

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS75342-LL-19A (1/4)

Short Title: Medical Release for Ill and Disabled Inmates. (Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION AND THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO PROVIDE FOR MEDICAL RELEASE OF NO-RISK INMATES WHO ARE EITHER PERMANENTLY AND TOTALLY DISABLED, TERMINALLY ILL, OR GERIATRIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 84B.

"Medical Release of Inmates.

§ 15A-1369. Definitions.

For purposes of this Article, the term:

- (1) "Commission" means the Post-Release Supervision and Parole Commission.
- (2) "Department" means the Department of Correction.
- (3) "Geriatric" describes an inmate who is 65 years of age or older and suffers from chronic infirmity, illness, or disease related to aging that did not exist at the time of sentencing and makes it highly unlikely that the inmate poses a significant public safety risk.
- (4) "Inmate" means any person sentenced to the custody of the Department of Correction.
- (5) "Medical release" means a program enabling the Commission to release no-risk inmates who are either permanently and totally disabled or terminally ill.
- (6) "Permanently and totally disabled" describes an inmate other than an inmate convicted of a capital felony or a Class A, B1, or B2 felony

1 who, as determined by a licensed physician, suffers from permanent
2 and irreversible physical incapacitation as a result of an existing
3 physical or medical condition that was unknown at the time of
4 sentencing and was not diagnosed upon entry to prison and that is so
5 incapacitating that it is highly unlikely that the inmate poses a
6 significant public safety risk.

7 (7) "Terminally ill" describes an inmate who, as determined by a licensed
8 physician, has an incurable condition caused by illness or disease that
9 was unknown at the time of sentencing and was not diagnosed upon
10 entry to prison, that will likely produce death within six months, and
11 that is so debilitating that it is highly unlikely that the inmate poses a
12 significant public safety risk.

13 **"§ 15A-1369.1. Authority to release.**

14 The Commission shall establish a medical release program to be administered by the
15 Department. The Commission shall prescribe when and under what conditions an
16 inmate may be released for medical release, consistent with the provisions of
17 G.S. 15A-1369.4. The Commission may adopt rules to implement the medical release
18 program.

19 **"§ 15A-1369.2. Eligibility.**

20 (a) Except as otherwise provided in this section, notwithstanding any other
21 provision of law, an inmate is eligible to be considered for medical release if the inmate
22 is:

- 23 (1) Diagnosed as permanently and totally disabled, terminally ill, or
24 geriatric under the procedure described in G.S. 15A-1369.3(b)(1); and
25 (2) Assessed by the Department to pose no risk to society, as described in
26 G.S. 15A-1369.3(b)(2).

27 (b) Persons convicted of a capital felony or a Class A, B1, or B2 felony and
28 persons convicted of an offense that requires registration under Chapter 27A of the
29 General Statutes shall not be eligible for release as permanently and totally disabled or
30 geriatric under this Article.

31 **"§ 15A-1369.3. Procedure for medical release.**

32 (a) The Commission shall consider an inmate for medical release upon referral
33 by the Department. The Department may base its referral upon either a request or
34 petition for release filed by the inmate, the inmate's attorney, or the inmate's next of kin
35 or upon a recommendation from within the Department.

36 (b) The criteria for referral shall include an assessment of the inmate's medical
37 condition and the risk the inmate poses to society, as follows:

- 38 (1) Both the Department medical director, or a designee of the director
39 who is a licensed physician, and an independent licensed physician
40 approved by the Department shall review the case of each inmate who
41 has applied for or has been recommended for medical release. Any
42 physician who examines an inmate being considered for medical
43 release shall prepare a written diagnosis that includes:

- 1 a. A description of any and all terminal conditions, physical
2 incapacities, and chronic conditions; and
3 b. A prognosis concerning the likelihood of recovery from any and
4 all terminal conditions, physical incapacities, and chronic
5 conditions.

6 (2) The Department shall make an assessment of the risk for violence and
7 recidivism that the inmate poses to society. In order to make this
8 assessment, the Department may consider such factors as the inmate's
9 medical condition, the severity of the offense for which the inmate is
10 incarcerated, the inmate's prison record, and the release plan. The
11 Department shall also provide the victim or victims of the inmate or
12 the victims' family or families with an opportunity to be heard.

13 (c) If the inmate meets the criteria for release, the Department shall forward its
14 referral and medical release plan for the inmate to the Commission. The Department
15 shall complete the risk assessment and forward its referral and medical release plan
16 within 30 days of receiving a request, petition, or recommendation for release of a
17 terminally ill inmate and within 30 days of receiving a request, petition, or
18 recommendation for release of a permanently and totally disabled inmate or a geriatric
19 inmate.

20 (d) The Commission shall make a determination of whether to grant medical
21 release within 15 days of receiving a referral from the Department for release of a
22 terminally ill inmate and within 20 days of receiving a referral from the Department for
23 release of a permanently and totally disabled inmate or a geriatric inmate.

24 (e) A denial of medical release by the Commission shall not affect an inmate's
25 eligibility for any other form of parole or release under applicable law.

26 (f) If the Department determines that an inmate should not be considered for
27 release under this Article or the Commission denies medical release under this Article,
28 the inmate may not reapply or be reconsidered unless there is a demonstrated change in
29 the inmate's medical condition.

30 **"§ 15A-1369.4. Conditions of medical release.**

31 (a) The Commission may set reasonable conditions upon an inmate's medical
32 release that shall apply for any length of time determined by the Commission through
33 the date upon which the inmate's sentence would have expired. These conditions may
34 include:

- 35 (1) That the released inmate may be placed in a hospital, hospice, or other
36 institution as specified by the Commission; and
37 (2) That the Department shall receive periodic assessments from the
38 inmate's treating physician.

39 Inmates who are granted medical release are subject to supervision by the Division
40 of Community Corrections and any conditions set by the Commission.

41 (b) The Commission shall revoke an inmate's medical release if the Commission
42 determines that an inmate has failed to comply with any reasonable condition set upon
43 the inmate's release. If the Commission revokes an inmate's medical release, the inmate
44 shall be returned to the custody of the Department and shall resume serving the balance

1 of the sentence with credit given only for the duration of the inmate's medical release
2 served in compliance with all reasonable conditions set forth pursuant to subsection (a)
3 of this section. Revocation of an inmate's medical release for violating a condition of
4 release shall not preclude an inmate's eligibility for any other form of parole or release
5 provided by law but may be used as a factor in determining eligibility for that parole or
6 release.

7 **"§ 15A-1369.5. Change in medical status.**

8 (a) If a periodic diagnosis reveals that an inmate released on medical release has
9 improved so that the inmate would not be eligible for medical release if being
10 considered at that time, the Commission may order the inmate returned to the custody of
11 the Department to await a revocation hearing. In determining whether to revoke medical
12 release, the Commission may consider the most recent periodic diagnosis of the inmate
13 and a risk assessment of the inmate conducted pursuant to G.S. 15A-1369.3(b)(2). If the
14 Commission revokes the inmate's medical release, the inmate shall resume serving the
15 balance of the sentence with credit given for the duration of the medical release.

16 (b) Revocation of an inmate's medical release due to a change in the inmate's
17 medical condition shall not preclude an inmate's eligibility for medical release in the
18 future or for any other form of parole or release provided by law."

19 **SECTION 2.** This act is effective when it becomes law.