



PRISON LAW OFFICE

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Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that incarcerated people often have trouble getting legal information and we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in the prison law library.

COMPASSIONATE RELEASE FOR PEOPLE IN CDCR PRISONS (updated March 2025)

We send this letter because you asked for information about or assistance with compassionate release, or because we think this information might be useful to you. We are sorry we cannot send a personal response, and we hope this letter will help answer your questions. This letter describes how people incarcerated in California Department of Corrections and Rehabilitation (CDCR) who have very serious medical conditions may get released through compassionate release resentencing, including who is eligible and the process that is followed. It also includes information about what can be done if compassionate release is denied.

Please note: Until December 2024, CDCR had another program, called medical parole, which allowed some people to be placed at a facility outside of prison while they served their sentence. Although state law permits a medical parole program (see Penal Code § 3550), CDCR no longer has such a program.

COMPASSIONATE RELEASE RESENTENCING

Compassionate release allows a court to recall the sentence of someone who has a fatal illness or who is medically incapacitated or functionally impaired, and resentence them so that they can spend the rest of their life in the community. See Penal Code § 1172.2, effective on January 1, 2023. As of March 2025, CDCR's regulations on compassionate releases (15 CCR §§ 3076, 3076.3-3076.5) have not yet been updated to reflect the changes made by the new law.

Compassionate release resentencing first requires CDCR medical officials to determine whether a person has both a qualifying medical condition or incapacitation and a plan for housing and care if released.¹ If CDCR medical officials determine a person has a qualifying condition and a

¹ People sentenced to serve felony terms in county jails also may get compassionate release; the

post-release plan, they must present the application for release to the superior court which sentenced the person. The law then requires the superior court to grant release if it determines the person has a qualifying medical condition or incapacitation, unless it determines there is an unreasonable risk that the person would commit a violent super-strike felony if released.²

Eligibility for Compassionate Release

First, compassionate release is not available to people who are sentenced to death, life without the possibility of parole (LWOP), or have been convicted of first-degree murder of a police officer engaged in or as retaliation for performance of their duties.³

For all others, the law says that the Secretary of the CDCR *shall* (*meaning they are required to*) recommend a person for compassionate release if the CDCR statewide Chief Medical Executive determines that the person either:

- “[has] a serious and advanced illness with an end-of-life-trajectory.⁴ Examples include, but are not limited to, metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced end-stage dementia”; or
- is “permanently medically incapacitated with a medical condition or functional impairment” that makes them “permanently unable to complete activities of basic daily living, including, but not limited to, bathing, eating, dressing, toileting, transferring, and ambulation, or has progressive end stage dementia, and that incapacitation did not exist at the time of sentencing.”⁵

county jail staff and county correctional administrator must carry out the same type of evaluation and court referral process using the same criteria that CDCR uses for people in state prisons. Penal Code § 1172.2(n).

² Penal Code § 1172.2(b).

³ Penal Code §§ 1172.2(o) and 1170.02.

⁴ The meaning of the term “end-of-life-trajectory” is still being determined, including by the courts. In 2024, a California appellate court ruled that a person with metastatic solid-tumor cancer that, while incurable, had not progressed since suppressive chemotherapy treatment had begun seven years earlier, did not have an end-of-life trajectory, and affirmed the denial of a compassionate release application. See *People v. Multani* (2024) 106 Cal.App.5th 1334; 327 Cal.Rptr.3d 773

⁵ Penal Code § 1172.2(a)-(b) (underlines added for emphasis; note that as written the law appears to make “progressive end-stage dementia” its own criteria for release, whether or not there is an inability to complete activities of daily living). These standards went into effect on January 1, 2023, and made more people eligible for compassionate release compared to the previous law. Under the previous law, compassionate release could be granted only if the person was “terminally ill with an incurable condition caused by an illness or disease that is expected to cause death within 12 months” OR “permanently medically incapacitated” with a condition that makes them “permanently unable

In practice, because the law requires CDCR to present “a post-release plan” with any recommendation for compassionate release resentencing,⁶ an application for compassionate release will not go forward, even if a person meets the medical eligibility criteria, if the person does not have a place to live where they will get adequate medical care. The requirement for a post-release plan can be a barrier because some people do not have a place to live (for example, with family and friends), or family and friends are not able to provide needed care, and placement in a community skilled nursing facility is not always possible. CDCR should and usually does help a person develop a post-release plan, if possible.

The Compassionate Release Process

An incarcerated person or their family member or advocate can request a compassionate release by contacting the Chief Medical Executive at the prison.⁷ Prison medical staff can also (and we believe should) discuss possible compassionate release with any person who appears to meet the medical eligibility criteria.

Whenever a prison doctor determines -- either on their own initiative or after receiving a request from an incarcerated person or a family member -- that an incarcerated person meets the medical requirements for compassionate release, the doctor shall notify the Chief Medical Executive at the prison. If the Chief Medical Executive agrees, they shall notify the Warden. Within 48 hours after receiving the notification, the Warden shall tell the incarcerated person about the compassionate release process and arrange to contact a family member or outside advocate about it; the law further requires CDCR to provide the incarcerated person and representative with updated information throughout the compassionate release process.⁸

As stated above, in practice a compassionate release application will not go forward, even if an eligible person meets all medical criteria, if CDCR cannot identify an adequate post-release plan, which CDCR is required to present to the court.

If a person is determined to meet all eligibility criteria (and has a post-release plan), CDCR must refer the case to the sentencing court within 45 days after the prison doctor made the

to perform activities of basic daily living” and “requiring 24-hour care.” Former Penal Code § 1170(e)(2). Also, the prior law provided the CDCR Secretary could but was not required to recommend compassionate release for someone who met the criteria. *See* Former Penal Code § 1170(e)(1). However, even under the old law, CDCR officials were not supposed to rely on factors other than those in the statute when deciding whether to recommend compassionate release. *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578, 595 [107 Cal.Rptr.3d 439] (improper to consider whether a person’s time in incarceration was proportionate to the seriousness of their crime).

⁶ Penal Code § 1172.2(h) (“Any recommendation for recall submitted to the court by the department shall include . . . a postrelease plan . . .”).

⁷ Penal Code § 1172.2(g).

⁸ Penal Code § 1172.2(d),(f).

determination of a qualifying medical condition and refers the matter to the prison's Chief Medical Executive.⁹ The CDCR's referral must include at least one medical evaluation, a post-release plan, and findings about how the person meets the medical criteria for compassionate release and their level of public safety risk.¹⁰

Currently, after the prison's Chief Medical Executive refers the matter to the Warden, the Warden refers it to classification staff (a correctional counselor), who prepare a report focusing on custody factors. The application is then sent to CDCR's statewide Chief Medical Executive (Statewide CME), who makes the final decision as to whether compassionate release should be recommended. If the Statewide CME determines compassionate release should be recommended, CDCR must send the recommendation to the sentencing court.

As stated above, if the CDCR recommends compassionate release, it must send the recommendation to the court within 45 days of the prison doctor starting the process.

The court that imposed the original sentence must hold a hearing within 10 days of receiving the compassionate release recommendation from the CDCR.¹¹ The case should be heard by the same judge who did the original sentencing, if possible.¹² The incarcerated person has the right to an attorney, and the court must appoint an attorney if the person cannot afford to hire one.¹³

Importantly, the law now provides for a presumption favoring resentencing if the superior court finds that the person meets the medical criteria for release, unless the court also determines, based on "the current physical and mental condition," that the person poses an unreasonable risk of committing a violent super-strike felony if released.¹⁴

If the court grants compassionate release, CDCR must release the person within 48 hours after receiving the court's order, unless the person agrees to be held a longer period of time;¹⁵ for example, delayed release might be beneficial to allow for coordination of housing and medical needs in the community. Upon release, CDCR must ensure that the person has in their possession a

⁹ Penal Code § 1172.2(d), (g). Prior to January 1, 2023, CDCR's timeline was 30 days. Former Penal Code § 1170(e)(6). The CDCR regulations, which have not been updated to reflect the new law, specified who was to perform each task in preparing the referral and the timeline for each task. It is expected that CDCR will revise the regulations in accord with the new law. We will update this letter when new regulations are announced.

¹⁰ Penal Code § 1172.2(h).

¹¹ Penal Code § 1172.2(c).

¹² Penal Code § 1172.2(i).

¹³ Penal Code § 1172.2(k).

¹⁴ Penal Code § 1172.2(b); see *Nijmeddin v. Superior Court of Monterey County*, 90 Cal.App.5th 77 (2023) (reversing denial of compassionate release because trial court failed to use the statutory violent super-strike felony standard when finding incarcerated person would be a danger if released).

¹⁵ Penal Code § 1172.2(l).

medical discharge summary, their full medical records, state identification, appropriate medications, and all of their property.¹⁶

CDCR-reported information indicates that in calendar year 2023, compassionate release was considered for about 105 incarcerated people.¹⁷ Compassionate release was recommended for about 75 of those people, and superior courts granted release to about 50 people. In 2024, according to that information and that published by the Judicial Council¹⁸, CDCR formally considered compassionate release for approximately 200 people; 140 cases were referred to the superior courts, and 87 people were resentenced / released. These totals, we believe, are approximately double or triple the number granted compassionate release in each of the two years (2021 and 2022) before the new law took effect.. The increased number of people referred for and granted compassionate release appears to be a result of the January 2023 changes in the law that (1) expanded the medical eligibility criteria, (2) required CDCR to make recommendations for release regardless of custody factors, and (3) required superior courts to grant release if people meet the medical criteria unless it is specifically determined there is an unreasonable risk the person will commit a violent super-strike felony.

Challenging Denial of Compassionate Release

If a compassionate release request is not processed within the required timeframe or is denied, the incarcerated person (or if they are not competent, their family member or advocate on their behalf) can challenge the delay or denial. The steps to take depend on the stage of the process at which the problem occurs.

If a prison doctor delays or refuses to determine whether the person has a qualifying medical condition, or if the doctor, prison Chief Medical Executive or Statewide Chief Medical Executive concludes that the person does not meet the medical criteria, the person can file a Health Care Grievance (CDCR Form 602-HC) within 30 days after they learn about the delay or the decision. If the person is terminally ill and likely has only a short time to live, the grievance should be processed as an urgent issue with faster response timelines than normal. If the grievance is denied, the person can appeal by filing the 602-HC to the Headquarters level of review.

If prison medical staff find that a person has a qualifying medical condition, but CDCR custody or classification staff do not timely complete the public safety evaluation or do not timely refer the case to the sentencing court, then the person should file a regular administrative Grievance (CDCR Form 602-1) within 60 days after they learn about the delay or the decision. If the grievance

¹⁶ Penal Code § 1172.2(l).

¹⁷ CDCR medical headquarters reports compassionate release applications on a tracking log available to us because we represent all people in CDCR in the federal class action lawsuit, known as the *Plata* case, regarding medical care in the prisons. Beginning January 1, 2024, the California Judicial Council is required to issue an annual report on the CDCR compassionate release process, including among other things the number released and denied release for various reasons. See Penal § 1172.2(p).

¹⁸ See Judicial Council of California, Report on Compassionate Release Program, January 1, 2025, at <https://courts.ca.gov/system/files/file/2024-report-compassionate-release-program.pdf>

is denied, the person should file an Appeal of Grievance (CDCR Form 602-2) for Headquarters level review.

After “exhausting administrative remedies” by completing the appropriate CDCR administrative grievance and appeal, a person can file a state court petition for writ of habeas corpus challenging the CDCR’s delay or refusal to process a compassionate release request, or decision not to recommend compassionate release. In a situation where immediate action is necessary, a court may be willing to hear a habeas petition even if the person has not exhausted administrative remedies. There is no set deadline for filing a habeas corpus petition, but a person should not delay. A person who is terminally ill may also want to ask the court to hear the case on a quicker than normal schedule or issue a preliminary injunction. In a habeas corpus petition, a person could argue that CDCR staff did not comply with the state statute and regulations or did not provide adequate due process.¹⁹ A person could also argue that CDCR staff or officials incorrectly found that the person did not meet the medical criteria; the court should overturn the CDCR decision if it is not supported by “some evidence.”²⁰

If the problem is that the sentencing court denied compassionate release, the person may take a direct appeal to the court of appeal for the district in which the sentencing court is located.²¹ No “exhaustion of administrative remedies” is needed. To take a direct appeal, the person should file a notice of appeal in the sentencing court within 60 days after the court issues its decision. In very limited circumstances, the court of appeal may allow the notice of appeal to be filed after the 60 day deadline. Among issues that might be raised on appeal are that the sentencing court did not provide due process because it did not appoint an attorney, allow submission of additional information, or hold a proper hearing. Another possible issue is that the sentencing court abused its discretion by denying release even though the person meets the statutory criteria.²²

Free information packets on administrative appeals, state habeas corpus petitions, and direct appeals are available by writing to the Prison Law Office. Those information packets are also available on the Prison Law Office website at www.prisonlaw.com, on the Resources page.

¹⁹ See, e.g., *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578, 582, 592 [107 Cal.Rptr.3d 439] (ordering reconsideration because correctional officials must recommend a person for compassionate release if the person meets the statutory criteria, and officials had declined to recommend release based on irrelevant factors, such as whether the person’s period of incarceration had been proportionate to the seriousness of the crime).

²⁰ See *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578, 595 [107 Cal.Rptr.3d 439].

²¹ *People v. Loper* (2015) 60 Cal.4th 1155 [184 Cal.Rptr.3d 715].

²² *Nijmeddin v. Superior Court of Monterey County*, 90 Cal.App.5th 77 (2023) (reversing denial of compassionate release because trial court failed to use the statutory violent super-strike felony standard when finding incarcerated person would be a danger if released); *People v. Torres* (2020) 48 Cal.App.5th 550 [261 Cal.Rptr.3d 844] (reversing denial and ordering grant of compassionate release where sentencing court had found person met statutory criteria but denied release based on other factors).