



Operating Procedure

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Supersedes Operating Procedure 820.1 (5/1/07)	
Authority COV §53.1-10 , §53.1-40.01 , §53.1-229 , §53.1-231 BOC None	
ACA Standards None	
Office of Primary Responsibility Deputy Director of Operations Deputy Director of Community Corrections	

Subject
PETITIONS FOR RELEASE OF GERIATRIC OR TERMINALLY ILL OFFENDERS

Incarcerated Offender Access
Yes No

FOIA Exempt Yes No
Attachments Yes No

I. PURPOSE

This operating procedure establishes the eligibility criteria and process for geriatric or terminally ill offenders to petition for early release from incarceration in the Virginia Department of Corrections. Although the Department is able to provide excellent medical care, it recognizes that certain circumstances may warrant compassionate release of an offender based on advanced age or failing health.

II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws, Board of Corrections policies and regulations, ACA standards, and DOC directives and operating procedures.

III. DEFINITIONS

Medical Clemency Recommendation - A recommendation in cases for possible Executive Medical Clemency, submitted to the Office of the Secretary of the Commonwealth and signed by the DOC Director, and the Parole Board

Black Book - A completed request for Executive Medical Clemency that contains, in one indexed booklet, all letters, evaluations, forms, investigations, statements, assessments and recommendations related to an offender's petition for medical clemency.

Geriatric Offender - Any person serving a sentence imposed upon a conviction for a felony offense, other than a Class 1 felony, who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed; or who has reached the age of sixty or older and who has served at least ten years of the sentence imposed.

Imminent Death - In the independent judgment of a DOC treating physician and a second licensed physician, the terminally ill offender, has an estimated three months or less to live.

Medical Clemency Coordinator - An individual who is appointed to oversee and coordinate all processes related to petitions for Executive Medical Clemency, based on the offender's terminal medical condition.

Petitioner - An individual, such as a relative or close family friend, who requests Executive Medical Clemency on behalf of a terminally ill offender.

Terminal Illness - For the purposes of this operating procedure, the independent opinion of at least two physicians that an offender's illness is expected to result in death within ten to twelve months of the date of the medical clemency physicians' report.

Treating Physician - The primary facility physician who has treated the offender for the specific terminal illness

IV. CONDITIONAL RELEASE OF GERIATRIC OFFENDERS

- A. Per COV §53.1-40.01, the Virginia Parole Board has the authority to grant conditional release of geriatric offenders under a discretionary parole process in accordance with [Parole Board Administrative Procedure 1.226](#).
- B. An offender is eligible if he or she is serving a sentence imposed upon a conviction for a felony offense, other than a Class 1 felony, and;
1. Has reached the age of 65 or older and served at least five years of the sentence imposed or,
 2. Has reached the age of 60 or older and served at least ten years of the sentence imposed
- C. Petition
1. An offender must submit a [Petition for Conditional Release of Geriatric Offender](#) (820_F1) to the Parole Board.
 2. An offender must be within 90 days of the minimum requirement of age and time served when submitting the *Petition for Conditional Release of Geriatric Offender*.
 3. An offender who is qualified to submit a *Petition for Conditional Release of Geriatric Offender* but is denied conditional release may resubmit a petition annually.
- D. Parole Board Review
1. Initial Review
 - a. Members of the Parole Board will review the *Petition for Conditional Release of Geriatric Offender*, the DOC central criminal record and any other pertinent information.
 - b. A petition may be denied by majority vote of the Parole Board, thus ending the review process.
 - c. If a petition is not denied in the initial review, the offender's request will advance to the assessment review.
 2. Assessment Review
 - a. A member of the Parole Board or designated staff shall conduct a personal assessment interview with the offender petitioner.
 - b. The interviewer shall compose a written assessment of the offender's suitability for conditional release and make a recommendation "for" or "against" conditional release.
 3. All factors in the parole consideration process, including Board appointments and victim input, shall apply in the determination of conditional release.
 4. Conditional release may be granted by vote of Parole Board members, in accordance with Parole Board policies and established procedures.
- E. Conditions of Release
1. The terms and conditions of release shall be at the discretion of the Parole Board and may be similar to the general Conditions of Parole.
 2. The Parole Board may impose additional special conditions as appropriate, and shall establish the period of supervision.
 3. The DOC Division of Community Corrections will provide community supervision for the offender.
 4. The Virginia Parole Board may order the arrest and re-incarceration of a released offender if he or she violates one or more terms of conditional release.

V. CLEMENCY FOR TERMINALLY ILL OFFENDERS

A. Procedure Overview

1. The petitioner submits to the Governor of Virginia through the Secretary of the Commonwealth, a request for Executive Medical Clemency on behalf of a terminally ill offender.
2. The Secretary of the Commonwealth refers the petition to the Medical Clemency Coordinator to confirm eligibility.
3. After the Medical Clemency Coordinator confirms eligibility, each petition must be reviewed by the Parole Board, who will provide recommendations to be forwarded to the Governor.
4. Under COV §53.1-229, only the Governor of Virginia has the power to grant clemency to terminally ill offenders.

B. Eligibility

1. The offender must be diagnosed as terminally ill, with death imminent as defined in this operating procedure.
2. The offender must not be eligible for parole.
3. The offender must have family or other persons willing and able to assume responsibility for the offender's care.

C. Petition

1. The petitioner may submit a request for consideration for executive medical clemency that may be on a provided form or in a letter that contains all of the following required information:
 - a. Be addressed to [Director of Extraditions and Clemency, Secretary of the Commonwealth, P.O. Box 2454, Richmond, VA 23218-2454](#)
 - b. The offender's name, number, and facility location
 - c. A general description of the offender's medical condition and prognosis
 - d. The name, address, telephone, e-mail if applicable, and relationship to the offender of the person willing to assume responsibility for the offender's care and a statement of their ability to provide that care
2. The Secretary of the Commonwealth, or designee, shall initiate the clemency review process through the Medical Clemency Coordinator.

D. Responsibilities

1. The *Medical Clemency Recommendation* shall be signed by the following persons:
 - a. DOC Director or designee
 - b. Parole Board Chair or designee
2. Case Processing Responsibilities
 - a. The Medical Clemency Coordinator shall confirm the offender is not eligible for parole. Parole eligible offenders shall be referred directly to the Parole Board.
 - b. When a petition for Executive Clemency is received, the Medical Clemency Coordinator will determine the initial medical eligibility of the offender.
 - c. The Health Services Director or designee will obtain required medical evaluations from the treating physicians and a second licensed physician.

- i. The offender shall sign and have witnessed, a [Consent for Release of Confidential Health Information](#) (820_F2) from the offender authorizing the committee, family, Parole Board, and any other authorized entity to review his or her medical diagnosis, history and reports.
 - ii. A [Physician's Report](#) (820_F3) signed by the treating physician and a second licensed physician shall state that, in their clinical opinion, the offender's death is imminent as defined in this operating procedure – If the two primary physicians are not in agreement, the DOC Chief Physician or designee will make the final recommendation.
 - iii. If physicians determine that the offender is not terminally ill, nor is death imminent as defined in this operating procedure, the Medical Clemency Coordinator will notify the Office of the Secretary of the Commonwealth, in order for them to notify the petitioner that the offender is not eligible. Follow-up medical evaluations will be conducted in the following situations:
 - (a) If death is indicated within one year or less but greater than 90 days, a follow up medical examination will be conducted at 90 day intervals, unless notified sooner by the treating physician
 - (b) If the medical report indicates that the offender's life expectancy is greater than one year, another petitioner request will not be reviewed for six months from the date of the last physician's medical report, unless notified sooner by the treating physician.
 - iv. If physicians determine that the offender's death is imminent, all completed medical reports shall be forwarded to the Medical Clemency Coordinator, who will obtain additional information related to the offender's petition from Offender Management Services and the Division of Community Corrections.
- d. The Deputy Director of Community Corrections, or designee, will facilitate obtaining the following documentation from the local community, law enforcement officials, and the family of the offender, and forward that information to the Medical Clemency Coordinator.
- i. A signed [Letter of Intent of Care](#) (820_F4) from the family or other persons assuming responsibility for the offender, indicating they are willing and capable of providing medical care and financial support for the offender if released.
 - ii. A pre/post-sentence investigation report when available
 - iii. [Local Law Enforcement Statements](#) (820_F5), including the sentencing Judge, Commonwealth's Attorney, and Sheriff/Chief of Police
- e. The Chief of Operations for Offender Management Services, or designee, will obtain necessary information from the Central Criminal Records (i.e. offender's profile, psychological assessment if requested, Central Classification Service's assessment of public risk) and forward that information to the Medical Clemency Coordinator.
- f. The Parole Board will notify the Parole Board Victim Input Coordinator to provide relevant victim input.
3. The following documentation will normally be a part of each case considered. The Medical Clemency Coordinator is responsible for gathering this documentation into the "Black Book".
- a. Petition for Executive Medical Clemency
 - b. A signed and witnessed [Consent for Release of Confidential Health Information](#) (820_F2) from the offender authorizing the committee, family, Parole Board, and any other authorized entity to review his or her medical information
 - c. The signed [Letter of Intent of Care](#) (820_F4) from the family or other persons assuming responsibility for the offender, indicating they are willing and capable of providing medical care and financial support for the offender if released.
 - d. [Physician's Report](#) (820_F3) submitted by the treating physician and a second licensed physician
 - e. Offender's profile, psychological assessment if requested, Central Classification Service's

assessment of public risk, etc.

- f. Information and reports on where the offender will reside, the family's ability to provide continued care, Home Plan, and other data submitted by Probation and Parole, Community Corrections and other staff.
 - g. [Medical Clemency Assessment Checklist](#) (820_F7)
4. The Medical Clemency Coordinator shall compile the documentation listed in *Medical Clemency Assessment Checklist* for recommendation based on the following information:
- a. The offender's petition and DOC record
 - b. Any other available evidence to determine the following:
 - i. That the offender is terminally ill and death is imminent as defined in this operating procedure
 - ii. A review of classification records and statements of law enforcement authorities indicate whether the offender is considered to be a threat to public safety.
 - c. The recommendation will be based, from all available information, on whether or not the offender is an appropriate candidate to recommend for medical clemency. The DOC Director and the Parole Board Chair or designees will review and sign the [Medical Clemency Assessment Report](#) (820_F6).
 - d. The Medical Clemency Coordinator will complete and sign the *Medical Clemency Assessment Report* and sign a transmittal memorandum.
5. The Medical Clemency Recommendation Report (i.e. Black Book), containing all of the above required information (whether approved or is approved) shall be forwarded to the Secretary of the Commonwealth for their review and recommendation.
- E. If the Governor grants executive clemency, all official documents designating the executive action will be delivered through the Medical Clemency Coordinator to the offender who is granted clemency.
- F. The Medical Clemency Coordinator, through the Community Release Unit of Offender Release Services, shall be responsible for distribution of all official documents and coordination of release.
- G. Copies of petitions of clemency, reports, and other relevant documents should be maintained by the Medical Clemency Coordinator.

VI. REFERENCES

Operating Procedure 701.3, *Health Records*

[Parole Board Administrative Procedure 1.226, Conditional Release for Geriatric Inmates](#)

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than April 1, 2014.

Signature Copy on File

Harold W. Clarke, Director