 9 Kentucky
- 10 Texas
- 11 Colorado
- 12 Illinois
- 13 California (Medical)
- 14 California (Elderly)

²¹ MARY PRICE, FAMILIES FOR JUSTICE REFORM, EVERYWHERE AND NOWHERE: COMPASSIONATE RELEASE IN THE STATES (2018), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>; see also FAMILIES FOR JUSTICE REFORM, COMPASSIONATE RELEASE STATE BY STATE (2022).

²² ROBINA INSTITUTE, EXAMINING PRISON RELEASES IN RESPONSE TO COVID: LESSONS LEARNED FOR REDUCING THE EFFECTS OF MASS INCARCERATION (July 2022).

NEW YORK

Type of Parole: Medical Parole
Decisionmaker: Board of Parole

.....**Eligibility**.....

- A “significant and permanent non-terminal condition, disease, or syndrome”
- Terminal condition (no time prognosis requirement)

.....**Exclusions**.....

- First-Degree Murder (and attempt or conspiracy thereof)
- Must have served one-half of minimum sentence for 2nd degree murder, 1st degree manslaughter, or any sexual offense of Article 130 (inc. attempt)

.....**Suitability**.....

- "So physically or cognitively debilitated or incapacitated that there is a reasonable probability that they no longer present any danger to society"

.....**Process**.....

- (1) Request is submitted to Commissioner by D.O.C. staff, prisoner himself, or prisoner’s attorney or relative.
- (2) A physician in the Department of Health must complete a medical evaluation, which is “promptly” sent to the Deputy Commissioner or Chief Medical Officer.
 - Victim is notified of application.
- (3) Within seven days, the Deputy Commissioner or Chief Medical Officer sends a recommendation to the Commissioner.
- (4) Commissioner determines whether to certify.
 - Not certified → final decision (not reviewable).
 - Certified → case referred to Board.
- (5) Board either grants or denies Medical Parole (which is either terminated or renewed after six months). [Appealable]
 - For non-terminal conditions, the Board must notify victims, who then have 30 days to provide comment, which the Board considers in its decision.
 - For terminal conditions, it does not appear that the Board must notify victims or that victims can be heard.

.....**Hearings**.....

- It does not appear that hearings are held at all.
 - However, if the Board does not renew the Medical Parole period, the Board must have a hearing at which the releasee is entitled to counsel

(including appointed counsel if unable to afford representation). N.Y. Exec. Law § 259-r 2(f).

MASSACHUSETTS

Type of Parole: Medical Parole
Decisionmaker: Commissioner of Corrections

.....**Eligibility**.....

- “Permanent incapacitation”
 - Physical or cognitive incapacitation that appears irreversible.
- Terminal illness
 - 18 months to live

.....**Exclusions**.....

- None

.....**Suitability**.....

- Prisoner will not violate the law and release is not incompatible with public safety or welfare of society.

.....**Process**.....

- (1) Request is submitted to Superintendent or Sheriff by D.O.C. staff, the prisoner himself, or the prisoner’s attorney or relative.
- (2) Within 21 days, Superintendent or Sheriff sends recommendation to grant or deny to Commissioner of Corrections.
- (3) Within 45 days of receiving recommendation, Commissioner makes decision.
 - Incarcerated person and the victim can provide written statements.

.....**Hearings**.....

- No hearing unless the individual is serving a sentence for premeditated murder.
 - In that case, the victim’s family or the district attorney may request a hearing, which the Commissioner grants or denies at his discretion.
 - “Attendees may include” the inmate, his attorney, the district attorney, or the victim/victim’s family.

RHODE ISLAND

Type of Parole: Medical Parole
Decisionmaker: Board of Paroles

.....**Eligibility**.....

- “Permanently physically or cognitively incapacitated”
 - Injury, disease, illness, or “cognitive insult” (e.g., dementia) to the extent that (1) the individual needs help with most necessary activities for independence (e.g., feeding, dressing, bathing), or (2) no significant physical activity is possible and the individual is confined to a bed or wheelchair.
- “Severely ill”
 - Permanent or chronic physical or mental condition that (1) requires extensive treatment with little to no possibility of recovery and (2) “significantly impairs rehabilitation from further incarceration.”
- “Advanced age”
 - Aged 65+ and suffering from “functional impairment, infirmity, or illness.”
- Terminal illness
 - 18 months to live

.....**Exclusions**.....

- Life sentences

.....**Suitability**.....

- Reasonable probability that if released, individual will not violate any laws;
- Release is compatible with society’s welfare; and
- Release will not “depreciate” the seriousness of the crime.

.....**Process**.....

- (1) Application filed by the incarcerated individual or his family or friends (requires written approval of an “attending” physician) OR by individual’s physician.
- (2) Within 72 hours, application referred to Department’s Health Service Unit for a medical report.
 - If Medical Director does not believe the person meets the eligibility criteria, the petition is not forwarded to the Board.
- (3) Within seven days, Board Chair (not entire Board) makes decision as to whether Medical Parole may be warranted.
 - If not, application is denied.
 - If so, the case is set for a hearing within 30 days.

.....**Hearings**.....

- Individuals are entitled to representation (and appointment if indigent).
- Victim and prosecutor have the right to be heard at the hearing, submit written comments, or both.
- Decisions appear to be unreviewable, but an individual can reapply after 60 days but only if he demonstrates a “material change in circumstances.”

NEW JERSEY

Type of Parole: Compassionate Release (NOTE – starts with the Board and then goes to the court)
Decisionmaker: Superior Court, Criminal Division (in county of conviction)

.....**Eligibility**.....

- Permanent physical incapacity
 - Condition (not existing when sentenced) that (1) results in permanent inability to perform activities of daily living and (2) requires 24-hour care.
- “Grave medical condition”
 - Medical condition that renders the individual unable to perform activities of daily living that has required 24-hour care over the previous three months.
- Terminal illness
 - 6 months to live.

.....**Exclusions**.....

- None

.....**Suitability**.....

- “Clear and convincing evidence” that the individual is permanently physically incapable of committing a crime.
 - Additionally, if the condition is not terminal: release conditions would not pose a threat to the public.

.....**Process**.....

- (1) D.O.C. staff can ask for initial medical diagnosis, or an incarcerated individual, family member, or attorney may submit a request.
- (2) Two licensed physicians conduct an initial diagnosis.
- (3) If the medical diagnoses confirm the individual is eligible, the Department must issue a Certificate of Eligibility for Compassionate Release.
- (4) Once issued, the individual can submit a petition to the court.
- (5) The court determines whether to schedule a hearing.

- If an objection from the prosecutor or notification that a victim intends to testify, the court holds an “expedited hearing.”
- If no objection or responses are received, the court may rule on the petition without holding a hearing.

.....**Hearings**.....

- The individual may request representation from the public defender’s officer after receiving a Certificate of Eligibility.
 - Denials are appealable.
- Victims have an opportunity to be heard at the hearing or to provide written comments to the court.

NEW HAMPSHIRE

Type of Parole: Medical Release
Decisionmaker: Adult Parole Board

.....**Eligibility**.....

- Cost of medical care, treatment, and resources must be “excessive” *and*:
 - Terminal illness
 - No time prognosis specified.
 - Debilitating, incapacitating, or incurable medical condition or syndrome.
 - (1) prevents prisoner from independently performing activities of daily living; (2) such limited physical strength or capacity as to pose an extremely low threat to others; and (3) condition unlikely to improve or cannot be managed in prison.
 - “Serious and complex medical condition”
 - Requiring extended services or care that cannot be accommodated, managed, or provided by the prison.

.....**Exclusions**.....

- Individuals sentenced to death or life in prison.

.....**Suitability**.....

- “Reasonable probability” that the individual (1) will not be a danger to the public, (2) will not violate the law, and (3) will be a “good citizen.”

.....**Process**.....

- (1) D.O.C. Commissioner and Administrative Director of Forensic and Medical Services must recommend individuals.

- Unclear if inmates themselves can start the process.
- (2) Licensed physician must certify that individual meets eligibility requirements.
- (3) After receiving petition from Department, Parole Board will convene a hearing.

.....**Hearings**.....

- Unclear on what a hearing looks like.
 - FAMM could not determine whether representation by counsel is allowed.
- No information on whether the decision is reviewable or not.
- Majority vote needed to grant medical parole.

VERMONT

Type of Parole: Medical Parole
Decisionmaker: Parole Board

.....**Eligibility**.....

- A “serious” medical condition
 - Definition: incurable, progressive illness or debilitating injury from which the individual will not recover.
 - D.O.C. has provided examples that would meet criteria:
 - (1) completely disabled, meaning they cannot provide any self-care and totally confined to bed or chair.
 - (2) capable of only “limited self-care” and confined to bed or chair more than 50% of waking hours.
- Terminal condition
 - 18 months or less to live.

.....**Exclusions**.....

- None

.....**Suitability**.....

- “Unlikely to be physically capable of presenting a danger to society” [part of eligibility requirements]
- *See also* subsection (4) under “Process”

.....**Process**.....

- (1) Individual submits “medical slip” requesting consideration or D.O.C. staff identify potentially eligible individuals.

- (2) Director of Nursing reviews requests to determine only medical eligibility. If the request meets the criteria, it is sent to the Director of Classification and Director of Field Services.
- (3) Director of Classification then reviews for “suitability of release.”
- (4) Within 30 days, Board conducts administrative review and identifies those eligible for presumptive release by finding that:
 - (1) inmate is eligible; (2) reasonable probability that inmate can be released without detriment to community; and (3) inmate is willing and capable of fulfilling obligations of a law-abiding citizen
- (5) Board may order hearing instead (see below)

.....**Hearings**.....

- The Board...
 - “Shall” conduct hearing for eligible individuals whom it denied under the (2) factor above.
 - “May” order hearing for individual otherwise eligible for presumptive release if it determines that victim should have opportunity to participate.
- FAMM indicates that representation by counsel is allowed.
- Victims have opportunity to be heard at a hearing.

UTAH

Type of Parole: Compassionate Release
Decisionmaker: Board of Pardons and Paroles

.....**Eligibility**²³.....

- “Medical infirmity, disease, or disability”
- “Mental health disease or disability”
- “Advancing age”
- “Serious and persistent” medical condition requiring extensive medical attention, nursing home care, or palliative care.
- If immediately family member dies within 120 days of the individual’s previously scheduled release.

.....**Exclusions**.....

- None

.....**Suitability**.....

- “Significantly reduced risk” to public safety and of recidivism

²³ It appears that Utah’s statute does not specifically mention terminal conditions.

.....**Process**.....

- (1) Utah D.O.C. submits written request to Board detailing how an inmate meets the eligibility conditions.
- (2) If inmate previously had “original hearing” (initial hearing to determine whether “parole or other disposition” may be granted), the Board can grant or deny the request with or without a hearing.
 - Before the Board grants release without a hearing, the Board should make a reasonable effort to notify, inform, and consider the input of any victim if the victim has previously requested notice of hearings.
- (3) If the individual has not had an original hearing, the Board will hold a hearing for the Compassionate Release request.

.....**Hearings**.....

- Very limited statute with almost no guidance or formal definitions.
 - No mention on whether Board decisions are reviewable.

SOUTH DAKOTA

Type of Parole: Compassionate Parole

Decisionmaker: Board of Paroles

.....**Eligibility**.....

- “Seriously ill” and not likely to recover.
- Requires “extensive medical care” or “significant chronic medical care.”
- Terminal illness
- Aged 65+ and requiring medical care that doubles the average annual medical cost of incarcerated individuals.
 - Only for Class 3 felony or below.
 - Must have served at least 10 years of sentence.
- Aged 70+
 - Must have served at least 30 years of sentence.

.....**Exclusions**.....

- Sentenced to death.

.....**Suitability**.....

- Unlikely to pose a “detriment” to self, the victim, or the community (based on a list of factors); *and*
- Cannot be “medically indigent.”
 - Medical requirements must be covered by the individual or a third-party payer (e.g., Medicaid, Medicare, private insurance).

.....**Process**.....

- (1) Warden is responsible for referring potentially eligible individuals to Secretary of Corrections. Health care providers may make referrals, but those must also go to the Warden first.
- (2) If Secretary denies referral, it is final and not subject to review. If Secretary approves referral, the case goes to the Board.
- (3) The Board must schedule a “discretionary” Compassionate Parole hearing within three months of receiving a referral.

.....**Hearings**.....

- “Victim input” is one of the statutory factors the Board considers.
- No details on what a Compassionate Parole hearing looks like.
 - FAMM reports that the program does not allow for representation by counsel in front of the Board, though.

KENTUCKY

Type of Parole: Early Medical Consideration (Early Parole)
Decisionmaker: Parole Board

.....**Eligibility**.....

- Terminal condition
 - 12 months to live.
- Severe chronic lung disease, end-stage heart disease, or severe neuromuscular disease (e.g., multiple sclerosis)
- Severely limited mobility because of a stroke, disease, or trauma
- Dependency on external life support systems
- and*
- Doesn't pose a threat to public safety

.....**Exclusions**.....

- None (except other statutes that eliminate parole or establish minimums for eligibility for certain offenses)

.....**Suitability**.....

- Does not “pose a threat to society” is part of eligibility requirements.
 - Individual must meet this standard in order for the Board to consider.
- Board may consider prior record, mental status, conduct while incarcerated, the parole discharge plan, and other factors related to public safety or the incarcerated individual's needs.

.....**Process**.....

- (1) Limited information about applications or referrals.
- (2) D.O.C. medical staff must provide written documentation of diagnosis and prognosis.
- (3) Medical Director reviews documentation and makes recommendation (for or against) to Department Commissioner.
- (4) Department Commissioner, if approved, forwards request to Board.

.....**Hearings**.....

- Must hold hearing if the individual is serving time for a Class A or B felony or for a Class C felony involving violence or a sexual offense.
 - Appears that the Board can waive a hearing for all other offenses.
- Board must notify victims (including time, date, and location of scheduled hearing).
- It appears that the incarcerated individual appears at the hearing.
 - If he is too ill to appear, the date may be deferred. Or, if the condition is acute, the Board may conduct a hearing without the individual present.
- Limited details on hearings otherwise:
 - FAMM reports that counsel representation is not allowed.
 - Victims have the right to attend or to submit comments.

TEXAS

Type of Parole: Medically Recommended Intensive Supervision
Decisionmaker: Board of Pardons and Paroles

.....**Eligibility**.....

- Terminal illness
 - 6 months to live.
- Physical disability (severe, chronic, and likely to continue indefinitely)
 - Substantial functional limitations in three or more major life activities (e.g., self-care, mobility, learning)
- Intellectual disability
 - Significantly sub-average intellectual functioning concurrent with deficits in adaptive behavior *and* originated before age 18
- Mental illness
 - (1) substantially impairs thoughts, perception of reality, emotional process, and/or judgment; *or*
 - (2) grossly impairs, as manifested by recent “disturbed behavior.”
- Need for long-term care:

- (1) deficient in self-care, (2) clinical condition that will not change over time, and (3) requires nursing care.
- Advanced age (65+)

.....**Exclusions**.....

- Life/death sentences
- Non-citizens with active ICE detainees
- Aggravated offenses of violent or sexual nature (except for long-term care inmates)
- Pending felony detainer, reportable conviction, or adjudication for sex offense.

.....**Suitability**.....

- Does not pose a threat to public safety (technically part of eligibility requirements)

.....**Process**.....

- (1) Begins with internal referral (D.O.C. medical staff—mandated in extreme cases) or external referral (individual, family, attorneys, elected officials, social agencies).
- (2) Healthcare provider completes MRIS Medical Summary.
- (3) MRIS Program Supervisor evaluates referral, and, if requirements are met, a D.O.C. healthcare provider and MRIS Specialist prepare the case for the Board.
- (4) The Board first holds a consideration vote (based on medical condition and determination as to whether individual constitutes a threat to public safety).
 - If denied, process ends.
 - If approved, moves forward to release approval or denial.
- (5) Board votes to approve or deny. (If terminal, within 10 days of MRIS referral).

.....**Hearings**.....

- Does not appear that there are actual hearings.
- FAMM reports that the process does not allow for representation of counsel.
- Victim notification, but no mention of victim’s opportunity to be heard.

COLORADO

Type of Parole: Special Needs Parole
Decisionmaker: Board of Parole

.....**Eligibility**.....

- Chronic, permanent, or irreversible physical illness, condition, disease, or mental health disorder that requires costly care of treatment.
- Incompetent to proceed (e.g., dementia)
 - Does not have “substantial probability” of being restored to competency during remaining sentence.
- Aged 55+ and suffers from chronic infirmity, illness, condition, disease, or behavioral or mental health disorder that:
 - Causes “serious impairment” that limits ability to function (i.e., ability to independently perform essential day-to-day activities).
- Aged 64+ and has served at least 20 years of a sentence (except violent and/or sexual offenses)

.....**Exclusions**.....

- Class 1 felony *and*
 - Life sentence without parole *or*
 - Life sentence (parole possible) & served less than 20 years
- Class 2 felony for a crime of violence *and*
 - Has served less than 10 years

.....**Suitability**.....

- Not likely to pose a risk to public safety.

.....**Process**.....

- (1) D.O.C. is responsible for identifying potential candidates. An incarcerated individual can request an eligibility determination, which must be conducted by D.O.C. within 30 days.
- (2) If individual is deemed eligible, the Special Needs Parole Case Manager gathers various information and notifies victim services before referring the case to the Board.
 - Victims have 30 days to submit a victim impact statement that will be sent to the Board for consideration.

.....**Hearings**.....

- The Board may schedule a hearing with the incarcerated individual present. It may also choose to issue a decision without a hearing.
 - It appears that the court can only waive a hearing if no victim notification is required. Colo. Rev. Stat. §17-2-201(4)(f)(i).
- The statute does not include any information about what a hearing looks like.
 - FAMM reports that the individual is allowed representation and that decisions are appealable.

ILLINOIS

Type of Parole: Medical Release
Decisionmaker: Prisoner Review Board

Eligibility

- Any diagnosable condition (including dementia and a severe permanent medical or cognitive disability) that is unlikely to improve noticeably in the future *and*
 - Prevents individual from completing more than one activity of daily living without assistance; *or*
 - Causes incapacitation to the extent that institutional confinement does not offer additional restrictions.
- Terminal condition
 - 18 months to live

Exclusions

- None

Suitability

- “No longer a threat to the community” [from article on state government website]
- From statute: Board considers the diagnosis along with victim statements and the “likelihood of and ability to pose a substantial danger to the physical safety of a specifically identifiable person or persons.”

Process

- (1) Application filed by individual, his family, his attorney, a medical professional, or D.O.C. official.
- (2) Once received, D.O.C. physician or nurse practitioner evaluates the individual and, within 10 days, completes a written assessment.
- (3) If criteria met, the case is referred to the Board.

Hearings

- Public hearings are not required.
- An individual, however, may request a hearing, be represented by an attorney, and present witnesses.
 - If a hearing is requested, the Board must hold one within 90 days of receiving the initial application.
 - At the hearing, no more than four people may speak at the hearing.
 - People who oppose medical release (e.g., victim) may also be heard—unclear if they count against the four-person limit.

CALIFORNIA (1)

Type of Parole: Medical Parole
Decisionmaker: Board of Parole

.....**Eligibility**.....

- Medical condition that results in a permanent inability to perform activities of basic daily living and a need for 24-hour care.
 - Daily living activities include breathing, eating, bathing, dressing, toileting, use of arms, and physical ambulation.

.....**Exclusions**.....

- Sentenced to death or life in prison without the possibility of parole.
- First degree murder if the victim was a peace officer
- Sentences for which parole is prohibited by any initiative statute.

.....**Suitability**.....

- Does not “reasonably pose a threat to public safety.”

.....**Process**.....

- (1) D.O.C. employed physicians must identify eligible individuals *or* an individual, his attorney, or a family member can initiate the process.
- (2) Chief Medical Officer reviews requests. If the C.M.O. agrees, the case is referred to the Classification and Parole Representative.
- (3) Within 30 days, the C&P Representative refers the case to the Board for a hearing.
 - During that period, the Representative and a caseworker gather more information about the request.

.....**Hearings**.....

- Two-member panel conducts hearing.
 - If a tie results, the case is sent for a full Board decision.
- The incarcerated individual may attend, but does not have a right to attend.
- Notwithstanding any changes established by statute, the procedures for all other parole suitability hearings apply, including:
 - Appointment of counsel.
 - Victim’s right to be heard.

CALIFORNIA (2)

Type of Parole: Elderly Parole
Decisionmaker: Board of Parole

.....**Eligibility**.....

- Aged 50+ and has served at least 20 years in prison.

.....**Exclusions**.....

- Sentenced under California’s “three strikes” law
 - Court order (*Coleman/Plata v. Newsom*, 2014): individuals sentenced for a second or third strike are eligible when reaching age 60 and having served 25 years.
- Sentenced to death or to life without parole
- First-degree murder of police officer

.....**Suitability**.....

- If the individual’s “diminished physical condition” has reduced the risk for future violence.

.....**Process**.....

- (1) The Board must consider an individual’s eligibility when scheduling a parole suitability hearing date or considering hearing requests under other state parole provisions.
- (2) The Board holds a “parole suitability” hearing for those who meet the requirements. If the Board does not grant Elderly Parole, it will schedule a subsequent hearing.

.....**Hearings**.....

- It appears that these hearings are conducted as if they were a standard parole suitability hearing.
 - Thus, it appears that (1) the individual has a right to attend, (2) individual is entitled to appointment of counsel, and (3) any victims have a right to be heard.

Attachment C

From: Gwenyth Ross
To: Incarceration and Collateral Consequences of Criminal Conviction Subcommittee
Re: Compassionate Release Bills Raised in 2021 and 2022
Date: August 30, 2022

Background

Compassionate and medical parole are currently available to incarcerated people who are “physically incapable of presenting a danger to society” as a result of advanced age and terminal illness, respectively.^{1 2} For compassionate parole, there is the additional requirement of having served at least half of one’s sentence.³ Release through either mechanism is decided by the Board of Pardons and Parole (BOPP), and is not available to those serving sentences for a capital felony or for murder with special circumstances.^{4 5} Compassionate and medical parole are not used very often, but there was a rise in compassionate parole releases in 2020 due to the COVID-19 pandemic. Statistics on medical and compassionate parole from 2014 to 2021 are below. In 2021 and 2022, bills were raised in the Senate with the goal of making medical and compassionate release more accessible and allowing broader release of at-risk individuals during emergencies like the COVID-19 pandemic.

		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

¹ CGS § 54-131a

² CGS § 54-131k.

³ Ibid.

⁴ CGS § 54-131b.

⁵ CGS § 54-131k.

⁶ “Statistics.” CT.gov, <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Historical>.

2021 SB 1058⁷

In 2021, Senate Bill 1058 was introduced by the Judiciary committee. It passed in the Senate but did not receive a vote in the House. Under SB 1058, an inmate would have to “present a significantly reduced risk of danger to society” instead of “be physically incapable of presenting a danger to society,” significantly lowering the threshold. During a major disaster or declaration of emergency by the Governor or by the President which covers any part of the State, an inmate could be released when “circumstances exist which pose a higher risk of harm to such inmate should he or she remain confined.” This section specifically includes COVID-19, other disease epidemics and public health emergencies, and natural disasters.

SB 1058 would have made a number of logistical changes regarding compassionate and medical parole. It would have created a release panel within the BOPP composed of three members that determines compassionate and medical parole release. It also would have transferred the supervision of parolees under compassionate and medical parole to the BOPP from the DOC. Finally, it would have incorporated compassionate and medical parole into CGS §54-127, §54-127a, and §54-128, which are existing statutes regarding parole. CGS §54-127 states that upon request to return a parolee to custody, a law enforcement official should arrest and hold that person without a written warrant. CGS §54-127a states that parole is revoked or rescinded upon recommendation by a member of the board and approval by at least two panel members. CGS §54-128 states that inmates returned to DOC custody for parole violation should be incarcerated for the remainder of their unexpired sentence, though the BOPP may determine that the inmate forfeits any earned time or is paroled again.

SB 1058 would also have expanded some whistleblower protections to DOC employees, unrelated to compassionate release.

2022 SB 460⁸

In 2022, Senate Bill 460 was introduced by the Judiciary Committee. It did not receive a vote. SB 460 is identical in effect to SB 1058 with three exceptions. First, in addition to CGS §54-127, §54-127a, and §54-128, SB 460 also incorporates compassionate and medical leave into §54-129, which states that the BOPP may at any time declare a person on parole, inmate eligible for parole, or person on special parole discharged from the DOC’s custody or terminate such a person’s special parole without a court order.

Second, SB 460 would have established a mechanism in which inmates receive 122 days credit per month they are incarcerated during a declaration of emergency by the Governor or President. There is a maximum of 244 total days credit earned, and inmates would be granted proportional amounts of credit for partial months served while under a declaration of emergency. This would not apply to persistent dangerous felony offenders, persistent dangerous sexual offenders, and those incarcerated for murder, felony murder, murder with special circumstances, arson murder, first-degree manslaughter, first-degree manslaughter with a firearm, first-degree aggravated sexual assault, aggravated sexual assault of a minor, or home invasion. This would also only apply to those whose sentences end within a year of the issuance of declaration. Notably, this means the measure would not apply to anyone who was serving a sentence during the declaration of emergency for COVID-19. This mechanism is not present in SB 1058.

⁷ 2021 Senate Bill 1058

https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2021&bill_num=1058#

⁸ 2022 Senate Bill 460

https://www.cga.ct.gov/asp/CGABillStatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB460

Finally, SB 460 does not include the section regarding DOC whistleblowers, which is unrelated to compassionate release. Below is a table comparing the current law with the amendments that would have been made by SB 1058 and SB 460.

BOPP Response

The Board of Pardons & Paroles, working in conjunction with the Office of the Public Defender, crafted the framework of both SB 1058 and SB 460. However, the final language of the bills limited the Board in decisions on release to only considering whether “circumstances exist which pose a higher risk of harm to such inmate should such inmate remain confined.” The Board had previously testified on SB1058 and again testified to the Judiciary committee on SB 460 that it is imperative to include language which also allows the Board to assess whether “such inmate presents a reduced risk of presenting any danger to society.”

Comparison of Current Compassionate Parole Law with SB 1058 and SB 460

Current Law⁹	2021 SB 1058¹⁰	2022 SB 460¹¹
Compassionate and medical parole determined by Board of Pardons and Parole	Conforms law with practice by creating release panel of three members	Conforms law with practice by creating release panel of three members
Compassionate parole requires inmate to “be physically incapable of presenting a danger to society”	Lowers threshold; requires inmate to “present a significantly reduced risk of danger to society”	Lowers threshold; requires inmate to “present a significantly reduced risk of danger to society”
No special compassionate parole in emergencies	During a major disaster or declaration of emergency, allows release of an inmate when “circumstances exist which pose a higher risk of harm to such inmate should he or she remain confined”	During a major disaster or declaration of emergency, allows release of an inmate when “circumstances exist which pose a higher risk of harm to such inmate should such inmate remain confined”
No credit towards release during emergencies	No credit towards release during emergencies	Inmates incarcerated during a declaration of emergency earn 122 days credit towards release every month up to a maximum of 244 days
Those released under compassionate or medical parole are under the supervision of the Department of Corrections	Those released under compassionate or medical parole are under the supervision of the Board of Pardons and Parole	Those released under compassionate or medical parole are under the supervision of the Board of Pardons and Parole
Certain parole release	Expands certain provisions to	Expands certain provisions to

⁹ CGS § 54-131.

¹⁰ SB 1058 (n 7)

¹¹ SB 460 (n 8)

<p>procedures do not apply to compassionate and medical parole</p>	<p>compassionate and medical parole:</p> <ol style="list-style-type: none">1. Upon request to return a person to custody, law enforcement must arrest and hold the person2. A person's parole is revoked or rescind when a board member recommends it and two panel members approve3. Inmates returned to DOC may be detained for remainder of sentence with possible deductions	<p>compassionate and medical parole:</p> <ol style="list-style-type: none">1. Upon request to return a person to custody, law enforcement must arrest and hold the person2. A person's parole is revoked or rescind when a board member recommends it and two panel members approve3. Inmates returned to DOC may be detained for remainder of sentence with possible deductions4. The panel may declare a parolee discharged from custody and terminate period of parole by a unanimous vote
--	--	--

Attachment D

AN ACT CONCERNING STANDARDS FOR MEDICAL PAROLE BY THE BOARD OF PARDONS AND PAROLES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 54-131a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2024*):

(a) The Board of Pardons and Paroles or a special panel appointed under section 54-131f may determine, in accordance with sections 54-131a to 54-131g, inclusive, when and under what conditions an inmate serving any sentence of imprisonment may be released on medical parole.

(b) The board or special panel may review, establish conditions for, rescind or revoke any parole release granted under (1) sections 54-131a to 54-131g, inclusive, as amended by this act, or (2) section 54-131k, revision of 1958, revised to 2024.

Sec. 2. Section 54-131b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2024*):

(a) The Board of Pardons and Paroles or a special panel may release on medical parole any inmate serving any sentence of imprisonment, except an inmate convicted of a capital felony under the provisions of section 53a-54b in effect prior to April 25, 2012, or murder with special circumstances under the provisions of section 53a-54b in effect on or after April 25, 2012, who: [has been diagnosed pursuant to section 54-131c as suffering]

(1) Suffers from a terminal condition, disease or syndrome, diagnosed pursuant to section 54-131c, and is so debilitated or incapacitated by such condition, disease or syndrome that there is a reasonable probability that the inmate will not pose a risk to public safety; or

(2) Suffers from a condition, disease or syndrome that is not terminal, diagnosed pursuant to section 54-131c, and is so permanently physically or cognitively debilitated, incapacitated or infirm as a result of advanced age or as a result of the condition, disease or syndrome that there is a reasonable probability that the inmate will not pose a risk to public safety

(b) Prior to making a decision under subdivision (2) of subsection (a) of this section,

the board or special panel shall consider:

(1) The inmate's prognosis and level of incapacitation as it relates to overall risk to the victim or the community;

(2) The inmate's release plan, including provision for health care; and

(3) Any written statement of a victim the board has received under subsection (c) of this section.

(c) (1) Prior to consideration of medical parole release by the board, except when a special parole is convened under 54-131f, the Office of Victim Services, within the Judicial Department, shall notify each victim of the crime for which the inmate is serving who is registered with the Office of Victim Services within the Judicial Department or registered with the Victim Services Unit within the Department of Correction, of the intent of the board to consider such parole release.

(2) A victim may submit a statement to the board concerning the inmate's application for release on medical parole.

(3) For the purposes of this section, "victim" means a victim, as defined in section 54-126a.

(d) Notwithstanding any provision of the general statutes to the contrary, the Board of Pardons and Paroles may release such inmate at any time during the term of such inmate's sentence.

Sec. 3. Section 54-131c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2024*):

(a) A diagnosis that an inmate [is suffering] suffers from a terminal condition, disease or syndrome or a condition, disease or syndrome that is not terminal and was not diagnosed at the time of sentencing, shall be made by a physician licensed under chapter 370. [and]

(b) The diagnosis shall include, but need not be limited to:

(1) [a] A description of [such terminal] the condition, disease or syndrome, and shall indicate whether it is a terminal condition, disease or syndrome;

(2) [a] A prognosis concerning the likelihood of recovery from such condition, disease or syndrome; and

(3) [a] A description of the inmate's physical incapacity.

(c) A diagnosis made by a physician other than one employed by the Department of Correction or a hospital or medical facility used by the Department of Correction for medical treatment of inmates may be reviewed by a physician appointed by the Commissioner of Correction or reviewed by the medical director of the Department of Correction.

(d) For the purposes of [this section] sections 54-131a to 54-131g, inclusive, as amended by this act, "terminal condition, disease or syndrome" includes, but is not limited to, any prognosis by a licensed physician that the inmate has six months or less to live.

Sec. 4. Section 54-131d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2024*):

(a) The Board of Pardons and Paroles shall require as a condition of release on medical parole that the parolee agree to placement and that he is able to be placed for a definite or indefinite period of time in a hospital or hospice or other housing accommodation suitable to his medical condition, including his family's home, as specified by the board.

(b) The Board of Pardons and Paroles [may] shall require as a condition of release on medical parole periodic diagnoses as described in section 54-131c. If after review of such diagnoses the board finds that a parolee released pursuant to sections 54-131a to 54-131g, inclusive, is no longer so debilitated or incapacitated [as to be physically incapable of presenting a danger to society] that there is no longer a reasonable probability that the parolee will not pose a risk to public safety, such parolee shall be returned to any institution of the Department of Correction.

Sec. 5. Section 54-131f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2024*): The Board of Pardons and Paroles may appoint a special panel to implement the provisions of sections [54-131a](#) to [54-131g](#), inclusive. The special panel shall consist of at least three members of the Board [The board or special panel] and shall review and decide requests for medical parole under said sections on an emergency basis, and in all cases shall act in as expeditious a manner as possible.

Sec. 6. Section 18-84 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2024*):

The terms "inmate" and "prisoner", as used in this title and sections 54-125 to [54-129] 54-131g, inclusive, [and 54-131,] as amended by this act, include any person in the custody of the Commissioner of Correction or confined in any institution or facility of the Department of Correction until released from such custody or control, including any person on parole.

Sec. 7. Section 54-131k of the general statutes is repealed. (*Effective October 1, 2024*)

Statement of Purpose:

To modify standards used by the Board of Pardons and Paroles to determine inmate eligibility for terminal and non-terminal cases.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]