

**HB**

**229**



AMENDMENT TO HOUSE BILL NO. 229

AMENDMENT NO. 1

OFFERED BY: Rep. W. Krause

- 1 At page <sup>3</sup>~~2~~, line <sup>2</sup>~~28~~, delete "and"
- 2 At page <sup>3</sup>~~2~~, line <sup>6</sup>~~29~~, after "noticeably" add:
- 3 "; and <sup>7</sup>~~(6)~~ an appropriate discharge plan has been formulated that addresses basic life
- 4 domains for the prisoner, including care coordination, housing, eligibility for public
- 5 benefits, and health care (including necessary medication)."

*Adopted*

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 229  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Department of Corrections  
Title Parole for Medical/Cognitive Disability BRU Administration & Operations  
Component Inmate Health Care  
Sponsor \_\_\_\_\_  
Requester \_\_\_\_\_ Component No. 705

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

The annual average savings from passage of this legislation is calculated to be approximately \$500,000. The numbers of inmates who qualify for medical parole and their cost of care may vary greatly from year to year. The Governor's FY 04 budget contains a \$500,000 decrement to inmate medical care which assumes passage of this legislation.

Prepared by: Jerry D. Burnett, Director  
Division: Administrative Services  
Approved by: Portia C.K. Parker, Deputy Commissioner  
Agency: Department of Corrections

Phone 465-3339  
Date/Time 4/9/03 11:05 AM  
Date 4/9/2003

CS FOR HOUSE BILL NO. 229( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to special medical parole and to prisoners who are severely medically  
2 or cognitively disabled."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 33.16.085(a) is amended to read:

5 (a) Notwithstanding a presumptive, mandatory, or mandatory minimum term a  
6 prisoner may be serving or any restriction on parole eligibility under AS 12.55, a  
7 prisoner who is serving a term of at least 181 days, may, upon application by the  
8 prisoner or the commissioner, be released by the board on special medical parole if the  
9 board determines that

10 (1) [FOR A PRISONER CONVICTED OF

11 (A) AN OFFENSE OTHER THAN A VIOLATION OF  
12 AS 11.41.434 - 11.41.438, THAT] the prisoner is severely medically or  
13 cognitively disabled [OR A QUADRIPLAGIC] as certified in writing by a  
14 physician licensed under AS 08.64 [, WAS NOT SEVERELY MEDICALLY

1 DISABLED OR A QUADRIPLAGIC AT THE TIME THE PRISONER  
2 COMMITTED THE OFFENSE OR PAROLE OR PROBATION  
3 VIOLATION FOR WHICH THE PRISONER IS PRESENTLY  
4 INCARCERATED; OR

5 (B) A VIOLATION OF AS 11.41.434 - 11.41.438, THAT  
6 THE PRISONER IS A QUADRIPLAGIC AS CERTIFIED BY A  
7 PHYSICIAN LICENSED UNDER AS 08.64 AND WAS NOT A  
8 QUADRIPLAGIC AT THE TIME THE PRISONER COMMITTED THE  
9 OFFENSE OR PAROLE OR PROBATION VIOLATION FOR WHICH THE  
10 PRISONER IS PRESENTLY INCARCERATED]; [AND]

11 (2) [THAT] a reasonable probability exists that

12 (A) the prisoner will live and remain at liberty without  
13 violating any laws or conditions imposed by the board;

14 (B) because of the prisoner's medical or cognitive disability  
15 [BEING SEVERELY MEDICALLY DISABLED OR A QUADRIPLAGIC],  
16 the prisoner will not pose a threat of harm to the public if released on parole;  
17 and

18 (C) release of the prisoner on parole would not diminish the  
19 seriousness of the crime;

20 (3) the prisoner

21 (A) was not suffering from the medical or cognitive  
22 disability at the time the prisoner committed the offense or parole or  
23 probation violation for which the prisoner is presently incarcerated; or

24 (B) was suffering from the medical or cognitive disability at  
25 the time the prisoner committed the offense or parole or probation  
26 violation for which the prisoner is presently incarcerated and the medical  
27 or cognitive disability has progressed so that the likelihood of the  
28 prisoner's committing the same or a similar offense is low;

29 (4) the care and supervision that the prisoner requires can be  
30 provided in a more medically appropriate or cost-effective manner than by the  
31 department;

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(5) the prisoner is incapacitated to an extent that incarceration does not impose significant additional restrictions on the prisoner; and

(6) the prisoner is likely to remain subject to the medical or cognitive disability throughout the entire period of parole or to die and there is no reasonable expectation that the prisoner's medical or cognitive disability will improve noticeably.

\* Sec. 2. AS 33.16.087(a) is amended to read:

(a) If the victim of a crime [AGAINST A PERSON OR ARSON IN THE FIRST DEGREE] requests notice of a scheduled hearing to review or consider special medical parole for a prisoner convicted of that crime, the board shall send notice of the hearing to the victim at least 30 days before the hearing. The notice must be accompanied by a copy of the prisoner's or commissioner's application for parole submitted under AS 33.16.085. However, the copy of the application sent to the victim may not include the prisoner's proposed residence and employment addresses.

\* Sec. 3. AS 33.16.900(11) is amended to read:

(11) "severely medically or cognitively disabled" means that a person has a medical condition, or a cognitive condition (due to irreversible dementia), that substantially reduces [ELIMINATES] the [PHYSICAL] ability to commit an offense similar to the offense for which the person was convicted or to commit an offense in violation of AS 11.41 that is punishable as a felony, and the person is likely to

(A) remain subject to the medical or cognitive condition throughout the entire period of parole; or

(B) die from the medical or cognitive condition;

\* Sec. 4. AS 33.16.900(12) is amended to read:

(12) "special medical parole" means the release by the board before the expiration of a term, subject to conditions imposed by the board and subject to its custody and jurisdiction, of a prisoner who is severely medically or cognitively disabled [OR A QUADRIPLAGIC].

\* Sec. 5. AS 33.30.017(c) is amended to read:

(c) The provisions of (b) of this section do not apply to prisoners

(1) who are

*Amend #2*

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(A) developmentally disabled; or  
(B) severely medically or cognitively disabled, as that term is defined in AS 33.16.900;  
(2) who are housed in a mental health unit or psychiatric unit of a state correctional facility; or  
(3) while placed in a state correctional facility awaiting classification under classification procedures for the purpose of making the appropriate assignment of the prisoner.

Alaska State Legislature  
House Finance Committee

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SECTIONAL ANALYSIS  
COMMITTEE SUBSTITUTE for HOUSE BILL 229 ( )  
*Draft 23-LS0885\H*

*“An Act relating to special medical parole and to prisoners who are severely medically and cognitively disabled.”*

**Section 1:** Amends AS 33.16.085(a). Special medical parole. Removes the language stating that a prisoner who may be considered for medical parole may not be convicted of an offense in violation of AS 11.41.434 through AS 11.41.438 (Sexual abuse of a minor 1,2,3) and was not severely medically disabled or a quadriplegic at the time of the offense.

Adds language that the prisoner must be either severely medically disabled or have a cognitive disability. In addition to the above, other provisions allowing for special medical parole are:

- The prisoner was not suffering from the medical or cognitive disability at the time of the offense was committed or the medical or cognitive disability the prisoner had at the time of offense has progressed so that the likelihood of the prisoner committing the same or similar offense is low;
- The care and supervision required of the prisoner can be provided in a more medically appropriate or cost effective manner than can be provided by the Department of Corrections;
- The prisoner is incapacitated to the extent that institutional confinement does not offer additional restrictions; and
- The prisoner is likely to die or remain subject to the condition throughout the entire period of parole and there is no reasonable expectation that the prisoner's disability will improve noticeably.

**Section 2:** Amends AS 33.16.087(a). Rights of certain victims in connection with special medical parole. Removes the words “against a person or arson in the first degree”. This allows victims of any crime to request notice of a scheduled hearing to review or consider special medical parole. The parole board is required to send notice 30 days before the hearing.

**Section 3:** Amends AS 33.16.900(11). Definitions. Adds or cognitively disabled to the definition of severely medically disabled. Also adds "or a cognitive condition due to irreversible dementia" to the definition. The words "eliminates" and "physical" are removed. Eliminates is replaced by reduces. Removal of the word "physical" allows for any disability to be considered for medical parole.

**Section 4:** Amends AS 33.16.900(12). Definitions. Amends the definition of special medical parole to include "or cognitively".

**Section 5:** Amends AS 33.30.017(c). Adds cognitively to this section of statute.

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# Alaska State Legislature

## House Finance Committee



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### COMMITTEE SUBSTITUTE FOR HOUSE BILL 229 ( ) DRAFT 23-LS0885VH SPONSOR STATEMENT

House Bill 229 gives the Alaska Board of Parole the flexibility to grant or deny medical parole to applicants. This allows the board to release severely disabled prisoners from confinement and gives the Department of Corrections relief from the high cost of providing medical service for these prisoners.

The Alaska Parole Board has a proven track record in their decision-making abilities. Over the past seven years, the Alaska Board of Parole has granted parole to approximately 45% of all *discretionary* parole applicants. Less than 8% of these parolees have violated their conditions (i.e., missed a meeting with a parole officer) and approximately 1% committed a new offense. This number is particularly compelling when compared to the 77% return rate of *mandatory* parole violators. Two applicants were considered for special medical parole in 2002 and both were denied.

When making a determination for Medical Parole the following are considered:

1. Department of Corrections' medical report
2. The seriousness of the criminal offense
3. Release plan
4. Parole Officer/DOC recommendation
5. Will not pose a threat to the public if released

House Bill 229 will allow the Alaska Board of Parole and the Department of Corrections to work together to determine an appropriate and cost effective release plan. The cost of health care to the Department of Corrections has significantly increased over the last few years. Some of the factors causing these increases are the increased population of terminally ill inmates and hospitalization of prisoners for long-term assisted care. This bill will give the department and the Parole Board another tool to ensure public safety and at the same time, help the department reduce the rising costs associated with providing medical service for prisoners afflicted with debilitating physical and mental disabilities.

# Montana Code Annotated 2001

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## Part Contents

**46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order a person placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome;

(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome and the extent of any potential recovery.

(2) The diagnosis must be reviewed and accepted by the department before the board may consider granting a medical parole. The board may not grant a medical parole unless the incapacitating physical condition, disease, or syndrome renders the person highly unlikely to present a clear and present danger to public safety.

(3) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person is likely to pose a possible detriment to society, the board may revoke the parole and return the person to the custody of the department.

(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to nonmedical parole.

**History:** En. Sec. 1, Ch. 248, L. 1991; amd. Sec. 1, Ch. 381, L. 1993; amd. Sec. 23, Ch. 125, L. 1995; amd. Sec. 3, Ch. 420, L. 1997.

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## Administrative Rule 20.25.302A

20.25.302A MEDICAL PAROLE (1) The board may release a person on medical parole except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37, MCA to practice medicine. The diagnosis must include a determination that the person suffers from an incapacitating physical condition, disease, or syndrome, a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity and a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome and the extent of any potential recovery.

(2) The diagnosis must be reviewed and accepted by the department of corrections before the board may consider granting a medical parole.

(3) The board may not grant a medical parole unless the incapacitating physical condition, disease, or syndrome renders the person highly unlikely to present a clear and present danger to the public safety.

(4) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnosis at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person is likely to pose a possible detriment to society, the board may revoke the medical parole and return the person to the custody of the department.

(5) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(6) After receiving a request for a medical parole hearing from the warden/superintendent or their designate, the board will schedule a hearing in a timely manner.

(7) Prior to the medical parole hearing, the board, through its staff, shall gather for the board's formal deliberations, all pertinent information on each inmate, including but not limited to the nature of the offense, social history, criminal history, institutional performance, and any medical and mental examinations which may have been made while in custody.

(8) Upon receiving notification from the department that a medical parolee is eligible for nonmedical parole, the board will consider the

person for nonmedical parole according to the rules established for nonmedical parole consideration. Unless the board otherwise orders or there has been a substantial change in the person's physical condition, disease or syndrome, after medical parole consideration an applicant may not reappear for medical parole consideration for a period of 12 months.

(9) A grant or denial of medical parole does not affect a person's eligibility for nonmedical parole.

(10) Revocation procedures for a medical parolee shall be consistent with the procedural rules adopted for revocation of release. (History: 46-23-218, MCA; IMP, 46-23-210, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)



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DEPARTMENT OF CORRECTIONS  
POLICIES AND PROCEDURES

Policy No.: DOC 4.7.1	Subject: <b>MEDICAL PAROLE</b>
Chapter 4: FACILITY / PROGRAM SERVICES	Page 1 of 6
Section 7: Releases / Placement	Revision Date: Jan. 5, 1998
Signature: /s/ by Director Rick Day 1/5/98	Effective Date: Mar. 11, 1996

**I. POLICY:**

It is the policy of the Department of Corrections that selected offenders, housed in correctional facilities or programs, may be considered for medical parole. This policy, and the Montana Codes Annotated specifically preclude persons under sentence of death from eligibility for medical parole.

**II. AUTHORITY:**

53-1-203, MCA. Powers and Duties of the Department

46-23-210, MCA. Medical Parole

Title 37, Chapter 3, MCA. Professions and Occupations, Medicine, Licensing

**III. DEFINITIONS:**

**Medical Parolee** means an offender who has been released on medical parole to the community supervision of the Department, by the Board of Pardons and Parole, after a licensed physician has determined that the person suffers from an incapacitating physical condition, disease, or syndrome and the Board of Pardons and Parole has determined that such condition renders the person highly unlikely to present a clear and present danger to public safety.

**Medical Parole Candidate (Parole Candidate)** means an offender placed in a correctional facility or program for whom the status of medical parole is under consideration.

**Division Administrator** means the Administrator of the Community Corrections Division of the Department of Corrections.

**Board** means the Board of Pardons and Parole.

**Department** means the Department of Corrections.

IPPO means Institutional Probation and Parole Officer.

#### IV. PROCEDURES:

Consideration of medical parole will be based upon a medical diagnosis that the offender suffers from an incapacitating physical condition, disease, or syndrome; a description of the disease; the offender's incapacity; and a prognosis addressing the offender's likelihood of recovery. The Board may not grant medical parole unless it finds that the incapacitating condition, disease or syndrome renders the offender highly unlikely to present a clear and present danger to public safety.

##### A. Request for Medical Parole

Medical parole may be requested by the Board, the Department, the offender, the offender's parent, grandparent, child, sibling or a recognized representative. The request must be made in writing to the Warden/Superintendent of the correctional facility where the offender is incarcerated, or to the Division Administrator if the offender is residing in a community corrections program. The written request must include:

1. The reasons for the requested medical parole.
2. The relationship of the parole candidate to the requesting party (if the request is not from the offender).
3. The name, address and telephone number of the proposed individual or facility which has agreed to provide care to the parole candidate.
4. The name, address and telephone number of the physician who has agreed to provide medical care to the parole candidate while on medical parole.
5. A statement documenting the parole candidate's ability to pay for residential care and on-going medical care.
6. Specific travel arrangements for transporting the medical parolee to the caretaking person or facility.
7. A statement of the requesting party's willingness to cooperate with the Board and the Department in all matters relating to the status of the medical parolee.

##### B. Medical Documentation

Attached to the Request for Medical Parole must be written documentation of a thorough medical examination conducted by a physician licensed to practice medicine under Title 37 Montana Codes Annotated. The written diagnosis resulting from this examination must include:

Subject: **MEDICAL PAROLE**

1. A determination that the parole candidate suffers from an incapacitating physical condition, disease or syndrome.
2. A description of the physical condition, disease or syndrome, and a detailed description of the offender's physical incapacity.
3. A prognosis regarding the offender's likelihood of recovery from the incapacitating physical condition, disease or syndrome and the extent of any potential recovery.

**C. Medical Examinations/Diagnosis**

1. The parole candidate, or another person designated in statute to make a request on behalf of the parole candidate, may submit a written request for a medical diagnosis to the Warden, Superintendent or Division Administrator. Copies of the request must be submitted to the Department medical coordinator for review and comment.
2. The medical examination and diagnosis will typically be completed by a physician named by the Department. When the Department makes the request for a medical examination and names the physician, the Department will assume the expense of the examination and the diagnosis.
3. In the event that the parole candidate or designee requests a medical examination by a physician of the candidate's choice, payment will be the responsibility of the candidate and/or the requesting party.
4. The Department reserves the right to review, and accept or deny the medical diagnosis, regardless of who designates the physician, before the Board considers granting a medical parole.

**D. Location of Placement**

1. As a condition of medical parole, placement of a parole candidate must be established at a location acceptable to the Department prior to the offender's release on medical parole.
2. Placement may be in a hospital, nursing home, family home, or other location acceptable to the Department.

**E. Approval/Disapproval of a Request for Medical Parole**

**Subject: MEDICAL PAROLE**

1. The final decision to grant, deny or revoke a medical parole is within the discretion of the Board. Nothing herein shall be construed as creating a right to medical parole, or otherwise reducing the Board's discretion as provided for by statute.
2. The Department reserves the right to make decisions relative to the eligibility of a parole candidate to be considered by the Board for Medical Parole. Eligibility decisions by the Department will be made based on the medical diagnosis and examination; however, the Department will take into consideration the potential risk that the parole candidate may pose to the safety and security of the community. Eligibility decisions of the Department are not appealable.
3. When the medical examination and diagnosis is complete, the party requesting the medical parole will attach written documentation to the Request for Medical Parole and submit that documentation to the Warden, Superintendent, or the Division Administrator.
4. The Warden, Superintendent or Division Administrator will consult with the medical coordinator to determine whether further medical examination is appropriate and necessary.
5. If the Warden, Superintendent, or the Division Administrator denies the request, the denying party will provide the individual that requested the medical parole with written reasons for the disapproval.
6. If the request is approved on behalf of the Department, it will be forwarded with a letter of approval to the Institutional Probation and Parole Officer (IPPO) who is assigned to the parole candidate.
7. The IPPO, in consultation with correctional facility staff, will prepare, and/or request preparation, of all pre-parole documents required by the Board. Attachments to the request to the Board will include the Request for Medical Parole, medical diagnosis, letter of approval from the Department representative, and recommended conditions for parole. The IPPO will be responsible for forwarding all pre-parole documents to the Board.
8. The Board will schedule a hearing in a timely manner and approve or disapprove the medical parole request. All decisions of the Board must be in writing and signed by at least two Board members and delivered to the parole candidate within thirty days from the date of the hearing. If the medical parole is approved, the IPPO shall provide the parolee a waiver of release of medical information. The parolee, or a recognized representative, must sign the waiver prior to

Subject: **MEDICAL PAROLE**

release from the facility or program to medical parole. Copies of the waiver will be provided to the Department, the Board and the care-giver in the community.

9. After the Board has approved the medical parole, the Probation and Parole Bureau will investigate the medical parole plan and send the findings to the Board.
10. When a medical parole plan is approved by the Board, the parolee or a recognized representative will sign the standard conditions of parole, as well as any conditions set by the Board which are specific to the parolee's circumstances. Normal parole sign up procedures will be followed by the parolee, the Board and the supervising Probation and Parole Officer.
11. If the medical parole plan is denied, the plan will be returned to the IPPO to determine if concerns that the Board has identified can be addressed and if the plan can be resubmitted for further consideration by the Board at a future date.
12. An applicant may not reapply for medical parole consideration for a period of twelve months unless there has been a documented and substantial change in the offender's physical condition, disease or syndrome. The Board may, on its own motion, consider exceptions to this requirement in the event that special circumstances warrant reconsideration.
13. Decisions by the Board on any request for Medical Parole are not reviewable.

**F. Conditions of Medical Parole**

The Board may require additional conditions for the medical parolee, including but not limited to periodic medical examinations and updated prognoses of the parolee. Periodic medical examinations and updates to the original diagnosis will be at the expense of the parolee. If such examinations and prognoses are required by the Board, copies of the results shall be submitted to the Board and the Department by the examining physician. The parolee must sign a release of information allowing the Department and the Board to be provided with information on all medical treatment received during the time of medical parole.

**G. Consideration for Non-Medical Parole**

Subject: **MEDICAL PAROLE**

1. When a medical parolee is 60 days from the regular parole eligibility date, the Records Supervisor responsible for maintaining records for the parolee will inform the Board and the supervising officer of the date of non-medical parole eligibility.
2. Upon notification that the medical parolee is being considered for non-medical parole status, the supervising probation and parole officer will be responsible for providing the Board with all pre-parole documents, reports, and recommendations.
3. The Board will, within its regular course of business, conduct a hearing to determine whether the parolee should remain on medical parole status or be granted a non-medical parole. The Board will inform all appropriate parties of its decision, in writing, in a timely manner.

#### **H. Violation of Conditions of Medical Parole**

1. If it is alleged that the parolee has violated the conditions of medical parole, or that the offender's physical capabilities have improved to the extent that the parolee may pose a threat to public safety, normal procedures for parole revocation may be implemented by the supervising Probation and Parole Officer.
2. Either the Board or the Department may determine that the parolee is likely to pose a danger to public safety. If that determination is made, the Board may revoke the parole and return the offender to the custody of the Department.

#### **V. CLOSING:**

Questions concerning this policy should be directed to the Warden/Superintendent, Community Corrections Division Administrator, the Board of Pardons and Parole, or the Director of the Department of Corrections.

# TITLE 13

## Criminals – Correctional Institutions

### CHAPTER 13-8.1

#### Medical Parole

#### SECTION 13-8.1-4

**§ 13-8.1-4 Procedure.** – (a) The parole board is authorized to grant release of a prisoner, except a prisoner serving life without parole, at any time, who is determined to be terminally ill or permanently physically incapacitated within the meaning of § 13-8.1-3.

(b) In order to apply for this relief, the prisoner, with an attending physician's written approval, or an attending physician, on behalf of the prisoner, shall file an application with the director of the department of corrections. Within seventy-two (72) hours after the filing of any application, the director shall refer the application to the health service unit of the department of corrections for a medical report and a medical discharge plan to be completed within five (5) days. Upon receipt of the medical discharge plan the director of the department of corrections shall immediately transfer the medical discharge plan together with the application to the parole board for its consideration and decision.

(c) The report shall contain, at a minimum, the following information:

- (1) Diagnosis of the prisoner's medical conditions, including related medical history;
- (2) Detailed description of the conditions and treatments;
- (3) Prognosis, including life expectancy, likelihood of recovery, likelihood of improvement, mobility, and rate of debilitation;
- (4) Degree of incapacity or disability, including an assessment of whether the prisoner is ambulatory, capable of engaging in any substantial physical activity, and the extent of that activity;
- (5) An opinion from the medical director as to whether the person is terminally ill, and if so, the stage of the illness or whether the person is permanently physically incapacitated.

(d) When the director of corrections refers a prisoner to the parole board for medical parole, the director shall provide to the parole board a medical discharge plan which is acceptable to the parole board.

(e) The department of corrections and the parole board shall jointly develop standards for the medical discharge plan that are appropriately adapted to the criminal justice setting. The discharge plan should ensure at the minimum that:

- (1) An appropriate placement for the prisoner has been secured, including, but not limited to, a

hospital, nursing facility, hospice, or family home;

(2) A source for payment of the prisoner's medical expenses has been secured;

(3) A physician continues to examine the releasee and report back to the board.

(f) If the parole board finds from the credible medical evidence that the prisoner is terminally ill or permanently physically incapacitated, the board shall grant release to the prisoner but only after the board also considers whether, in light of the prisoner's medical condition, there is a reasonable probability that the prisoner, if released, will live and remain at liberty without violating the law, and that the release is compatible with the welfare of society and will not so depreciate the seriousness of the crime as to undermine respect for the law. Notwithstanding any other provision of law, release may be granted at any time during the term of a prisoner's sentence.

(g) There shall be a presumption that the opinion of the physician and/or medical director will be accepted. However, the applicant, the physician, the director, or the parole board may request an independent medical evaluation within seven (7) days after the physician's and/or medical director's report is presented. The evaluation shall be completed and a report, containing the information required by subsection (b) of this section, filed with the director and the parole board and a copy sent to the applicant within fourteen (14) days from the date of the request.

(h) Within seven (7) days of receiving the application, the medical report and the discharge plan, the parole board shall determine whether the application, on its face, demonstrates that relief may be warranted. If the face of the application clearly demonstrates that relief is unwarranted, the board may deny the application without a hearing or further proceedings, and within seven (7) days shall notify the prisoner in writing of its decision to deny the application, setting forth its factual findings and a brief statement of the reasons for denying release without a hearing. Denial of release does not preclude the prisoner from reapplying for medical parole after the expiration of sixty (60) days. A reapplication under this section must demonstrate a material change in circumstances.

(i) Upon receipt of the application from the director of the department of corrections the parole board shall, except as provided in subsection (h) of this section, set the case for a hearing within fourteen (14) days;

(2) Notice of the hearing shall be sent to the prosecutor and the victim(s), if any, of the offense(s) for which the prisoner is incarcerated, and the prosecutor and the victim(s) shall have the right to be heard at the hearing, or in writing, or both;

(3) At the hearing, the prisoner shall be entitled to be represented by an attorney or by the public defender if qualified or other representative.

(j) Within seven (7) days of the hearing, the parole board shall issue a written decision granting or denying medical parole and explaining the reasons for the decision. If the board determines that medical parole is warranted, it shall impose conditions of release, which shall include the following:

(1) Periodic medical examinations;

(2) Periodic reporting to a parole officer, and the reporting interval;

(3) Any other terms or conditions that the board deems necessary.

(k) If after release the releasee's condition or circumstances change so that he or she would not then be eligible for medical parole, the parole board may order him or her returned to custody to await a hearing to determine whether his or her release should be revoked. A release may also be revoked for violation of conditions otherwise applicable to parole.

(l) An annual report shall be prepared by the director of corrections for the parole board and the general assembly. The report shall include:

- (1) The number of inmates who have applied for medical parole;
- (2) The number who have been granted medical parole;
- (3) The nature of the illness of the applicants, and the nature of the placement pursuant to the medical discharge plan;
- (4) The categories of reasons for denial for those who have been denied;
- (5) The number of releasees on medical parole who have been returned to the custody of the department of corrections and the reasons for return.