

Medical Release for Ill and Disabled Inmates

This Act establishes a process to release inmates with certain medical conditions. The Act directs the state parole and probation commission to set reasonable conditions on medical release that will apply for any length of time determined by the commission through the date the inmate's sentence would have expired.

Inmates who are diagnosed as permanently and totally disabled, terminally ill, or geriatric or incapacitated to the extent they do not pose a public safety are eligible for medical release. Inmates convicted of certain felonies and registered sex offenders are not eligible for medical release.

The Act establishes the following conditions of medical release:

- care is to be consistent with the care specified in a medical care plan;
- the inmate must cooperate with and comply with the prescribed medical release plan and with reasonable requirements of medical providers to whom the released inmate is to be referred for continued treatment;
- the inmate must be subject to supervision by the division of community corrections and must permit officers from the division to visit the inmate at reasonable times at the inmate's home or elsewhere;
- the inmate must comply with any conditions of release set by the commission; and
- the state department of corrections must receive periodic assessments from the treating physician.

If the commission receives credible information that an inmate has failed to comply with any reasonable condition set for release, the inmate must be promptly ordered returned to the custody of the state department of corrections to await a revocation hearing. If the commission subsequently revokes an inmate's medical release for failure to comply, the inmate must resume serving the balance of the sentence with credit given only for the duration of the inmate's medical release served in compliance with the conditions.

If an inmate on medical release shows improvement and would no longer meet program eligibility requirements, the inmate can be returned to the department of corrections' custody and will be given credit for the time on medical release.

Submitted as:
North Carolina
Session Law 2008-2
Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as “An Act to Provide for Medical
2 Release of No-Risk Inmates Who are Either Permanently and Totally Disabled, Terminally Ill, or
3 Geriatric.”

4

5 Section 2. [*Definitions*.] For purposes of this Act, the term:

6 (1) “Commission” means the [Post-Release Supervision and Parole Commission].

7 (2) “Department” means the [Department of Correction].

8 (3) “Geriatric” describes an inmate who is [65] years of age or older and suffers from
9 chronic infirmity, illness, or disease related to aging that has progressed such that the inmate is
10 incapacitated to the extent that he or she does not pose a public safety risk.

11 (4) “Inmate” means any person sentenced to the custody of the [Department of
12 Correction].

13 (5) “Medical release” means a program enabling the [Commission] to release inmates
14 who are permanently and totally disabled, terminally ill, or geriatric.

15 (6) “Medical release plan” means a comprehensive written medical and psychosocial care
16 plan that is specific to the inmate and includes, at a minimum:

- 17 a. The proposed course of treatment;
- 18 b. The proposed site for treatment and post-treatment care;
- 19 c. Documentation that medical providers qualified to provide the medical services
20 identified in the medical release plan are prepared to provide those services; and
- 21 d. The financial program in place to cover the cost of this plan for the duration of
22 the medical release, which shall include eligibility for enrollment in commercial insurance,
23 Medicare, or Medicaid or access to other adequate financial resources for the duration of the
24 medical release.

25 (7) “Permanently and totally disabled” describes an inmate who, as determined by a
26 licensed physician, suffers from permanent and irreversible physical incapacitation as a result of
27 an existing physical or medical condition that was unknown at the time of sentencing or, since
28 the time of sentencing, has progressed to render the inmate permanently and totally disabled,
29 such that the inmate does not pose a public safety risk.

30 (8) “Terminally ill” describes an inmate who, as determined by a licensed physician, has
31 an incurable condition caused by illness or disease that was unknown at the time of sentencing
32 or, since the time of sentencing, has progressed to render the inmate terminally ill, and that will
33 likely produce death within six months, and that is so debilitating such that the inmate does not
34 pose a public safety risk.

35
36 Section 3. [*Authority to Release.*] The [Commission] shall establish a medical release
37 program to be administered by the [Department]. The [Commission] shall prescribe when and
38 under what conditions an inmate may be released for medical release, consistent with the
39 provisions of [insert citation]. The [Commission] may adopt rules to implement the medical
40 release program.

41
42 Section 4. [*Eligibility.*]

43 (A) Except as otherwise provided in this section, notwithstanding any other provision of
44 law, an inmate is eligible to be considered for medical release if the [Department] determines
45 that the inmate is:

46 (1) Diagnosed as permanently and totally disabled, terminally ill, or geriatric
47 under the procedure described in Section 5 of this Act; and

48 (2) Incapacitated to the extent that the inmate does not pose a public safety risk.

49 (B) People convicted of a [capital felony] or a [Class A, B1, or B2 felony] and people
50 convicted of an offense that requires registration under [insert citation] shall not be eligible for
51 release under this Act.

52
53 Section 5. [*Procedure for Medical Release.*]

54 (A) The [Commission] shall consider an inmate for medical release upon referral by the
55 [Department]. The [Department] may base its referral upon either a request or petition for release

56 filed by the inmate, the inmate's attorney, or the inmate's next of kin or upon a recommendation
57 from within the [Department].

58 (B) The referral shall include an assessment of the inmate's medical and psychosocial
59 condition and the risk the inmate poses to society, as follows:

60 (1) The [Department medical director, or a designee of the director who is a
61 licensed physician], shall review the case of each inmate who meets the eligibility requirements
62 for medical release set forth in Section 4 of this Act. Any physician who examines an inmate
63 being considered for medical release shall prepare a written diagnosis that includes:

64 a. A description of any and all terminal conditions, physical incapacities,
65 and chronic conditions; and

66 b. A prognosis concerning the likelihood of recovery from any and all
67 terminal conditions, physical incapacities, and chronic conditions.

68 (2) The [Department] shall make an assessment of the risk for violence and
69 recidivism that the inmate poses to society. In order to make this assessment, the [Department]
70 may consider such factors as the inmate's medical condition, the severity of the offense for which
71 the inmate is incarcerated, the inmate's prison record, and the release plan.

72 (C) If the [Department] determines that the inmate meets the criteria for release, the
73 [Department] shall forward its referral and medical release plan for the inmate to the
74 [Commission]. The [Department] shall complete the risk assessment and forward its referral and
75 medical release plan within [45] days of receiving a request, petition, or recommendation for
76 release.

77 (D) The [Commission] shall make a determination of whether to grant medical release
78 within [15] days of receiving a referral from the [Department] for release of a terminally ill
79 inmate and within [20] days of receiving a referral from the [Department] for release of a
80 permanently and totally disabled inmate or a geriatric inmate. In making the determination, the
81 [Commission] shall make an independent assessment of the risk for violence and recidivism that
82 the inmate poses to society. The [Commission] also shall provide the victim or victims of the
83 inmate or the victims' family or families with an opportunity to be heard.

84 (E) A denial of medical release by the [Commission] shall not affect an inmate's
85 eligibility for any other form of parole or release under applicable law.

86 (F) If the [Department] determines that an inmate should not be considered for release
87 under this Act or the [Commission] denies medical release under this Act, the inmate may not
88 reapply or be reconsidered unless there is a demonstrated change in the inmate's medical
89 condition.

90
91 Section 6. *[Conditions of Medical Release.]*

92 (A) The [Commission] shall set reasonable conditions upon an inmate's medical release
93 that shall apply through the date upon which the inmate's sentence would have expired. These
94 conditions shall include:

95 (1) That the released inmate's care be consistent with the care specified in the
96 medical release plan as approved by the [Commission];

97 (2) That the released inmate shall cooperate with and comply with the prescribed
98 medical release plan and with reasonable requirements of medical providers to whom the
99 released inmate is to be referred to continued treatment;

100 (3) That the released inmate shall be subject to supervision by the [Division of
101 Community Corrections] and shall permit officers from the [Division] to visit the inmate at
102 reasonable times at the inmate's home or elsewhere;

103 (4) That the released inmate shall comply with any conditions of release set by the
104 [Commission]; and

105 (5) That the [Commission] shall receive periodic assessments from the inmate's
106 treating physician.

107 (B) The [Commission] shall promptly order an inmate returned to the custody of the
108 [Department] to await a revocation hearing if the [Commission] receives credible information
109 that an inmate has failed to comply with any reasonable condition set upon the inmate's release.
110 If the [Commission] subsequently revokes an inmate's medical release for failure to comply with
111 conditions of release, the inmate shall resume serving the balance of the sentence with credit
112 given only for the duration of the inmate's medical release served in compliance with all
113 reasonable conditions set forth pursuant to subsection (A) of this section. Revocation of an
114 inmate's medical release for violating a condition of release shall not preclude an inmate's
115 eligibility for any other form of parole or release provided by law but may be used as a factor in
116 determining eligibility for that parole or release.

117

118 Section 7. [*Change in Medical Status.*]

119 (A) If a periodic medical assessment reveals that an inmate released on medical release
120 has improved so that the inmate would not be eligible for medical release if being considered at
121 that time, the [Commission] shall order the inmate returned to the custody of the [Department] to
122 await a revocation hearing. In determining whether to revoke medical release, the [Commission]
123 shall consider the most recent medical assessment of the inmate and a risk assessment of the
124 inmate conducted pursuant to Section 5 (B)(2). If the [Commission] revokes the inmate's medical
125 release, the inmate shall resume serving the balance of the sentence with credit given for the
126 duration of the medical release.

127 (B) Revocation of an inmate's medical release due to a change in the inmate's medical
128 condition shall not preclude an inmate's eligibility for medical release in the future or for any
129 other form of parole or release provided by law.

130

131 Section 8. [*Severability.*] [Insert severability clause.]

132

133 Section 9. [*Repealer.*] [Insert repealer clause.]

134

135 Section 10. [*Effective Date.*] [Insert effective date.]