

Pardons and Conditional Release in Virginia

In Virginia, the Governor has “the power to grant pardons or reprieves” to those with criminal convictions.¹ Petitions are submitted to the Secretary of the Commonwealth, and decisions are made based on the written submissions and supporting letters.² There is no additional “hearing, meeting, or conference.”³ Securing a pardon is difficult, but possible.⁴

Submitting a pardon petition is a lengthy and complex process, and we encourage you or a family member to hire an attorney with relevant experience if you can. **This guide is not legal advice** and does **not** create an attorney-client relationship between you and Legal Aid Justice Center (LAJC). The guide is meant to provide an overview as a starting point. It was reviewed for accuracy in April of 2024, but the law changes frequently.

Covered in this guide: There are absolute, simple, and conditional pardons, and each type has different benefits and requirements. The governor can also grant executive medical clemency, sometimes called a medical pardon, for the terminally ill. Finally, the Parole Board has the separate authority of “conditional release,” which is available to people with terminal illnesses or older people who have served significant portions of their sentences. This guide focuses on pardons and includes references to resources about medical clemency and conditional release. This guide does not address the separate processes of parole or restoring one’s rights to vote, serve on a jury, or own firearms.

Enclosed with this guide: At the end of this guide, you will find a copy of a resource created by Families Against Mandatory Minimums (FAMM) in 2021. It provides more detail on medical clemency, geriatric conditional release, and conditional release for people with terminal illness. Please note that LAJC did not produce the FAMM guide and we cannot guarantee its accuracy.

Types of Relief

Confusingly, the Supreme Court of Virginia has defined and explained the various types of pardons in a manner that does not match up precisely with the categories that the

¹ See Va. Ann. Code § 53.1-229 (referencing Article V, Section 12 of the Constitution of Virginia).

² *Frequently Asked Questions About Pardons*, SECRETARY OF THE COMMONWEALTH – KELLY GEE, <https://www.commonwealth.virginia.gov/judicial-system/pardons/> (last visited June 13, 2024) (referred from now on as “Secretary of the Commonwealth’s Website”).

³ Secretary of the Commonwealth’s Website.

⁴ In 2020, attorney Jonathan Sheldon published a table of all pardons granted from 2008–2019. The document, which summarizes FOIA requests, lists the type of pardon, the underlying offense, the reason for the pardon, and the name of the recipient. See <https://www.sfhdefense.com/wp-content/uploads/2020/06/2020-06-10-Pardon-Summary-Updated-1-copy-2.pdf> (last visited June 13, 2024).



LEGAL AID JUSTICE CENTER

Secretary of the Commonwealth discusses on its website and includes on pardon request forms. For instance, the Secretary of the Commonwealth does not provide forms for requesting a “partial pardon.” Since you are required to use a form provided by the Secretary, you will inevitably run into their terminology.

The following table illustrates the different forms of relief and how they’re described by the courts and the Secretary of the Commonwealth.

Virginia Supreme Court Caselaw ⁵ Pardon Description	Sec’y of the Commonwealth ⁶ Pardon Description	Other Forms of Relief
<p>“Absolute” vs. “Partial” Pardons: An absolute pardon is an act that clears someone’s name entirely, while a partial pardon is an act that removes some but not all the legal effects or punishment.</p> <p>“Conditional” vs. “Unconditional” Pardons: A conditional pardon is a pardon that takes effect upon the completion of a prerequisite or specifies a basis for revocation of the pardon, while an unconditional pardon is an act that nullifies punishment or other consequences without completion of prerequisites or risk of revocation. An unconditional pardon can be absolute or partial.</p>	<p>“Simple Pardons”: A simple pardon is a statement of official forgiveness that does not remove the conviction from the record but rather adds a notation to the criminal record with the word “pardon” next to the conviction. This pardon is available only after a person has been free of court-imposed conditions of sentence for five years.</p> <p>“Absolute Pardons”: An absolute pardon removes all legal consequences of the conviction and is based on the Governor’s belief that the petitioner is actually innocent of the charge for which he or she was convicted. It is available only for people who pled “not guilty” throughout the judicial process and have exhausted all other avenues for relief.</p> <p>“Conditional Pardons”: A conditional pardon is an act to modify a sentence imposed by a court, and it may be used to shorten a person’s incarceration. Special “medical” and “immigration” pardons are also considered types of conditional pardons.</p>	<p>Executive Clemency or “Medical Pardon”: This allows for the release of people who are terminally ill. It is granted by the governor’s office and described in VADOC regulations.⁷</p> <p>Conditional Release: The Virginia code also includes forms of release granted by the Parole Board (but distinct from parole). These include conditional release based on terminal illness⁸ and geriatric conditional release.⁹</p>

⁵ *Blount v. Clark*, 291 Va. 198 (Va. 2016).

⁶ Secretary of the Commonwealth’s Website.

⁷ DOC-OP 820.2, § XI (B).

⁸ See Va. Ann. Code § 53.1-40.02.

⁹ See Va. Ann. Code § 53.1-40.01.



LEGAL AID JUSTICE CENTER

General Format and Advice

For simple pardons, absolute pardons, and conditional pardons (including general conditional pardons as well as executive medical clemency and immigration-related pardons), the basic format of the petition is similar. The specific aspects of each type of relief will be discussed further below.

Required Application Form

A person convicted of a crime must petition the Governor for a pardon by submitting the *Pardon Petition Form*.¹⁰ Without the form, your application will not be considered. The form may be completed through an online portal (<https://cov-pardons.azurewebsites.net>) or requested from the prison law library or the Secretary of the Commonwealth's Office and then mailed to the following address:

Clemency Staff
P.O. Box 2454
Richmond, Virginia 23218

The petitioner can list individuals authorized to speak to the Office of the Commonwealth about the request. This might be the petitioner's attorney and people writing letters to support the petition.

Remember that supportive documents you submit along with your form will **not** be returned to you, so make copies and send them instead of originals.

Basic Form Elements

1. *Biographical information* – Name, name at time of conviction, aliases, DOB, SSC, inmate number, anticipated release date, parole eligible date, contact information
2. *Convictions for which petitioner is seeking a pardon*
3. *Authorized individuals*
4. *Supplemental information/documents—to be included on separate pages attached to the form.*
 - a. MANDATORY: Adult and juvenile criminal history, including all arrests, even if they were out-of-state or charges were dismissed, accompanied by the explanations required by the form
 - b. OPTIONAL: Information that might make the governor more likely to grant the petition, such as educational accomplishments, employment history, military history, etc.

¹⁰ See Pardon Petition Form:

<https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/CEC-Pardon-Questionnaire-Form.pdf> (last visited April 13, 2023).

5. Signature

Suggestions for Presenting a Compelling Petition

To increase your chances of success, you can go beyond the bare minimum required by the form and include with it a separate personal statement that explains why you should get a pardon. Putting together such a statement is a large undertaking, and it is one area where an attorney can be helpful.

The rest of this section presents ideas for putting together a more compelling application, but they are **suggestions only** and should be evaluated carefully, on a case-by-case basis.

- **Request and review your prison institutional records.** As you review, make a plan for how you will address any “bad facts” in your pardon petition (for example, you received a disciplinary infraction in the past five years). Because the Governor’s office will have access to your institutional records when they review your petition, it is important to address any potential reasons for denying your petition head-on.
- **Compile records that support your petition.** Where possible, you should gather documents reflecting your educational accomplishments, employment history, and community service or volunteer work performed, from both before and during your incarceration. If any documents support the claims you intend to make in your petition about why your pardon should be granted, you should also collect and be prepared to submit them. For example, if you are requesting a medical clemency application, you should be prepared to submit medical records that confirm your terminal illness and three-month life expectancy. This may include both DOC records and records from any outside medical providers/hospitals where you have received treatment. Remember, records won’t be returned to you, so submit copies, not originals.
- **Include a “personal statement” that makes your case.** The *Pardon Petition Form* is required, but you can also submit a personal statement in the “Supplemental Information” section. Your statement should be thoughtful and thorough.
 - Present *detailed* plans for your release and re-entry. Explain where you plan to live, that you will have a stable living environment, how you intend to cover living and medical expenses, whether you are eligible for/intend to enroll in Medicaid and/or SNAP, whether and in what amount you are entitled to Social Security benefits, any job opportunities you have lined-

up and/or intend to pursue, etc.

- Describe *in detail* how you've grown and been rehabilitated while in prison. Because the Governor's office will have your records, you should not simply list the programs you have participated in. Instead, describe how participating in these programs has impacted you/your beliefs/your thought processes. You could describe how something you learned in a program changed your point view on a relevant issue, or how you've been practicing and plan to use tools you've learned in a program in the future.
- Unless you are applying for an absolute pardon, this is **not** the place to claim your innocence. (If you believe that you should be pardoned because you are innocent of the charges, you must pursue all forms of relief and apply for an absolute pardon.)
- Assuming you are not applying for an absolute pardon, you might consider discussing in detail any remorse you have experienced around your conviction offense. However, you should review the statement with other people to ensure that readers interpret it as sincere, remorseful, and aligned with what you intend to communicate.
- Address any issues that might lead the Governor to deny your petition. (For example, you should take responsibility for any disciplinary infractions you have received in custody.)
- **Get letters of support** from family, friends, community members, or others who might be helpful. Letters can be submitted online¹¹ or by mail. If you are requesting a medical pardon, doctors who have treated you may be willing to write a letter explaining how your condition makes your continued incarceration especially harsh, punitive, or unnecessary. You should also ask for letters from people who will be supporting you with housing, employment, etc., after your release, and anyone who has personally witnessed your character change over the course of your incarceration. (This might include teachers, clergy, work supervisors, and even correctional officers/unit managers with whom you have a good relationship.) Be careful, however, in making these requests: If you've had any bad experiences with the person, you should carefully consider if and how it might come up in the letter, and the consequences that could follow. Letters of support from a victim involved in your case and/or their surviving family can be incredibly powerful, but they can also easily turn into letters of opposition if you haven't previously been in contact and/or made amends with the person.

¹¹ See <https://solutions.virginia.gov/Pardons/LetterofSupport/LetterofSupport>.

Decision-making Process

The Governor has the sole power to grant pardons, though he or she can require that the Virginia Parole Board investigate and make non-binding recommendations on pardon applications.¹² (This differs from conditional geriatric release and conditional release for terminal illness, which are legally under the discretion of the Virginia Parole Board and not subject to the Governor's approval.¹³)

Though there are variations in the supplementary information recommended for each type of petition, information regarding the petitioner's offense is always relevant. Other relevant factors that may be relevant include:

- Petitioner's attitude toward the crime (remorse for actions and/or concern for the victim);
- Seriousness of the offense and potential for future harm;
- Record of disciplinary infractions during incarceration;
- Circumstances surrounding the crime;
- Changes in the law since conviction;
- Length of time served;
- History of prior or subsequent convictions that demonstrate a pattern of behavior;
- Length of time since last conviction;
- Age of petitioner at time of conviction;
- Community support for the petitioner;
- Local or statewide public leaders who support the petitioner;
- Petitioner's conduct since release (if you are no longer incarcerated); and
- Petitioner's family's support of release and/or dependency on the petitioner.¹⁴

The *Pardon Petition Form* requires discussion of many of these factors. If not explicitly required, this information can still be included under the "optional" section of the form, which asks that the petitioner provide "any other personal information [the Governor's Office] should know."¹⁵

Once the request is submitted, it may take **two or more years** for the pardon application to be reviewed and for you to receive a decision.¹⁶

¹² See Va. Ann. Code § 53.1-231.

¹³ See Va. Ann. Code § 53.1-40.01-.02.

¹⁴ Walter A. McFarlane, *The Clemency Process in Virginia*, 27 U. Rich. L. Rev. 241 (1993).
<http://scholarship.richmond.edu/lawreview/vol27/iss2/6>

¹⁵ See Pardon Petition Form,
<https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/CEC-Pardon-Questionnaire-Form.pdf>.

¹⁶ Secretary of the Commonwealth's Website.

Campaign Strategy

Your efforts to secure a pardon need not end with your submission of the application. An incarcerated Virginian named Uhuru Rowe has written a detailed blog post describing how to develop a campaign that employs online petitions, rallies and press conferences, letter-writing campaigns, and legislative support. (Mr. Rowe won a conditional pardon in 2022 after 28 years of incarceration through a yearlong campaign led by his attorney, friends, and supporters on the Justice for Uhuru Coordinating Committee (JUCC).) You will find a link to the blog post in the footnotes.¹⁷

Post-Decision

There is no process for appealing the denial of a petition. However, the petitioner can file another petition three years after the date of the denial.¹⁸

The Governor is required to communicate with the General Assembly about pardons at each regular session.¹⁹ The list of pardons granted and the reasons behind the decisions are published on the Legislative Information System.²⁰

Details of Types of Relief

Simple Pardons

A simple pardon is a “statement of official forgiveness” from the Governor.²¹ It does not remove the conviction from the petitioner’s record or restore rights lost with a felony conviction, such as voting or access to firearms. It simply results in the addition of the word “pardoned” next to the conviction in the petitioner’s record.

To be eligible for a simple pardon, the petitioner must be “free of all conditions set by the court . . . on all convictions followed by a waiting period of five years.”²² Conditions may include any probation period, suspended time, or good-time behavior. A petitioner

¹⁷ See Uhuru Rowe, “Proven Strategies for Waging an Effective Campaign for Clemency in Virginia,” <https://consciousprisoner.wordpress.com/2023/05/24/proven-strategies-for-waging-an-effective-campaign-for-clemency-in-virginia> (last visited June 13, 2024).

¹⁸ Secretary of the Commonwealth’s Website.

¹⁹ See Article V, Section 12 of the Constitution of Virginia.

²⁰ *Reports to the General Assembly*, Virginia Legislative Information System, <https://rga.lis.virginia.gov/?SearchView&SearchOrder=4&query=clemency> (last accessed April 13, 2024).

²¹ Secretary of the Commonwealth’s Website.

²² Secretary of the Commonwealth’s Website.

cannot request a simple pardon while still incarcerated. Additionally, if the petitioner is requesting a simple pardon for a felony conviction, they must have been granted their Restoration of Rights *before* submitting the petition. Information on applications for Restoration of Rights is beyond the scope of this guide.

At the top of the *Pardon Petition Form*, there is an option for the petitioner to select “Simple.” Petitioners should consider the general advice provided above.

Simple pardons have become more common in recent years, though they are still rare. Governor McAuliffe granted 189 simple pardons over four years, a majority to individuals convicted of misdemeanors.²³ Governor Ralph Northam issued more than 1,200 simple pardons between 2018 and 2022.²⁴

Absolute Pardons

An absolute pardon is intended for when the Governor believes that the petitioner is actually innocent of the charge for which he or she was convicted.²⁵ An absolute pardon entitles the petitioner to the automatic judicial expungement of the conviction, without the need for a petition for expungement to be filed with the court.

To be eligible for an absolute pardon, the petitioner must have pled “not guilty” throughout the judicial process and exhausted all other forms of judicial appeal and other remedies, including having sought a Writ of Actual Innocence. Therefore, a request for an absolute pardon is considered a remedy of last resort.

At the top of the required *Pardon Petition Form*, there is an option for the petitioner to select “Absolute.” In the materials submitted alongside the petition, there should be a focus on answering the question of why the petitioner is innocent of the charge for which they were convicted.

Conditional Pardons

A conditional pardon modifies or ends a sentence imposed by the court and is available to someone is currently incarcerated. There are no eligibility guidelines for

²³ *Virginia Restoration of Rights & Record Relief*, Collateral Consequences Resource Center, <https://ccresourcecenter.org/state-restoration-profiles/virginia-restoration-of-rights-pardon-expungement-sealing/> (last accessed April 13, 2024).

²⁴ Senate Document No. 2, *List of Pardons, Commutations, Reprieves and Other Forms of Clemency*, Office of the Governor (2022), <https://rga.lis.virginia.gov/Published/2022/SD2/PDF>.

²⁵ *Wilborn v. Saunders*, 170 Va. 153, 162, 195 S.E. 723, 727 (1938).

general conditional pardons beyond those that apply to all pardons. Conditional pardons are granted where there is “substantial evidence of exceptional circumstances” faced by petitioners who have “demonstrated rehabilitation.”²⁶

At the top of the required *Pardon Petition Form*, there is an option to select “Conditional.” Petitioners should also consider the general advice provided above.

If a pardon is granted, any conditions will be presented to the petitioner for their consent and signature. If the Governor pardons the petitioner without specifying any conditions, the pardon will be “self-executing,” meaning that the petitioner’s consent and signature are not required.²⁷

Immigration Pardons

Because immigration involves its own complex body of law, you should consult with an immigration attorney about any immigration-related issues.

The Secretary of the Commonwealth’s website lists a category of “immigration pardon,” described as follows:

A partial pardon is a form of a conditional pardon and can be granted to individuals who are experiencing immigration issues. In order to be considered for immigration related clemency, the individual must be facing deportation in 30 days or less. Due to this shortened time frame, immigration clemency requests are handled in an expedited process.²⁸

Apparently, these pardons are even less common than other types. The Secretary’s office would not answer questions about immigration pardons and would not explain the circumstances in which they might be granted or what they can be used for. Several immigration attorneys (some from Legal Aid Justice Center and some from the outside the organization) reported that they had never encountered these pardons in their work.

However, the news media reported that Governor Youngkin granted five immigration pardons in 2023.²⁹ The recipients were all “attempting to become U.S. citizens but cannot complete this process due to their currently being incarcerated.” Their convictions included robbery, embezzlement, identity fraud, and others not listed. Each person had

²⁶ Secretary of the Commonwealth’s Website.

²⁷ *Blount v. Clark*, 291 Va. 198, 211 (Va. 2016).

²⁸ Secretary of the Commonwealth’s Website.

²⁹ WRIC ABC-8 News, “A Look at Who Youngkin Pardoned in 2023,” available at <https://www.wric.com/news/politics/capitol-connection/a-look-at-who-youngkin-pardoned-in-2023> (last visited June 12, 2024).

their sentence reduced to a year of probation. These sentence reductions for naturalization purposes do not seem to correspond with the Secretary of the Commonwealth's description of emergency pardons to forestall deportation.

For more information about the intersection between pardons and federal immigration law, you may wish to consult *Pardon: The Immigrant Clemency Project Toolkit*, a resource produced by the Immigrant Defense Project in 2018.³⁰ It includes extensive guidance on elements that may strengthen a pardon application submitted for federal immigration purposes. Please be aware that the resource has **not** been reviewed for accuracy by LAJC and it does not address Virginia law.

To request an immigration pardon in Virginia, a petitioner must submit the Secretary of the Commonwealth's *Pardon Petition Form*, selecting "CONDITIONAL" as the form of the pardon, and "Yes" to the question, "Is this request related to immigration?"³¹ The petitioner will then be asked to provide their court date, as well as other information required for other types of pardons.

Executive Medical Clemency, Conditional Release Based on Terminal Illness, and Geriatric Conditional Release

In addition to the forms of relief described above, you may also seek conditional release based on terminal illness, executive medical clemency (also known as a medical pardon) based on terminal illness, or geriatric conditional release. These topics are all described in depth in a December 2021 manual produced by Families Against Mandatory Minimums (FAMM). Rather than reproducing the comprehensive information the FAMM manual contains, we are attaching it to this guide. However, please be aware that the FAMM guide was **not** produced by LAJC and LAJC cannot guarantee its accuracy.

³⁰ *Pardon: The Immigrant Clemency Project Toolkit* (2018), available at <https://immigrantpardonproject.com/wp-content/uploads/2018/10/IDP-Pardon-Toolkit.pdf> (last visited June 13, 2024).

³¹ See Pardon Petition Form: <https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/CEC-Pardon-Questionnaire-Form.pdf> (last visited Nov. 12, 2023).

Virginia provides compassionate release to eligible incarcerated individuals who are terminally ill through **Conditional Release Based on Terminal Illness**¹ and **Executive Medical Clemency**,² and to eligible individuals who are age 60 or older through **Geriatric Conditional Release**.³

CONDITIONAL RELEASE BASED ON TERMINAL ILLNESS

I. ELIGIBILITY

Medical Condition – Incarcerated individuals who are terminally ill may be eligible for Conditional Release.

- “Terminally ill” is defined as having a chronic or progressive medical condition caused by injury, disease, or illness where the individual is expected to die within 12 months.⁴

Exclusions – There is a long list of terminally ill individuals who will not be considered for Conditional Release, including those serving sentences for first or second degree murder, any kidnapping or abduction felony, arson, sexual assault, treason, and certain robbery and carjacking offenses.⁵

II. APPLICATION/REFERRAL

An incarcerated individual who is terminally ill may petition the Virginia Parole Board for Conditional Release by submitting a *Petition for Conditional Release Based on Terminal Illness*.⁶

- The petition form states that an individual’s “institutional counselor” may assist in filling out the form and gathering any necessary information.⁷

III. DOCUMENTATION AND ASSESSMENT

The Parole Board requires an incarcerated individual to submit the following information with the *Petition for Conditional Release Based on Terminal Illness*:

- Identification of health issues, including medical reports;
- Residential plans;
- Family/community support;

- Names and contact phone numbers of “support individuals or groups”; and
- Any other pertinent information.⁸

IV. DECISION-MAKING PROCESS

Decision-Maker – The Virginia Parole Board makes the final decision whether to release terminally ill individuals on Conditional Release.⁹

Decision – The Parole Board reviews and considers the petitions that eligible individuals submit and provides written notification of its decisions.¹⁰

Other than the *Petition for Conditional Release Based on Terminal Illness* form, the Parole Board has not promulgated any rules implementing Conditional Release Based on Terminal Illness, and there is no other information available on the Board’s decision-making process in these cases.¹¹

V. POST-DECISION

Although the statute does not address whether an individual may reapply after a denial, the *Petition for Conditional Release Based on Terminal Illness* includes a box the Parole Board can check to indicate it will not consider a request if the individual previously submitted a petition less than one year ago.¹² There is no other information available about whether the Board will reconsider a petition if an individual’s health has changed or worsened in the interim.

VI. REPORTING/STATISTICS

The Conditional Release Based on Terminal Illness statute became effective on March 1, 2021, and, as of this memo’s publication, the Parole Board has not issued information indicating that any individuals have been released under the new law.

EXECUTIVE MEDICAL CLEMENCY

The Governor may grant Executive Medical Clemency, also referred to as a Medical Pardon, to incarcerated individuals who are terminally ill.¹³

I. ELIGIBILITY

Medical Condition – An incarcerated individual is eligible for Medical Clemency consideration if the person has a terminal illness with a life expectancy of three months or less.¹⁴

- Note that this definition of terminal illness is different than the one used in the Conditional Release Based on Terminal Illness law, where terminal illness is defined as being expected to die within 12 months.

The incarcerated individual's treating physician and a second licensed physician, one of whom must be a Department of Corrections (Department) physician, must make the diagnosis.¹⁵

Exclusions – There is no information on any incarcerated individuals being excluded from Medical Clemency consideration.

II. APPLICATION/REFERRAL

Request/Petition – Incarcerated individuals, or relatives or friends on their behalf, can submit requests for Medical Clemency to the Office of the Secretary of the Commonwealth.¹⁶

- For information on how to submit a *Medical Clemency Petition* (also referred to as a *Medical Pardon Petition*), individuals must email the Office of the Secretary of the Commonwealth at pardons@governor.virginia.gov.

III. DOCUMENTATION AND ASSESSMENT

The only additional information the Department provides on the documentation and assessment process is that the Secretary of the Commonwealth and/or the Parole Board may ask Department “organizational units” for additional information on the incarcerated individual's medical treatment, mental and physical health needs, programming, work history, disciplinary record, interactions with staff and other incarcerated people, cognitive functioning, proposed home plan, and support system.¹⁷

- **Pre-release Planning** – Although the Department has fairly comprehensive guidance on pre-release planning,¹⁸ it does not appear applicable to incarcerated individuals who are terminally ill. For example, Re-entry Counselors are directed to work on “home plans,” and for people with ongoing medical issues, the Re-entry Counselors must complete a “Problematic Release Plan,” which require extra coordination to facilitate release.¹⁹ This planning process, which includes arranging for medical equipment and needed supplies and beginning the public benefits application process, does not reference incarcerated people who are terminally ill and the stated time frames (up to 12 months to complete some of the paperwork) are unrealistic for individuals who are terminally ill.

IV. DECISION-MAKING PROCESS

Decision-Maker – Only the Governor of Virginia has the power to grant Executive Medical Clemency on the basis of a terminal illness.²⁰

Decision – At the Governor’s request, the Virginia Parole Board is responsible for investigating Medical Clemency petitions and reporting its recommendations.²¹

Conditions – If the Governor grants the request, the Department’s Community Release Unit will create the release authorization, detailing the appropriate reporting instructions for the person’s “release status.”²²

- As a condition of Medical Clemency, an individual who is terminally ill must agree in writing to have a physician provide updated medical information to the Department whenever requested.²³

V. POST-DECISION

Supervision – The Governor may direct that an individual granted Medical Clemency be placed under supervision. In that situation, the individual is supervised in the same manner and under the same conditions as individuals released on parole, in addition to any conditions the Governor sets related to the medical condition.²⁴

Medical Follow-Up

- The Department’s Chief Physician (or designee) will communicate with the individual’s physician as needed to gather updated information on the medical condition, level of alertness, whether the individual is ambulatory and eating, and prognosis.²⁵
- A Department physician, if necessary, will be allowed to visit and examine any individual released on Medical Clemency.²⁶

Revocation/Termination – As stated above, a condition of being released under the Medical Clemency rules is that an individual must agree in writing to have a physician provide medical updates to the Department whenever requested. If a request for updated medical information is **not** honored, the Medical Clemency release can be immediately terminated.²⁷

VI. REPORTING/STATISTICS

Each year the Governor submits a report to the Virginia General Assembly providing information on the number of individuals granted pardons, commutations, and other forms of Executive Clemency. According to the most recent reports, in 2019, Governor Ralph Northam granted three terminally ill individuals Executive Clemency in the form

of a Medical Pardon,²⁸ and in 2020, he granted one terminally ill individual Executive Clemency in the form of a Medical Pardon.²⁹

GERIATRIC CONDITIONAL RELEASE

I. ELIGIBILITY

Age – Older incarcerated individuals may petition for Geriatric Conditional Release if they are (1) age 60 or older, having served at least 10 years of their sentence, or (2) age 65 or older, having served at least five years of their sentence.³⁰

Exclusions – Individuals convicted of Class 1 felonies are not eligible for Geriatric Conditional Release.³¹

II. APPLICATION/REFERRAL

Automatic Consideration – The Virginia Parole Board automatically reviews individuals incarcerated for felonies committed after January 1, 1995, within a year after they become eligible for Geriatric Conditional Release and annually thereafter.³²

Petition – Any incarcerated individual eligible for discretionary parole may submit a *Petition for Geriatric Conditional Release*, available on the Parole Board’s website, to be considered for release.³³

- Petitions can be submitted 90 days or less before the date the incarcerated individual meets the minimum age and time served requirements.³⁴

III. DOCUMENTATION AND ASSESSMENT

There is no formal documentation or assessment process prior to a *Petition for Geriatric Conditional Release* being submitted directly to the Board.

IV. DECISION-MAKING PROCESS

Decision-Maker – The Virginia Parole Board makes all decisions regarding Geriatric Conditional Release.

Decision Process – The Parole Board may deny petitions for Geriatric Conditional Release based on a review of the incarcerated individual’s record.³⁵ Petitions not denied on review are considered through the following procedures:

- Initial Review – Parole Board members review the incarcerated person’s petition, the individual’s “central file,” and any other relevant information.³⁶

- If the Board denies Geriatric Conditional Release at this step by a majority vote, the process ends.³⁷
- If the Board does **not** deny the request in its initial review, the case automatically advances to the next level, an “assessment review.”³⁸
- Assessment Review – A member of the Parole Board, or a designated staff person, conducts personal interviews with those petitioning for release and completes written assessments of their “suitability” for Geriatric Conditional Release. A recommendation to grant (or not grant) release is then made, detailing the supporting reasons.³⁹
 - Victim Notification – The Parole Board will notify the Department of Correction’s (Department) Victim Services office as required under Virginia Law, with the victim receiving written notification that an incarcerated person has petitioned for Geriatric Conditional Release.⁴⁰ The victim will be given 60 days to provide any comments and concerns,⁴¹ and consideration of any Geriatric Conditional Release is put on hold until that time period has ended.⁴²
- Final Vote and Decision – All factors the Parole Board uses in making parole decisions also apply in Geriatric Conditional Release, including victim input.⁴³ The case is then directed to the other Board members for review and decision.
 - The decision requires the concurrence of at least three Parole Board members. In the cases of individuals serving life sentences, Geriatric Conditional Release will not be granted unless four Board members agree.⁴⁴
 - Once a final decision has been made, the crime victim will be notified of the Parole Board’s action.⁴⁵

Conditions and Pre-release Planning

- Pre-release Planning – Transition, health care, and mental health staff are directed to complete applications for federal and state benefits that are available to older individuals after they are released. Those include veterans, Medicaid, and Supplemental Security Income (SSI) benefits.⁴⁶ Note that the Department has a “Memorandum of Understanding” with the Social Security Administration covering pre-release SSI application procedures.⁴⁷
- Conditions – The Parole Board sets the Geriatric Conditional Release terms and conditions, which are similar to those for general parole.⁴⁸ However, the Board can impose additional special conditions it feels are appropriate.⁴⁹

V. POST-DECISION

Denials and Appeal Rights – An individual may resubmit a *Petition for Geriatric Conditional Release* on an annual basis for the Parole Board’s review.⁵⁰

Effect of Conditional Release Request on Other Release Eligibility – An incarcerated individual may receive only one “consideration for release” (either discretionary parole or conditional release) in any 12-month period.⁵¹

Supervision – The Parole Board establishes the period of supervision for the formerly incarcerated person, with supervision provided by the Department’s Division of Community Corrections.⁵²

Revocation/Termination – If the individual violates one or more terms of the Geriatric Conditional Release, the Board may order an arrest and reincarceration.⁵³

VI. REPORTING/STATISTICS

The Parole Board publishes the number of individuals granted Geriatric Conditional Release as part of its monthly parole reports.⁵⁴

In 2019, the Parole Board considered 664 people for Geriatric Conditional Release, granting it to just 24 individuals – less than 4%. The age range of those granted release was 60 to 77 years old.

- Of the 24 people granted Geriatric Conditional Release, 23 were men and one was a woman; 18 individuals were Black and six were white.
- Of the 640 people denied Geriatric Conditional Release, 621 were men and 19 were women; 326 were white, 307 were Black, five were Asian American/Pacific Islander, and two were American Indian/Alaska Native.

In 2020, the Parole Board considered 940 people for Geriatric Conditional Release but only granted it to 79 individuals, ages 60 to 83. The percentage granted – 8.4% – is still relatively low but twice as high as the previous year.

- Of the 79 people granted Geriatric Conditional Release in 2020, 73 were men and six were women; 51 individuals were Black, 27 were white, and one was Asian American/Pacific Islander. Of the 79, four were also considered “dual eligibles,” meaning they were eligible for both Geriatric Conditional Release and general parole.
- Of the 861 people denied Geriatric Conditional Release in 2020, 841 were men and 20 were women; 451 individuals were white, 406 were Black, three were Asian American/Pacific Islander, and one was American Indian/Alaska Native.

VIRGINIA COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

CONDITIONAL RELEASE BASED ON TERMINAL ILLNESS

Statute

Virginia Code, § 53.1-40.02 (2021), available through the Virginia General Assembly, <https://law.lis.virginia.gov/vacode/title53.1/chapter2/section53.1-40.02/>.

Agency Policy/Publications

Virginia Parole Board, *Petition for Conditional Release Based on Terminal Illness* (2021), <https://vpb.virginia.gov/files/1193/vpb-pb29-petition-for-terminal-illness-release.pdf>.

Virginia Department of Corrections, Operating Procedure 820.02-Inmate Reentry Planning (May 1, 2021), §§ XI (A) (2) and (C), <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-820-2.pdf>.

EXECUTIVE MEDICAL CLEMENCY

Statute

Virginia Code, §§ 53.1-229 and 53.1-231, available through the Virginia General Assembly, <https://law.lis.virginia.gov/vacode/title53.1/chapter12/>.

Agency Policy/Publications

Secretary of the Commonwealth Kelly Thomasson, Pardons webpage, <https://www.commonwealth.virginia.gov/judicial-system/pardons/conditional-pardons/>.

Virginia Department of Corrections, Operating Procedure 820.2-Inmate Reentry Planning (May 1, 2021), §§ XI (B) and (C), <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-820-2.pdf>.

Virginia Department of Corrections, Operating Procedure 050.3 (Nov. 1, 2020), § II (E) (6), <https://www.vadoc.virginia.gov/files/operating-procedures/050/vadoc-op-050-3.pdf>.

(continued on next page)

VIRGINIA COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

(continued from previous page)

GERIATRIC CONDITIONAL RELEASE

Statute

Virginia Code, § 53.1-40.01, available through the Virginia General Assembly, <https://law.lis.virginia.gov/vacode/title53.1/chapter2/section53.1-40.01/>.

Agency Policy/Publications

Virginia Parole Board, Policy Manual (2006), § II.B, <https://vpb.virginia.gov/files/1107/vpb-policy-manual.pdf>.

Virginia Parole Board, Administrative Procedures Manual, Administrative Procedure 1.226-Conditional Release of Geriatric Inmates (2001), <https://vpb.virginia.gov/files/1108/vpb-procedure-manual.pdf>.

Virginia Parole Board, *Petition for Geriatric Conditional Release* (March 1, 2021), <https://vpb.virginia.gov/files/1093/vpb-pb27-petition-for-geriatric-release.pdf>.

Virginia Department of Corrections, Operating Procedure 820.2-Inmate Reentry Planning (May 1, 2021), §§ XI (A) (1) and (C), <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-820-2.pdf>.

NOTES

* *Id.* means see prior note.

¹ Va. Code Ann. § 53.1-40.02; Virginia Department of Corrections Operating Procedure (DOC-OP) 820.2, § XI (A) (2). See also Virginia Parole Board, *Petition for Conditional Release Based on Terminal Illness*. Note that the program is referred to as both “Conditional Release of Terminally Ill Prisoners” and “Conditional Release Based on Terminal Illness.”

² Va. Code Ann. §§ 53.1-229 and 53.1-231; DOC-OP 820.2, § XI (B) and DOC-OP 050.03, § II (E) (6). See also Secretary of the Commonwealth Kelly Thomasson, Pardons webpage.

³ Va. Code Ann. § 53.1-40.01; Virginia Parole Board Policy Manual, § II (B); Virginia Parole Board Administrative Procedure (Parole Board Procedure) 1.226-Conditional Release of Geriatric Inmates; DOC-OP 820.2, § XI (A) (1).

⁴ Va. Code Ann. § 53.1-40.02 (A); DOC-OP 820.2, § XI (A) (2) (a).

⁵ Va. Code Ann. §§ 53.1-40.02 (B) and (C); DOC-OP 820.2, § XI (A) (2) (c).

⁶ DOC-OP 820.2, § XI (A) (2) (b); Virginia Parole Board, *Petition for Conditional Release Based on Terminal Illness (Terminal Illness Petition)*.

⁷ *Terminal Illness Petition*, 2.

⁸ *Id.* at 1.

⁹ Va. Code Ann. § 53.1-40.02 (B).

¹⁰ *Terminal Illness Petition*, 2.

¹¹ The statute specifically states that the Parole Board must promulgate regulations to implement the new Conditional Release Based on Terminal Illness law. Va. Code Ann. § 53.1-40.02 (D). Note that the Virginia Parole Board's Policy Manual and Administrative Procedures Manual have not been updated since 2006.

¹² *Terminal Illness Petition*, 2.

¹³ Va. Code Ann. § 53.1-229; DOC-OP 820.2, § XI (B). See also Secretary of the Commonwealth Kelly Thomasson, Pardons webpage. Note that although the Department uses the term "Medical Clemency," the Governor's website refers to it as "Medical Pardon."

¹⁴ DOC-OP 820.2, § XI (B) (2).

¹⁵ *Id.*

¹⁶ *Id.* at (B) (3). See also Secretary of the Commonwealth Kelly Thomasson, Pardons webpage.

¹⁷ *Id.* at (C).

¹⁸ *Id.* at §§ I through XII.

¹⁹ *Id.* at § VI (D) (2)

²⁰ Va. Code Ann. § 53.1-229; DOC-OP 820.2, § XI (B) (1)

²¹ Va. Code Ann. § 53.1-231; Virginia Parole Board, Policy Manual § VII (B).

²² DOC-OP 820.2, § XII (A) (1).

²³ DOC-OP 820.2, § XI (B) (4); DOC-OP 050.3, § II (E) (6).

²⁴ Virginia Parole Board, Policy Manual § VII (C), referencing Va. Code Ann. § 53.1-136 (5).

²⁵ DOC-OP 050.3, § II (E) (6) (b).

²⁶ *Id.* at (6) (d).

²⁷ DOC-OP 820.2, § XI (B) (4), referencing DOC-OP 050.3.

²⁸ Office of the Governor, List of Pardons, Commutations, Reprieves and Other Forms of Clemency, to the General Assembly of Virginia, Senate Document No. 2, (2020), <https://rga.lis.virginia.gov/Published/2020/SD2/PDF>.

²⁹ Office of the Governor, List of Pardons, Commutations, Reprieves and Other Forms of Clemency, to the General Assembly of Virginia, Senate Document No. 2, (2021), <https://rga.lis.virginia.gov/Published/2021/SD2/PDF>.

³⁰ Va. Code Ann. § 53.1-40.01; Parole Board Procedure 1.226; DOC-OP 820.2, §§ XI (A) (1) (a) and (A) (1) (b).

³¹ Va. Code Ann. § 53.1-40.01; Parole Board Procedure 1.226, Policy; DOC-OP 820.2, § XI (A) (1) (b). Class 1 felonies are the most serious crimes, including those punishable by death or life imprisonment. See Va. Code Ann. § 18.2-9.

³² DOC-OP 820.2, § XI (A) (1) (c) (i). The Parole Board procedures do not reference automatic consideration for Geriatric Conditional Release. Note that although the Department procedures say that the Parole Board will review an individual eligible for Geriatric Conditional Release “annually,” they also state that after the initial review the Parole Board can defer the “next review” for up to three years. *Id.*

³³ *Id.* at (A) (1) (c) (ii).

³⁴ *Id.* at (A) (1) (c) (iii).

³⁵ Parole Board Procedure 1.226, Policy.

³⁶ *Id.* at Application, Initial Review.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at Application, Assessment Review.

⁴⁰ *Id.* at Application, Initial Review. See also Va. Code Ann. § 53.1-155 and Parole Board Procedure 1.225.

⁴¹ Parole Board Procedure 1.226, Application, Assessment Review. Comments can be provided in writing or by phone.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ DOC-OP 820.2, § X (C). Supplemental Security Income (SSI) provides income benefits for low-income individuals who are disabled and/or age 65 or older. Note that SSI applications for age-based claims may not be submitted more than 30 days prior to release. *Id.* at § X (B) (1) (b).

⁴⁷ DOC-OP 820.2, § X (B) (1).

⁴⁸ Parole Board Procedure 1.226, Application, Conditions of Release. See Virginia Parole Board Policy Manual, § IV (A) for general conditions of parole.

⁴⁹ Parole Board Procedure 1.226, Application, Conditions of Release.

⁵⁰ DOC-OP 820.2, § XI (A) (1) (c) (iv).

⁵¹ Parole Board Procedure 1.226, Application.

⁵² Id. at Application, Conditions of Release. Note that the Division of Community Corrections is still referred to as the “Division of Probation and Parole” in some Department documents.

⁵³ Id. Note, however, that an individual whose Geriatric Conditional Release is revoked may file a new petition and be considered again “at the discretion of the Board.” Id. at Application, Review Following Revocation of Conditional Release.

⁵⁴ Virginia Parole Board, Parole Decisions, <https://vpb.virginia.gov/parole-decisions/>.