



## 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 April 2025)**

We send this letter because we received a request from you or someone on your behalf 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 they spend the rest of their life in the community. See Penal Code § 1172.2, effective on January 1, 2023. In March 2025, CDCR updated its regulations on compassionate release, including its forms, to reflect the requirements of that law. See 15 CCR §§ 3999.98 (definition of compassionate release), 3999.99 (forms), and 3999.209 (criteria and processes).

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.<sup>1</sup> If CDCR medical officials determine a person has a qualifying medical condition, and there is a post-release plan, CDCR must present the application for resentencing 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.<sup>2</sup>

### Eligibility for Compassionate Release

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.<sup>3</sup>

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.<sup>4</sup> 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.”<sup>5</sup>

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<sup>1</sup> People sentenced to serve felony terms in county jails also may get compassionate release; the 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).

<sup>2</sup> Penal Code § 1172.2(b).

<sup>3</sup> Penal Code §§ 1172.2(o) and 1170.02.

<sup>4</sup> 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

<sup>5</sup> Penal Code § 1172.2(a)-(b); see also 15 CCR § 3999.209(b)(1) and (2) (underline 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

The current statute regarding compassionate release require CDCR to include “a postrelease plan” with any recommendation for compassionate release resentencing sent to a superior court.<sup>6</sup> In practice, this has meant that even if a person meets the medical eligibility criteria, CDCR medical staff will not process or approve a request or application for compassionate release, if the person does not have or CDCR cannot arrange a place to live where adequate medical care can be received. 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 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 where the person is located.<sup>7</sup> Prison medical staff can also (and we believe should) discuss possible compassionate release with any person who appears to meet the medical eligibility criteria.<sup>8</sup>

According to the compassionate release statute, whenever a prison primary care provider (PCP, usually a medical doctor) -- either on their own initiative or after receiving a request from an incarcerated person or a family member -- determines that an incarcerated person meets the medical requirements for compassionate release, and the patient is otherwise statutorily eligible, the PCP shall notify the chief medical executive.<sup>9</sup> The statute presumably means the statewide chief medical executive who under the law must determine if a person meets the medical eligibility requirements for compassionate release<sup>10</sup>; consistent with this, CDCR rules require the PCP, “in consultation with

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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 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).

<sup>6</sup> Penal Code § 1172.2(h) (“Any recommendation for recall submitted to the court by the department shall include . . . a postrelease plan . . .”). CDCR’s regulations do not mention this requirement.

<sup>7</sup> Penal Code § 1172.2(g), see also 15 CCR § 3999.209(c).

<sup>8</sup> See § 3999.209(b) [requiring Primary Care Providers to identify patients who meet criteria for compassionate release consideration].

<sup>9</sup> Penal Code § 1172.2(d).

<sup>10</sup> Penal Code § 1172.2(a).

the prison chief medical executive or designee, to “initiate the referral to the Director of Health Care Services.”<sup>11</sup> The referral must include a CDCR 128-C Chrono written by a PCP, and an Authorization for Release of Protected Health Information (CDCR Form 7385) signed by the incarcerated person.<sup>12</sup> This notification begins the 45-day calendar period within which the person who meets the requirements of the law must be referred to the court..

If the Director of Health Care Services does not agree the person meets the medical criteria for compassionate release, the incarcerated person and others must be notified in writing.<sup>13</sup>

If the Director of Health Care Services agrees that the person meets medical criteria for compassionate release, they or their designee must notify the prison Warden, Classification Services Unit, and the Classification and Parole Representative (C&PR) office to process the referral.<sup>14</sup>

Within 48 hours after receiving the notification, the C&PR shall notify the patient, explain the process, provide the patient an opportunity to designate a family member to be notified of their condition and the compassionate release process, and provide the patient an opportunity to sign a form waiving the right to attend any court hearing about their compassionate release.<sup>15</sup> The C&PR must also prepare a referral packet for the court which must at a minimum include a Case Factor Summary, the PCP’s Medical Chrono, and other forms.<sup>16</sup> T

The C&PR must also obtain the Warden’s signature for the referral packet, then submit it to CDCR’s Classification Services Unit (CSU).<sup>17</sup> The CSU must then submit the packet to the superior court which sentenced the person, District Attorney’s office, and Public Defender’s office, as well as notifying others entitled to know of the possible resentencing.<sup>18</sup> CDCR has 45 days from the date the

The court that imposed the original sentence must hold a hearing within 10 days of receiving the compassionate release recommendation from the CDCR.<sup>19</sup> The case should be heard by the same judge who did the original sentencing, if possible.<sup>20</sup> The incarcerated person has the right to an attorney, and the court must appoint an attorney if the person cannot afford to hire one.<sup>21</sup>

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,

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<sup>11</sup> 15 CCR § 3999.209(d).

<sup>12</sup> 15 CCR § 3999.209(d)(1) and (2).

<sup>13</sup> 15 CCR § 3999.209(e)(1).

<sup>14</sup> 15 CCR § 3999.209(e)(2).

<sup>15</sup> 15 CCR § 3999.209(f)(1) and (2).

<sup>16</sup> 15 CCR § 3999.209(g).

<sup>17</sup> 15 CCR § 3999.209(h).

<sup>18</sup> 15 CCR § 3999.209(i).

<sup>19</sup> Penal Code § 1172.2(c).

<sup>20</sup> Penal Code § 1172.2(i).

<sup>21</sup> Penal Code § 1172.2(k).

based on “the current physical and mental condition,” that the person poses an unreasonable risk of committing a violent super-strike felony if released.<sup>22</sup>

The CDCR CP&R is required to notify the incarcerated person of the court’s decision.<sup>23</sup>

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;<sup>24</sup> for example, delayed release might be beneficial to allow for coordination of housing and medical needs in the community. If the person agrees to a longer period before release, CDCR must ask the sentencing court to include in its order “that the patient must be released within 30 days to allow for the coordination of housing and medical needs in the community to a location where access to care is available.”<sup>25</sup> Upon release, CDCR must ensure that the person has in their possession a medical discharge summary, their full medical records, state identification, appropriate medications, and all of their property.<sup>26</sup>

### **Information about CDCR compassionate release cases in 2023 and 2024**

CDCR-reported information indicates that in calendar year 2023, compassionate release was considered for about 105 incarcerated people.<sup>27</sup> Compassionate release was recommended for about 75 of those people, and superior courts resentenced / granted release to about 50 people. In 2024, according to that information and that published by the Judicial Council<sup>28</sup>, 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 changes in the law, effective in January 2023, 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.

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<sup>22</sup> 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).

<sup>23</sup> 15 CCR § 3999.209(k).

<sup>24</sup> Penal Code § 1172.2(l); see also 15 CCR § 3999.209(l).

<sup>25</sup> 15 CCR § 3999.209(l).

<sup>26</sup> Penal Code § 1172.2(l).

<sup>27</sup> 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).

<sup>28</sup> 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>

### **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 (the Director of Health Care Services) 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 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.<sup>29</sup> 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.”<sup>30</sup>

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<sup>29</sup> 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).

<sup>30</sup> See *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578, 595 [107 Cal.Rptr.3d 439].

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.<sup>31</sup> 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.<sup>32</sup>

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](http://www.prisonlaw.com), on the Resources page.

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<sup>31</sup> *People v. Loper* (2015) 60 Cal.4th 1155 [184 Cal.Rptr.3d 715].

<sup>32</sup> *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).