

Rep(s). By Representatives Coleman (L) and Black (M)

HB486

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

To establish a procedure for the discretionary medical and geriatric release of state inmates convicted of a non-capital felony offense, excluding inmates who are serving a sentence of life without parole, and to set time frames for eligibility consideration by the Board of Pardons and Paroles.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as the "Alabama Medical and Geriatric Release Act."

Section 2. For the purposes of this act, the following words shall have the following meanings:

- (1) BOARD. The Board of Pardons and Paroles.
- (2) DEPARTMENT. The Department of Corrections.
- (3) GERIATRIC INMATE. A person 70 years of age or older convicted in this state of a non-capital felony offense and sentenced to the penitentiary who suffers from a chronic life threatening infirmity, life threatening illness, or life threatening disease related to aging and who poses a low risk to the community and does not constitute a danger to himself or herself or society.
- (4) PERMANENTLY INCAPACITATED INMATE. A state inmate convicted of a non-capital felony offense and sentenced to the penitentiary who does not constitute a danger to himself or herself or society and who, by reason of an existing medical condition which is not terminal, is permanently and irreversibly incapacitated and as a result of the medical condition requires immediate and long-term residential care.
- (5) TERMINALLY ILL INMATE. A person convicted of a non-capital felony offense who is sentenced to the penitentiary and who has an incurable condition caused by illness or disease which would, within reasonable medical judgment, produce death within 12 months and who does not constitute a danger to himself or herself or society.

Section 3. No physical or medical condition that existed at the time of sentencing shall provide the basis for geriatric or medical release under this act unless the inmate has become permanently incapacitated or terminally ill after the date of sentencing. In considering an inmate's eligibility for geriatric release, the board shall take into consideration the age of the inmate at the time the crime was committed.

No inmate shall be considered for medical geriatric release unless the inmate consents in writing to the release after a written explanation of the inmate's medical needs and the availability of medical services, unless the inmate is not capable of consent as determined by a medical professional.

Section 4. (a) The Board of Pardons and Paroles shall establish a medical and geriatric release program to be administered by the board in conjunction with the Department of Corrections. The board shall adopt rules and regulations for implementation of the medical and geriatric release program. For each person considered for geriatric or medical release, the board shall determine whether the person is a geriatric inmate, permanently incapacitated inmate, or terminally ill inmate.

(b) Notwithstanding any other law to the contrary, an inmate who has not served his or her minimum sentence shall not be considered eligible for consideration for release under this act.

(c) This act shall not apply to inmates convicted of capital murder or sentenced to life without parole.

(d) Medical and geriatric release consideration shall be in addition to any other release for which an inmate may be eligible.

(e) The board shall determine the conditions of release of any inmate pursuant to this act including the appropriate level of supervision of the inmate and, in conjunction with the Department of Corrections, shall develop a discharge plan for each inmate released under this act. Prior to the board granting any release based on the appropriate medical documentation pursuant to subsection (b) of Section 5, employees of the board or Department of Corrections shall contact appropriate departments and agencies, which may include, but shall not be limited to, the Department of Public Health, the Department of Human Resources, Medicare, Medicaid, hospice organizations, or other public and nonprofit community service agencies as the board may deem necessary for consultation in developing an appropriate discharge plan and to confirm that required care and resources are available to meet the inmate's needs. This act is not intended to expand or create new responsibilities for public agencies for arranging and providing care; and in no event shall a county be responsible for any of the inmate's medical expenses pursuant to the Health Care Responsibility Act or any other law for public agencies for arranging and providing care and in no event shall a county be responsible for any of the inmate's medical expenses pursuant to the Health Care Responsibility Act if such inmate is eligible for Medicaid.

(f) In considering an inmate for medical or geriatric release, the board may request that additional medical evidence be produced or that additional medical examinations be conducted.

(g) Except as provided herein, the release term of an inmate on medical or geriatric release shall be for the remainder of the inmate's sentence. In addition to terms and conditions prescribed by the board, supervision of an inmate on medical or geriatric release shall at a minimum consist of bi-annual medical evaluations by a medical care provider at intervals to be determined by the board at the time of release.

(h) Should the medical condition of an inmate released pursuant to this act improve to the extent that he or she no longer meets the criteria by which he or she was released, or if he or she violates a condition of release or becomes a danger to himself or herself or others, the board shall revoke the release under the same procedures applicable to the revocation of a parole.

(i) The executive director of the board shall report annually to the Joint Legislative Interim Prison Committee, House Judiciary Sentencing Commission Subcommittee, and the Alabama Sentencing Commission on the number of applications for medical and geriatric release, the nature of the illnesses, diseases, and conditions of the applicants, the number of inmates granted release and the number denied, and the number of persons on medical and geriatric release who have been returned to the custody of the department.

Section 5. (a) An inmate, or any concerned person, including, but not limited to, the inmate's attorney, family, physician, or an employee or official of the department may initiate consideration for medical or geriatric release by submitting to the department an initial medical or geriatric release application form.

(b) The initial application form shall include evidence that the inmate has applied for Medicaid, and shall include the report of a physician employed by the Department of Corrections and a notarized report of at least one other duly licensed physician who is board certified in the field of medicine for which the inmate is seeking a medical or geriatric release. These reports shall each be of the opinion that the inmate is either terminally ill or permanently incapacitated in the case of an application for a medical release, or that the inmate suffers from a chronic infirmity, illness, or disease related to aging in the case of an application for geriatric release. The physician's declaration shall be accompanied by an inmate authorization allowing the board access to his or her medical records. The board shall provide the initial application and medical authorization forms to all department medical care providers and the forms shall be available at every correctional facility for distribution to inmates.

(c) Consideration for medical or geriatric release shall be initiated by the submission of an application from the department, the inmate, or the inmate's representative, along with the department's supporting documentation to the board.

(d) If the appropriate medical documentation pursuant to subsection (b) has indicated that the inmate is permanently incapacitated or terminally ill, the department, within 30 days of receipt of an initial application form, shall submit the initial application form and all supporting documentation to the board. The initial application form and supporting document of inmates who have been diagnosed by a physician as suffering from a chronic illness or disease related to aging, shall be submitted to the board within 60 days of receipt of the application by the department. Supporting documentation shall include information concerning the inmate's medical history and prognosis, age, and institutional behavior. At the inmate's request, the department shall also provide a copy of all supporting documentation to the inmate.

(e) In determining eligibility factors for medical or geriatric release, the board shall take into consideration all of the following factors:

(1) Risk for violence.

(2) Criminal history.

(3) Institutional behavior.

(4) Age of the inmate, currently and at the time of the offense.

(5) Severity of the illness, disease, or infirmities.

(6) All available medical and mental health records.

(7) Release plans, which include alternatives to caring for terminally ill or permanently incapacitated inmates in traditional prison settings.

(f) The board shall notify the district attorney, sheriff, and any municipal police department of the jurisdiction where the inmate was last sentenced and the victim or victims of the crimes listed in paragraphs a. to i., inclusive, of subdivision (1) of subsection (e) of Section 15-22-36, Code of Alabama 1975, for which the defendant is currently incarcerated of the scheduled hearing to review or consider a special medical release or a geriatric release. Notice shall be sent by

certified mail, return receipt requested, to the victim named in the indictment or, if the victim is deceased, the victim's immediate family for whom the board has mailing addresses, to the last address provided by the victim or as otherwise noted in the board's file.

(g) The board shall make a determination whether to grant medical release for terminally ill inmates within 45 days of receipt of an initial application and supporting documentation.

(h) The board shall make a determination whether to grant medical release for permanently incapacitated inmates within 60 days of receipt of an initial application and supporting documentation.

(i) The board shall make a determination on whether to grant geriatric release within 90 days of receipt of the application and supporting documentation from the department.

Section 6. A person convicted of capital murder, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or sentenced to life without parole shall not be eligible for a medical or geriatric release. A person convicted of a crime involving sexual misconduct with a minor shall not be eligible for a medical or geriatric release.

Section 7. This act shall not be deemed to grant any entitlement or right to release. Upon denial of release by the board, the board may determine whether and when to schedule further consideration of geriatric or medical release. The authority to grant medical or geriatric release shall rest solely with the board and shall not be subject to judicial review either in the exercise of the authority or the manner in which it is exercised.

Section 8. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 9. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

Criminal Law and Procedure

Crimes and Offenses

Pardons and Paroles Board

Corrections Department

Prisons and Prisoners

Aged

Health

Popular Names